

*Rules  
and  
Procedures  
Governing  
Boards  
and  
Commissions*

BCR-2002

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**RULE 1            ADMINISTRATION & GENERAL MEETING RULES**

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**Rule 1.1            Composition Of Board And/Or Commission**

Composition of the Board and/or Commission shall be as found in the Codified Ordinances of the City of Napoleon, Ohio governing such board or commission.

It shall be the duty of each member of the board or commission to attend all meetings or hearings of the board or commission and to devote as much time as is necessary to the management of the business and affairs of the board or commission.

**Rule 1.2            Board Or Commission To Enforce Rules And Procedures**

The board or commission shall administer and enforce the rules and procedures herein prescribed.

**Rule 1.3            General Meeting Rules**

Unless otherwise provided by Council Ordinance or the City Charter, at the organizational meeting held in January of each calendar, the board or commission shall elect one (1) of its members to serve as chairman or chair lady (hereinafter called chairman) of the board or commission whom shall, except in case of death, resignation, recall, removal or forfeiture of office, serve for a term of one (1) year or until his or her successor is elected and qualified. In the absence of the chairman there shall be selected an "acting chairman" by the members whom shall be cloaked with all power and authority of the chairman in any absence of the chairman.

**Rule 1.4            Presiding Officer**

The chairman, and in the chairman's absence, the acting chairman, shall preside over the meetings of the board or commission. The presiding officer shall sign all documents as the presiding officer. The presiding officer shall call all meetings of the board or commission to order at the hour fixed and shall proceed with the order of business. In any case, if a quorum is present, the presiding officer shall give the members an opportunity for correcting the journal of the previous meeting as delivered. Approval of Minutes shall be pursuant to rule 1.16. The presiding officer shall preserve order and decorum, prevent personal attacks or the impugning of members motives, confine members in debate to the question under discussion, decide all points of order subject to an appeal to the commission, and appoint all hearing officers and other persons doing work for the commission as may be authorized from time to time, except as may otherwise be required by rule or law.

**Rule 1.5            Votes Necessary For Election Of Officers And Employees**

No candidate for chairman or acting chairman of the board or commission shall be declared elected unless the person shall have received a majority vote of all current members of the board or commission, and no person shall be employed by the board or commission except pursuant to a majority vote of all current members of the board or commission.

**Rule 1.6**      **Roll Call Votes**

Upon the roll call for the election of chairman or acting chairman or employee of the board or commission, each member shall respond by stating the name of the candidate of their choice eligible for such office or appointment. Once a response is given by a member, a motion may be made for nomination for appointment or position. If the motion receives a second (2nd), said person shall become eligible for such office or position. A vote in the open shall be taken among all members for filling such office or position. The person receiving the majority vote shall be appointed to the office or position.

**Rule 1.7**      **Duties, Privileges, And Decorum Of Members**

Rule 1.7.1      Attendance

The clerk shall publish in the city record the name of the members present and absent and if appropriate the time of arrival or departure.

Rule 1.7.2      Duty To Vote

Every member present shall vote on all questions upon the call of the vote, except in case of conflict. A vote shall be yea or nay or an equivalent thereof. No member shall vote on any question in which such member is financially interested, unless otherwise permitted by law, or which in any way involves personal or private rights. The mere abstention does not vacate the seat nor reduce or enlarge the required number of votes required for passage or defeat of any motion, resolution or other measure.

Rule 1.7.3      Recording Votes

On the passage of every resolution or motion and on the appointment of every officer, the vote shall be taken by yeas or nays or an equivalent thereof, entered in full upon the records, and published in the official journal. Upon the call of the yeas and nays the clerk shall call the names of members in the following manner:

The member immediately to the right of the member who voted first (1st) at the prior regular meeting shall be called first (1st), then followed by the remaining member nearest to their right until every member has voted or otherwise abstained. The failure to follow this procedure shall not invalidate any vote.

If any member, in speaking or otherwise, transgresses the rules of the board or commission, the presiding officer shall call the offending member to order. The member so called to order shall refrain from further speaking unless permitted by the presiding officer to explain. Any member may, by raising the point of order, call the attention of the presiding officer to such transgression. The point of order shall be decided by the presiding officer without debate. Every such decision of the presiding officer shall be subject to appeal to the board or commission by any two (2) members.

Rule 1.7.4 Appeal From Ruling Of Chair

Any member may appeal to the board or commission from a ruling of the presiding officer, the member making the appeal may briefly state his or her reason for the same, and the presiding officer may briefly explain his or her ruling; but there shall be no debate on the appeal and no other member shall participate in the discussion. The presiding officer shall then put the question, "Shall the decision of the chair be sustained?" If a majority of the members present vote yea, the ruling of the chair is sustained; otherwise it is overruled.

