



# Adoption of Operating Rules

Many procedural issues essential for the conduct of zoning board business are not addressed in state statutes and must be determined either by ordinances adopted by the local governing body or by rules formally adopted by the zoning board itself. The table below describes authority of zoning boards to adopt such rules.

**Figure 10: Adoption of Zoning Board Rules**

<b>County or Town Zoning Board of Adjustment</b>	<b>City, Village, or Town Zoning Board of Appeals</b>
<ul style="list-style-type: none"> <li>• The county board must adopt rules for the zoning board.<sup>78</sup></li> <li>• The zoning board may adopt rules to implement the county board<sup>79</sup> or town board regulations.<sup>80</sup></li> <li>• The county board sets filing fees for appeals to the zoning board.<sup>81</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The zoning board must adopt rules in accordance with any ordinance adopted under Wis. Stats. § 62.23.<sup>82</sup></li> </ul>

<sup>78</sup> Wis. Stat. § 59.694(3)

<sup>79</sup> Wis. Stat. § 59.694(3)

<sup>80</sup> Wis. Stat. § 60.65(4)

<sup>81</sup> Wis. Stat. §§ 59.696 & 59.697

<sup>82</sup> Wis. Stat. § 62.23(7)(e)3

## Content of Operating Rules

Many communities adopt *Robert's Rules of Order* to guide parliamentary procedures. In addition, communities may wish to adopt operating rules from the following list that are not addressed in ordinances, administrative rules or statutes:<sup>83</sup>

- A. General provisions
  - Applicability of state statutes, local ordinances, board rules, and case law
  - Requirements for familiarity with them
- B. Membership
  - General membership requirements (number, appointment, terms)
  - Desired qualifications and member education
  - Alternates (attendance requirements)
  - Conduct (ex parte communication, conflicts of interest, bias)
  - Compensation, travel, counsel, and other expenses
  - Vacancies, resignations (general and by absence), and removal
- C. Officers, duties, and staff assistance
- D. Powers and duties of the board
- E. Meetings
  - Procedural requirements (open meetings, public notice, public records)
  - Quorum (how many constitute quorum)
  - Order of business and agenda revision
  - Meeting conduct
- F. Appeal procedures
  - Filing procedures and fees
  - Time limits on appeal (\*time limits on appeal of administrative decisions are not specified in state statutes and should be included in local ordinance)
  - Stays on appeal
  - Contested case requests
  - Conduct of on-site inspections
  - Members to attend as group or individuals

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<sup>83</sup> For additional guidance and model rules, refer to Chapter 4: “Rules of the Board” in *The Zoning Board Manual*, 1984 by Frederick H. Bair, Jr.

### G. Hearings

- Witnesses to testify under oath (some zoning boards require applicants and other persons providing testimony to do so under oath, reminding them of the risks of perjury if they lie under oath)
- Order of business
- Recording
- Rules of evidence
- Continuances

### H. Decisions

- Voting requirements (\*state statutes specify that when a quorum is present, zoning boards may take action by a majority vote of the members present; local ordinances may set more stringent voting requirements)
- Timing when multiple decisions/authorities are required
- Findings, rationale, and form of decision
- Development conditions
- Filing and notice to the public and parties

### I. Refilings and rehearings

Keep in mind that when creating bylaws it is not necessary to restate all applicable state and local rules or case law that already apply to the zoning board. The bylaws should be a place to create rules for day-to-day conduct of the board and other issues that are not already addressed elsewhere. If you feel it is important to reiterate some of these rules in your local bylaws, it is best to do so by reference to the statute rather than a complete reprinting of those rules. That way, when rules are updated, it is not necessary to update the language of your bylaws. For example, when the state updated alternate and quorum requirements in August 2005, some zoning boards found they had to update the text of their bylaws, creating unnecessary work. However, where other applicable rules are permissive (i.e., using language such as “may” rather than “shall”) zoning boards may opt to include language that is more restrictive.

Options for addressing some of the topics outlined above are discussed in related sections of this manual. A number of counties and municipalities have adopted fairly comprehensive rules that may serve as examples.<sup>84</sup>

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<sup>84</sup> See, for example, bylaws from Oneida County, St. Croix County, and the City of Fitchburg.



## Section II – Review

### **Keywords**

- Open meeting
- Quorum
- Negative quorum
- Walking quorum
- Closed session
- Public notice
- Posting
- Class 1 notice
- Class 2 notice
- Recuse
- Ex parte communication
- Operating rules/bylaws

### **Test Your Knowledge** (answers on page 49)

#### **Chapter 4 - Overview of Laws That Apply to the Zoning Board**

- 1) Name the four sources that zoning boards must look to for guidance on proper procedures.

#### **Chapter 5 - Open Meetings Law**

- 2) What are the two tests to determine if a zoning board must comply with the open meetings law?
- 3) What is the difference between quorum, negative quorum, and walking quorum? Which is illegal?
- 4) What type of notice is required for local zoning board hearings in your community?
- 5) When are zoning boards able to enter closed session?
- 6) What are the procedures for going into closed session?
- 7) What are the three steps to follow to avoid violating the open meetings law?

**Chapter 6 - Ethical and Procedural Considerations**

- 8) Why should zoning boards follow due process of law?
- 9) Can a zoning board chair deem a member biased and make the member recuse him or herself?
- 10) If a neighbor talks to a zoning board member at the grocery store about an upcoming case before the board member can cut the neighbor off, what should the board member do at the hearing of this case?

**Chapter 7 - Adoption of Operating Rules**

- 11) Zoning boards may adopt local bylaws or operating procedures to guide zoning board actions not otherwise governed by state statute or local ordinance. Does your zoning board have such procedures?
- 12) How are these rules working for you? Are there any items not currently included in your operating rules that should be added?

**Answers**

- 1)
  - a. State statutes
  - b. Local ordinances
  - c. Zoning board bylaws or operating rules
  - d. Case law
  
- 2)
  - a. The purpose test
  - b. The numbers test
  
- 3)
  - a. See the definitions on page 22.
  - b. Walking quorum is illegal.
  
- 4)
  - a. Counties with population > 250,000 - Class 2 notice (posting recommended).
  - b. Counties with population < 250,000 - Posting two weeks prior (class 2 notice recommended).
  - c. Cities - Class 1 notice (posting recommended).
  - d. Villages and towns - Posting one week prior.
  
- 5)
  - a. To deliberate concerning a case.
  - b. To consider action concerning a public employee(s).
  - c. To consider potentially damaging personal information.
  - d. To confer with legal counsel.
  - e. To consider a request from an ethics board.
  - f. Other narrow exemptions.
  
- 6)
  - a. Convene in open session.
  - b. Cite statutory reason for entering closed session.
  - c. Vote to move into closed session.
  - d. Record motions and decisions.
  - e. Reconvene in open session only if specified in agenda.
  
- 7)
  - a. Determine proper notice.
  - b. Limit closed sessions to those specified by statute.
  - c. Document proceedings.
  
- 8) To ensure that all parties involved in a hearing before the board are treated fairly.

## Section II – Laws That Apply to the Zoning Board

- 9) No. This decision is up to the board member
- 10) Disclose the communication at the hearing and make the information part of the record so that it can be considered in decision-making
- 11) Answers may vary
- 12) Answers may vary