Rule 1.7.5 Motions In General

The board or commission may take action by a motion approved by a vote of at least a majority of those attending the meeting, unless otherwise a greater majority is provided by charter provision, ordinance or resolution of council, or rule, and when action by board or commission resolution is not otherwise required.

**Rule 1.8 Purpose And Form Of Motions**

Motions shall be used to expedite the orderly transaction of the business of the board or commission and may be substituted for board or commission resolutions, except as otherwise specifically provided by ordinance or resolution of council or other applicable law. A second (2nd) shall be required for any motion except as specifically provided for in a rule, but upon demand of any member any motion shall be reduced to writing. Any such motion may be withdrawn by the maker before it has been amended or voted upon. When a motion is made it shall be stated by the presiding officer before any debate shall be in order. All motions which have been entertained by the presiding officer shall be entered upon the minutes.

**Rule 1.9 Precedence Of Motions**

When a question is before the board or commission no motion shall be entertained except the following:

- 1) To Enter Executive Session
- 2) To Adjourn
- 3) To Fix The Hour Of Adjournment
- 4) For The Previous Question
- 5) To Lay On The Table
- 6) To Suspend or Waive Rules
- 7) To Refer To A Committee
- 8) To Amend

These motions shall have precedence in the order indicated. The motion to adjourn and the motion for the previous question shall be put to a vote without debate; the motion to

fix the hour of adjournment shall be debatable only as to the time of such adjournment; and all other motions shall be debatable.

**Rule 1.10**      **Questions**

Any member may ask the presiding officer to call the main questions and it is up to the presiding officer to recognize or not the member's request.

**Rule 1.11**      **Motion To Lay On The Table**

The motion to lay on the table shall dispose of the action unless removed from the table by the majority of all current members of the board or commission.

**Rule 1.12**      **Reconsideration By Motion**

After the decision of any question, any member who voted with the majority may move for reconsideration of any action at the same or the next succeeding meeting provided, however, that a board or commission resolution authorizing or relating to any contract may be reconsidered at any time before the final execution thereof. A motion to reconsider shall require a majority vote of all current members of the board or commission. After a motion for reconsideration has once been acted upon, no other motion for reconsideration thereof shall be made without unanimous consent of all the current members of the board or commission (example for illustration only; to correct error).

**Rule 1.13**      **The Presiding Officer To Present Resolutions**

A board or commission resolution shall be introduced only by written introduction and presented by the presiding officer. Said resolution shall merely require one (1) reading and shall have immediate effect upon passage. Procedure for adoption shall be as follows: (i) a member shall make a motion to consider the resolution, (ii) a second is required of a member, (iii) discussion had, and (iv) roll call vote for adoption. A mere majority vote of those members present is required for passage unless otherwise provided by ordinance or resolution of council. No publication of the board or commission resolution is necessary.

**Rule 1.14**      **Finance Director Or Council Clerk To Act As Clerk Of The Board Or Commission**

The finance director, or in the case when a specific council clerk exists, then such clerk, shall perform clerk duties of the board or commission. If, for any reason, the designated clerk is temporarily unable to carry out the duties of the position, then the board or commission may appoint an acting or temporary clerk, who shall carry out the duties of regular clerk as set forth in these Rules and Procedures, until such time as the regular clerk is able to resume carrying out the duties of the position.

The designated clerk shall attend all the meetings or hearings of the board or commission and perform the following duties: (i) take and keep the minutes and record the official actions of the board or commission; (ii) shall accurately and properly keep all the records of the board or commission; (iii) shall keep all files in proper order; (iv) shall prepare and deliver or cause to be delivered, notices and other communications ordered by the board or commission; (v) shall maintain an official roster; (vi) shall handle such correspondence as the board or commission shall determine in conjunction with the chairman, (viii) and

shall perform such other duties as may be required by the board or commission. The clerk is cloaked with the power and authority to correct clearly typographical errors in all board or commission minutes, resolutions, motions, other measures, or reports without prior or subsequent action of the board or commission.

**Rule 1.15**      **Order Of Business**

The order of business for meetings of the board or commission shall be:

- 1)      Roll call.
- 2)      Disposition of not approved minutes.
- 3)      Reports.
- 4)      Unfinished business.
- 5)      New business.
- 6)      Adjournment.

**Rule 1.16**      **Minutes**

The clerk assigned to the board or commission shall record the following matters:

Discussion and/or action of the board or commission (except discussion had in executive session) and member attendance.

Minutes will stand approved if not objected to without the necessity of motion and role call.

All minutes and the record of the board or commission shall be open to the public at all reasonable times.

**Rule 1.17**      **Place Of Meetings And Hearings**

The room(s) in the municipal building shall generally be used for meetings and hearings of the board or commission; however, other locations are permitted by order of the board or commission.

**Rule 1.18**      **Public Meetings**

Except as provided by charter, or by ordinance or resolution of council, or by these rules or statute, all meetings of the board or commission thereof shall be public, and, upon request of any citizen desiring to be heard on any matter then under consideration by the board or commission, the board or commission may hear the citizen.

**Rule 1.19**      **Regular Meetings**

The board or commission shall hold regular meetings at times decided upon by the board or commission and furnished to the clerk, unless otherwise established by resolution or ordinance of council. If the regular meeting date falls on a city recognized holiday, it shall convene on the following day (excepting Saturdays and Sundays).

**Rule 1.20**      **Special Meetings**

Special meetings may be called by a vote of board or commission taken at any meeting thereof, or by the clerk upon written request of the chairman, or any two (2) members. Any such request shall state the time, place, date and purpose of the meeting. Notice in writing of each special meeting called, except by approved motion of the board or commission, shall be given to each member not less than twenty-four (24) hours prior to the meeting by serving the same to each of them personally, by leaving a copy thereof at his or her usual place of residence, or by electronic mail or by facsimile transmission when the member authorizes electronic or facsimile notice. Service of notice may be waived in writing and shall be deemed conclusively to be waived by attendance at the special meeting. If the member is absent, notice in writing of the special meeting and the results thereof shall be given promptly after such meeting to each absentee in the manner hereinbefore provided. Public notice of each special meeting shall be given pursuant to Chapter 103 of the Codified Ordinances.

**Rule 1.21**      **Emergency Meetings**

Emergency meetings or hearings may be called when a situation or situations requires immediate official action as determined in the sole and final judgment of the person or persons authorized above to call a special meeting. An emergency meeting shall be considered a "special meeting" of an emergency nature. For such meeting, any notice requirement as required for a special meeting shall be an immediate notice.

**Rule 1.22**      **Adjournment**

Any regular or special meeting or hearing of the board or commission may be reconvened after adjournment or recess to another time, date or place without giving additional notice, so long as the time, date or place is announced at the meeting prior to adjournment or recess.

**Rule 1.23**      **Quorum**

A majority of the current members of the board or commission shall constitute a quorum for the transaction of business at any commission meeting, but a number less than a quorum may adjourn.

**Rule 1.24**      **Executive Session**

The board or commission may, by entering into executive session, exclude members of the public and staff from a portion of a public meeting to discuss matters as stated below and other matters as authorized by law. Only members of the public body, its invited staff and invited guests may attend. The board or commission or any given committee shall not exclude any of its members from an executive session.

- 1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official or (to consider) the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the employee, official, licensee, or regulated individual request a public hearing; however, this provision does not allow the public body to consider the discipline of an elected official for conduct

related to the performance of the person's official duties or to consider the person's removal from office.

- 2) To consider the purchase of property (real or personal property, whether it is tangible or intangible). Also, to consider the sale of property by competitive bid (real or personal property) if disclosure of the information would result in a competitive advantage to the other side. No member may use this exception as subterfuge for providing covert information to prospective buyers or sellers.
- 3) To discuss pending or imminent court action with the board or commission's attorney. Court action is pending if a lawsuit has been commenced; court action is imminent if it is on the point of happening or is impending.
- 4) To discuss matters required to be kept confidential by federal law, federal rules, or state statutes; or as otherwise determined by ordinance or resolution declaring the necessity of confidentiality.
- 5) To discuss specialized details of security arrangements where disclosure might reveal information that could be; used to commit, or avoid prosecution for a violation of the law.
- 6) To obtain general legal advice from the public body's attorney.
- 7) For other matters permitted by law.

No decision-making (formal action including actual voting) is permitted in executive session. Further, intertwined non-expected matters are prohibited from discussion while in executive session. Minutes shall not be taken in executive session.

An executive session must always begin and end in open session. First there shall be a motion that states the purpose for the executive session, and the motion must be specific as to the matters to be discussed (i.e. to discuss the dismissal of a public employee), it is not sufficient to state "personnel". Second, after the motion, there must be a second and a roll call vote taken, with a majority of a quorum of the public body. The vote shall be recorded in the minutes. When the executive session has concluded, a motion and second should be received with a roll call vote taken to adjourn the executive session. It should be reported if any action or no action was taken. The adjournment and reporting of action or no action shall be recorded in the minutes.

**Rule 1.25**      **Joint Sessions Of Committees, Boards, Commissions**

Notwithstanding the provisions of Chapter 121 of the Ohio Revised Code, council members, committee members, board members or commission members may attend meetings of each other; however, if attended for the purpose of a prearranged discussion of the public business by a majority of its members, it should be published as a joint session and called and conducted as such. Both bodies should call their respective body to order and have minutes taken and prepared for each. Visiting members of bodies, other than that body scheduled for an official session, may attend; however, if a quorum of the visiting body should happen to formulate, then those visiting attendees shall be mere passive observers in a ministerial fact gathering capacity or informational session.

**Rule 1.26**      **Conflict In Rules Governing Meetings And Hearings**

If a conflict exists between a meeting rule and a hearing rule, the rule pertaining to the purpose of the gathering shall prevail.

**Rule 1.27**      **Expenditure Of Funds By Commission**

Subject to budgetary constraints and appropriation of funds, a board or commission member may expend funds, not to exceed two hundred dollars (\$200.00), for a proper public purpose, without prior approval of the board or commission or body of council.

Subject to budgetary constraints and appropriation of funds, the board or commission, as a whole, may expend funds, not to exceed \$15,000 each purchase or contract, subject to approval of the purchase order by the City Manager. Any amounts exceeding \$15,000 shall be subject to approval of the body of council.

**Rule 1.28**      **Travel Expenses**

Subject to budgetary constraints and appropriation of funds, travel policies and reimbursable expenses applicable to city employees pursuant to the city's policy manual and/or personnel code shall apply to board or commission members while on official city business.

**Rule 1.29**      **Secondary Rules Of Application For Meetings**

When a procedure or rule is not covered in these rules and procedures governing meetings following rules shall prevail in the following order of priority: first, council rules when applicable and then Robert's Rules of Parliamentary Procedure (latest addition).

**Rule 1.30**      **Waiver Or Suspension Of Rules**

In specific cases where, in the judgment of the commission, it is in the best interest of the public, any Rule herein may be waived or suspended by a majority vote of the board or commission when not otherwise prohibited by law.

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**RULE 2      HEARINGS IN GENERAL**

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**Rule 2.1      Time Of Hearing; Notifications**

Notifications of hearing shall be furnished as required by Council Ordinance or other controlling law. In the event no notification procedure has been established, notice shall be made in a reasonable manner as determined by the clerk of the board or commission and the time and date of the hearing shall be at a reasonable time and date as determined by the clerk of the board or commission.

**Rule 2.2      Rules Of Evidence**

All hearings conducted pursuant to these Rules and Procedures shall be administrative in nature and the board or commission shall not be bound by formal rules of evidence or procedure. Except as contained in these rules, the rules of evidence do not apply to hearings before the board or commission.

**Rule 2.3      Evidence To Be Considered**

Only testimony and properly admitted evidence presented at a hearing may be considered by a board or commission in making its decision or order.

**Rule 2.4      Testimonial Evidence**

Any statements made at a hearing before the board or commission to be considered in the decision making process by the board or commission shall be made under oath or affirmation. The administering of oath or affirmation to multiple persons at the same time is permissible so long as it is reflected in the record.

After providing testimony, with permission of the board or commission presiding officer, the person who testified may be cross examined by any person having a bona fide interest in the action for which testimony is offered. Participation by any legal counsel is limited to protection of his or her client's rights. Counsel for a non-party witness may neither examine nor cross-examine any witness, without the prior consent of the board or commission presiding officer.

Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the board or commission shall contact the City Law Director for direction on what legal action may be taken.

**Rule 2.5      Physical Evidence**

All physical evidence shall be marked as exhibits and recorded in a journal.

**Rule 2.6      Best Evidence**

A duplicate may be admitted to prove the content of a document, recording, or photograph unless:

- 1) A genuine question is raised as to the authenticity of the original; or

- 2) The board or commission determines it would be unfair to admit the duplicate in lieu of the original.

**Rule 2.7**      **Burden Of Proof And Scope Of Hearing**

When any hearing involves the presentation of evidence, the decision of the board or commission shall be based on preponderance of the evidence, unless otherwise stated in City Code or controlling statute. Unless otherwise provided in City Code or other controlling statute, the moving party bares the burden of proof (i.e. person making the application; appellants, persons petitioning for hearing)

Definition of "**Preponderance of evidence**" is: *As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.*

**Rule 2.8**      **Service Of "Decisions" Or "Orders"**

A "decision" or "order" is served when:

- 1) It is presented in an open meeting with the affected party present; or,
- 2) It is personally served; or,
- 3) It is received by the person or entity which is the subject of the hearing at the persons or entities last known address, by certified mail, return receipt requested; or,
- 4) It is left at the usual place of residence, or last known address of the affected person or entity, with an adult residing therein.

If the service by certified mail is returned with an endorsement showing the service was refused or unclaimed, then the "decision" or "order" may be sent by ordinary U.S. mail, evidenced by a certificate of mailing. Service shall be construed as made three (3) days after the mailing date.

**Rule 2.9**      **Amendment Or Withdrawal Of "Orders"**

Amendment of any "decision" or "order" may be made by board or commission at any time.

**Rule 2.10**      **Scope Of Rules**

These rules govern practice and procedure in all proceedings before the board or commission when not otherwise in conflict with any city code governing the board or commission. In case of conflict, the city code shall prevail. Judicial invalidation of one (1) rule shall not be considered or construed as to invalidate any other rule.

**Rule 2.11**      **Standards Of Conduct And Suspension**

All representatives appearing before the board or commission shall conform to the standards of ethical conduct required of attorneys practicing before the courts of the State of Ohio.

The board or commission may bar from participation in hearings before it any representative who refuses to comply with its directions or who engages in dilatory tactics or contemptuous behavior in the course of any proceeding before the board or commission. Where a specific procedure rule is required by City Code or other controlling law, those procedure(s) shall take preference after these rules.

**Rule 2.12**      **Recording Of Hearings**

All hearings shall be recorded.

**Rule 2.13**      **Applicability Of Rules For Appeals To General Hearing Rules**

The rules and procedures governing hearings as a result of appeals are only applicable to general hearings by boards and commissions to the extent that such board or commission desires to make such rules applicable, unless otherwise required by law.

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**RULE 3        RULES AND PROCEDURES GOVERNING APPEALS**

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**Rule 3.1        General Hearing Rules Applicable**

The General Hearing Rules contained in these rules are applicable to appeals.

**Rule 3.2        Contents Of Appeals**

All appeals to a board or commission that have authority to hear appeals shall be in writing. Notices of appeal shall include the following information:

- 1)        The appellant's name, address, and telephone number; and,
- 2)        A description or summary of the action which is being appealed.

Appellants shall notify the board or commission, in writing, of any change of address during the pendency of an appeal.

**Rule 3.3        Designation Of Parties**

The party filing an appeal is designated "appellant."

**Rule 3.4        Continuances**

Upon its own motion or upon the motion of any party, the board or commission chairman may continue a hearing.

- 1)        Requests for continuance shall be addressed to the Finance Director (or Council Clerk when one exists). A request for continuance will not automatically stay the hearing, but must be expressly granted.
- 2)        Requests for continuance shall be made, in writing, at least ten (10) calendar days prior to a scheduled hearing date, unless good cause is shown for failing to do so. Exceptions to this rule may be made at the discretion of the board or commission chairman. If a party requests a continuance less than ten (10) calendar days prior to hearing, then that party shall inform the board or commission of the opposing party's consent or opposition to the continuance request.
- 3)        Each party shall contact its witnesses and inform them of the continuance. Failure to notify the opposing party or opposing party's counsel of a continuance which has been granted may be treated as a failure to appear by the party requesting the continuance if the opposing side appears for the hearing.
- 4)        The board or commission will not re-issue subpoenas when a hearing has been continued unless specifically requested to do so in writing.

Absent compelling circumstances, hearings shall not be continued due to the unavailability of a subpoenaed witness. The board or commission may hold the record open or accept a testimonial deposition. The cost of testimonial depositions taken under this rule shall be borne by the requesting party.

**Rule 3.5**      **Consolidations**

If two (2) or more appeals involve substantially identical issues of fact and law, the board or commission may consolidate them into a single hearing upon its own motion or upon the motion of either party.

**Rule 3.6**      **Appearances**

Any person, unless prohibited by law, may represent himself or herself. A person or entity which is the subject of the hearing may be represented by an Attorney. The board or commission may allow representation by a person not an attorney so long as the person does not receive any compensation from the represented person or entity for representation.

Representatives shall enter their appearances in writing.

One who has entered an appearance as the representative of a party is that party's representative of record unless and until a written withdrawal is filed with the board or commission.

If more than one (1) person enters an appearance as a party's representative, communications shall be sent as follows:

- 1)      If one of the representatives entering an appearance has been designated, in writing, to receive communications from the commission, all communications shall be sent to that representative.
- 2)      If no representative has been designated to receive communications from the commission, all communications shall be sent to the representative who last entered an appearance.
- 3)      If it is impossible to determine who last entered an appearance, all communications shall be sent to the representative whose name is first in alphabetical order.

**Rule 3.7**      **Substitution Of Parties**

If an appellant dies during the pendency of an appeal, the executor or administrator of his or her estate shall, upon motion, be substituted for him or her. An appeal shall be held open for a reasonable time to permit this substitution.

If the City official that made the decision or order being appealed changes during the pendency of an appeal, the new City official is automatically substituted without formal motion or order.

**Rule 3.8**      **Motions**

All motions shall state, with particularity, both the relief sought and the basis for such relief.

- 1) All motions, and any supporting documentation shall be served on the opposing party.
- 2) Motions to dismiss an appeal shall be supported by affidavits, made on personal knowledge, setting forth facts as would be admissible in evidence. Affidavits shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers referred to in an affidavit shall be attached thereto. When a motion is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials. An adverse party's response, by affidavit or otherwise, shall set forth specific facts showing there is a genuine issue in dispute.

Procedural motions, not determinative of the final outcome of an appeal, may be acted upon at any time after receipt by the board or commission without awaiting a response from the opposing party.

Within ten (10) calendar days of service of a non-procedural motion, a party shall serve a written response on the opposing party and file a copy of that response with the board or commission. The board or commission may rule on any non-procedural motion once the time to respond has run. Upon motion of the affected party, the board or commission may extend the time to reply to a non-procedural motion.

The board or commission may rule on any non-procedural motion at a record hearing, even if ten (10) calendar days have not elapsed since service. Provided the time for response to a non-procedural motion has not run, an oral response may be presented at the record hearing.

### **Rule 3.9**

#### **Briefs**

At any time prior to the issuance of a final decision or order, the board or commission may require briefs from the parties. Briefs shall address questions put to the parties by the board or commission and shall be filed within the time limits set by the board or commission.

- 1) The board or commission may limit both the number of reply briefs and the time for their preparation and filing.
- 2) If a party fails to submit a brief within the time limit, the board or commission may exclude his or her brief from its consideration.

Upon motion, the board or commission may hold the record open for receipt of briefs.

### **Rule 3.10**

#### **Filing**

A document is filed when it is received and time stamped by the office of the Finance Director (or Council Clerk when one exists) or other designated officer.

For purposes of calculating the appeal time in an action, the filing date of a "decision" or "order" is the date the order is time stamped by Finance Director (or Council Clerk when one exists) or other designated officer.

Either an original or a legible copy of any document required to be served by these rules shall be filed with the commission not more than five (5) calendar days after service.

All motions and briefs to be filed with the board or commission shall be on eight-and-one-half inch (8 ½") by eleven inch (11") paper.

**Rule 3.11**      **Service**

Any document required by these rules to be served upon a party may be served either personally or by mail. When a party is represented by a representative who has entered an appearance, service shall be made upon that representative. Service is complete on the date of mailing or upon the date of personal transmission of the document.

All motions and briefs shall contain the name, address, and telephone number of the person submitting the motion or brief.

A motion shall be considered by the board or commission only if a certificate of service appears on it. Any statement, signed by either the moving party or the party's representative, is an acceptable certificate of service so long as it contains all of the following information:

- 1)      Date of service,
- 2)      Method by which service was made,
- 3)      Address where service was made, and
- 4)      Name of the person or authority who was served.

**Rule 3.12**      **Communications To Representatives And Parties**

Communications regarding scheduling shall be sent to all parties and their representatives.

**Rule 3.13**      **Computation And Extension Of Time**

The date of occurrence of the event causing time to run is not counted in the computation of any time limit under these rules. The last day of a time period is included in the computation of time under these rules. If the last day of a time period is not a regular business day, then the time period shall extend to the end of the next regularly scheduled business day.

The board or commission may extend the time for filing or responding to motions and briefs.

- 1)      Requests for extension of time shall be made, in writing.
- 2)      Requests for extension of time shall be directed to the person responsible for handling the appeal.

Requests for extension of time in appeals before the board or commission shall be directed to the Finance Director (or Council Clerk when one exists) or designated officer.

**Rule 3.14**      **Procedural Orders**

Procedural orders may be issued by the board or commission at any time prior to the issuance of a final decision or order.

If a party fails to comply with a procedural order, the board or commission may dismiss the appeal or grant other appropriate relief to the opposing party.

**Rule 3.15**      **Procedure In Record Hearings**

The board or commission shall determine the order in which a hearing shall proceed.

The hearing shall be conducted when practical with all current members of the board or commission present. The decision shall be made by a majority of the quorum that heard the case. The hearing shall be in public. Unless otherwise provided in City Code or City Charter, the board or commission shall affirm any action of the ordering City official, unless the opposing party proves that the City official who issued a decision or order from which the appeal is taken acted in an arbitrary unreasonable or capricious manner, or that the City official abused his or her discretion in making the decision or order which affected the appellant.

The board or commission shall hear the evidence upon the decision or order as filed by the City official. In the hearing of such appeals, the order of procedure shall be as follows:

- 1)      The City official shall adduce their evidence in support of the "decision" or "order";
- 2)      The appellant shall then produce such evidence in defense;
- 3)      The City official may offer evidence in rebuttal;
- 4)      The board or commission may, in its discretion, hear arguments.

The board or commission may make inquiry in the matter through evidence presented at the hearing. The board or commission may continue the hearings as is necessary and required to receive all relevant testimony and evidence.

At all hearings conducted pursuant to this Rule, the City official and the Appellant may be represented by legal counsel.

Either party may call the opposing party to testify as if on cross-examination.

The board or commission may require, limit, or eliminate opening statements and closing arguments.

Copies of exhibits shall be made available to the board or commission as they are identified. When practical, parties shall exchange documents and exhibits prior to the hearing. Hearings will not be delayed to facilitate an exchange or review of the exhibits.

In hearings before the board or commission, parties shall provide the board or commission copies of all exhibits.

The parties are encouraged to discuss stipulations and settlement prior to the start of a hearing.

All parties, witnesses and attorneys are required to arrive at the designated location of the hearing at the scheduled hearing time.

**Rule 3.16**      **Record Of Hearings**

All record hearings shall be recorded on magnetic tape unless the board or commission orders a stenographic record. The magnetic tape recording by the board or commission is the official record.

Magnetic tape recordings may be erased after:

- 1)      A final board decision or order has been issued; and
- 2)      Ninety (90) calendar days have passed from the mailing of notice of the final order of the board or commission to the parties; or ninety (90) days after a transcript has been received by the board or commission from its official stenographer.

Any party may tape record or have a stenographer present at the hearing, provided such recording does not interfere with the hearing.

**Rule 3.17**      **Transcripts/Listening To Magnetic Tapes**

When the board or commission issues a final decision or order not otherwise appealable to City Council, and the decision or order is appealed to the court of common pleas, then the board or commission shall transmit a written transcript of each hearing appealed to the court of common pleas. The cost of the transcript must be paid in advance by the appealing party.

Transcripts for a party's own use may be obtained through the Finance Director (or Council Clerk when one (1) exists) or designated person. The cost of the transcript is to be paid by the party requesting the transcript.

Transcripts must be requested within sixty (60) days following the mailing of the final decision or order.

Any person may listen to the magnetic tape of a hearing. In order to do so, a person must make prior arrangements with the board or commission and must complete an acceptance of liability form. Under no circumstances shall any person remove the magnetic tapes from the board's or commission's control.

**Rule 3.18**      **Subpoenas**

When authorized by City code, City charter, or state statute, the board or commission chairman or acting chairman shall have the power to administer oaths and affirmations to witnesses and to take testimony concerning the matter before the board or commission.

The board or commission, through its chairman or acting chairman, shall have the power to subpoena and require the attendance of witnesses, and the production of pertinent documents, records, and other evidence.

Upon request of either party, the board or commission shall issue subpoenas for such persons and documents as the requesting party deems necessary. The party shall submit a written list of witnesses and a summary of each witness's testimony prior to the issuance of the subpoenas. If a party deems it necessary to subpoena more than five (5) witnesses, prior approval is required.

Subpoenas shall be issued in the following ways:

Upon receipt of a precipe, the board or commission shall supply subpoenas to the parties who are responsible for serving subpoenas with fees attached when required. A subpoena is deemed served when:

It is personally served upon the person; or

It is received by the person at the person's last known address by certified mail, return receipt requested; or

It is left at the usual place of residence, or last known address of the person, with an adult residing therein; or

If the service by certified mail as provided by this rule is returned with an endorsement showing the service was refused or unclaimed, then the subpoena may be sent by ordinary mail, evidenced by a certificate of mailing; and

The party serving the subpoena shall file a copy of the subpoena, properly endorsed as to service, at or prior to the hearing for which the subpoena was issued.

The board or commission may mail subpoenas by ordinary United States mail to the last known address of the person as directed by the party requesting the subpoena.

- 1) The board or commission shall not mail subpoenas less than fourteen (14) calendar days in advance of a hearing. If subpoenas cannot be mailed more than fourteen (14) calendar days in advance of a hearing, the board or commission shall, on request, hold the subpoenas so they can be served on the witness at the hearing.
- 2) If the board or commission is requested to serve the subpoena by ordinary mail, then the subpoena is deemed delivered.

To be enforceable, witnesses shall receive their subpoenas at least seven (7) calendar days prior to the hearing. Subpoenas duces tecum shall be received at least ten (10) calendar days prior to the record hearing. Absent proof a witness has received a subpoena in a timely manner, the board or commission shall not enforce the subpoena nor hold the record open for the testimony of an unsubpoenaed non-appearing witness.

Hearings shall not be continued due to the absence of a witness subpoenaed under this rule.

The board or commission will not re-issue subpoenas when a hearing has been continued unless specifically requested to do so in writing.

Upon motion and for good cause, the board or commission may quash any subpoena. Motions to quash shall be raised, in writing, prior to a hearing. Unless a motion to quash has been granted, a witness shall attend the hearing to which he or she was subpoenaed.

No character witness shall be subpoenaed to attend hearings. This prohibition does not pertain to witnesses testifying to the credibility of another witness.

**Rule 3.19**      **Mileage Reimbursement And Subpoenaed Witness Fees**

Mileage shall be paid to any subpoenaed witness, not a party, who works or resides outside of Henry County and who incurs unreimbursed travel expense to attend hearings before the board or commission.

Parties may not subpoena themselves.

Mileage and witness fees shall not be paid to anyone who fails to register at the hearing attended.

Any costs associated with any subpoena shall be taxed to the losing party.

**Rule 3.20**      **Failure To Appear**

If neither the appellant nor appellant's authorized representative appears at a hearing, the board or commission may dismiss the appeal.

If neither the appellee nor appellee's authorized representative appears at a hearing, the board or commission may grant appropriate relief, including disaffirmance of the decision or order.

If neither party appears at a hearing, the board or commission may, based upon the information available to it, resolve the appeal in the manner it deems appropriate.

**Rule 3.21**      **Settlements And Withdrawals**

An appeal may be withdrawn any time prior to the issuance of the final decision or order of the board or commission. All withdrawals shall be in writing and shall be signed by either the appellant or appellant's representative.

An appeal may be settled by the parties thereto any time prior to the issuance of a final decision or order of the board or commission. The board or commission will accept signed settlement agreements and incorporate them into its final decision or order. All settlement agreements shall be in writing and shall be signed by all affected parties and their representatives.

If the board or commission is notified a case has been withdrawn or settled, and no settlement agreement or withdrawal is filed with the board or commission within fourteen (14) calendar days of the notification to the board or commission, then the board or commission shall schedule the case for a hearing.

**Rule 3.22**      **Final Decision Or Order Of The Board Or Commission**

If a hearing is held before the members of the board or commission, then they will issue a final "decision" or "order". Final decisions or orders shall be signed by the chairman of the commission. The original order shall be placed in the case file.

Unless otherwise provided by law, a final "decision" or "order" does not become public record until it has been served on the parties. Service shall be in accordance with Rule 2.8.

**Rule 3.23**      **Appeals To The Court Of Common Pleas**

The parties if not contrary to Council ordinance or resolution, and where otherwise authorized by law, may appeal a final decision of the board or commission to the Common Pleas Court of Henry County, Ohio, so long as the decision or order of the board or commission is not appealable to the City Council and so long as such appeal is filed within thirty (30) calendar days from the filing of the board's or commission's decision or order. Any authorized appeal to City Council must be in a timely manner.

Notices of appeal shall be filed with both the board or commission and the reviewing court within fifteen (15) calendar days of mailing of the final decision or order of the board or commission.

A copy of the notice of appeal shall be served upon the opposing party.

**Rule 3.24**      **Certification Of The Record To Court**

The finance director (or council clerk when one exists) or designated officer of the board or commission shall certify only one (1) copy of the record to the court of common pleas in any appeal taken from the board or commission order or decision.

**Rule 3.25**      **Deposit Required Upon Filing Notice Of Appeal**

Upon filing with the board or commission a notice of appeal to the court of common pleas, the party filing such notice shall deposit with the board or commission a sum in accordance with the following schedule:

- 1)      Fifty-five dollars (\$55.00) per tape for magnetically recorded tapes numbered one through five of the proceedings.
- 2)      Fifty dollars (\$50.00) per tape for magnetically recorded tapes numbered six through ten of the proceedings.
- 3)      Forty-five (\$45.00) per tape for magnetically recorded tapes numbered eleven and above of the proceedings.

After the board or commission has received the deposit, the transcript and copies of the file will be prepared and the cost of those items will be calculated. If the deposit exceeds the costs of these items, then a refund of the excess will be issued; if the deposit does not cover the full amount, then it will be retained in accordance with this rule.

The deposit will be retained by the board or commission until the appeal process has been completed. If the deposit does not cover the full amount of the costs, and the costs have

been assessed to the party who paid the deposit, then that party will be billed for the remaining costs and the deposit will not be returned. Should the costs be assessed to the opposing party, then that party will be billed for the full amount of the costs and the deposit will be returned to the party who paid the deposit.

If a person alleges the inability to pay the deposit, then an "Affidavit of Indigence" must be completed. Said affidavit will be available from the board or commission upon request.

Upon the submission of the affidavit, the board or commission chairman will determine if the person is or is not excused from paying the deposit.

**Rule 3.26**      **Records**

The board or commission shall maintain, in accordance with the board or commission's retention schedule or city's retention schedule, records of all appeals filed, together with the dates of pending hearings, final action on the appeals and the dates on which the most recent filings, hearings or final actions occurred.

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