

# **Town of China Planning Board Ordinance**

## **SECTION 1.0 ESTABLISHMENT**

### **1.1 Authority**

This Ordinance is adopted per Article VIII-A of the Constitution of the State of Maine and Title 30-A M.R.S.A. §3001: a Planning Board is hereby established for the Town of China, Maine.

### **1.2 Severability**

If any section, clause, provision, or portion of this Ordinance is determined unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance is not affected thereby.

### **1.3 Conflicts**

This Ordinance shall not repeal, annul, or in any other way impair the necessity of compliance with any other rule, regulation, bylaw or provision of the Federal, State, or local government. Where this Ordinance conflicts with any other ordinance, the more restrictive ordinance shall control. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures than the State or Federal regulations, this Ordinance shall control.

## **SECTION 2.0 THE PLANNING BOARD**

### **2.1 Composition**

The Planning Board shall consist of five (5) regular members and one alternate member, each of whom shall be appointed by the Select Board. An alternate member may attend all meetings and fully participate in the proceedings but may vote only when designated by the Chair to sit for a regular member, except that the alternate member may vote on housekeeping matters unrelated to a specific application. When a member is unable to participate because of a conflict of interest, absence, or any other reason satisfactory to the Chair, the Chair shall designate the alternate member to act for the regular member until the matter before the Board is decided.

### **2.2 Appointment of Planning Board Members**

Prior to the adoption of this Ordinance, Planning Board members were elected by district at the Annual Town Meeting. Following adoption of this Ordinance, members so elected shall continue to serve until individual terms expire. As individual terms expire, the Select Board shall appoint new members on an at-large basis to two-year terms. Such terms may be extended at the discretion of the Select Board. Only qualified voters of the Town of China who reside in the Town shall be eligible to serve as a member of the Planning Board.

Upon appointment by the Select Board, each Planning Board member shall take an oath of office. All Board members must complete a Maine Municipal Association (MMA) approved training course within one year of appointment, or at the next scheduled MMA training session, whichever is earlier. All Board members must familiarize themselves with the latest versions of the Town of China Land Development Code, the Comprehensive Plan, and all applicable State Statutes.

Planning Board members shall not hold any other elected or appointed municipal office. Spouses/domestic partners of any municipal officer are excluded from serving on the Planning Board.

### 2.3 Compensation

Compensation for each member shall be \$25.00 per meeting with a maximum of \$700.00 per year.

### 2.4 Vacancy

A. When there is a permanent vacancy, the Select Board shall appoint a person to complete the unexpired term. Such selection shall be made within 45 days. If the Select Board is unable to fill the vacant seat within 45 days, the Select Board may at its discretion designate the Alternate to complete the vacant term. A vacancy shall occur upon the resignation or death of any member, or when a member ceases to be a voting resident of the Town, or for cause. Cause shall be deemed to exist if a member:

1. Fails to attend 3 consecutive regular monthly meetings without cause.
2. Fails to attend at least 75% of all meetings during the preceding twelve (12) month period.
3. Engages in conduct involving conflict of interest.
4. Is convicted of a crime greater than a misdemeanor during the member's term of office.

B. When a vacancy occurs, the Chair of the Board shall immediately so advise the Select Board in writing. The Board may recommend to the Select Board that the attendance provision be waived for cause, in which case no vacancy will then exist until the Select Board disapproves the recommendation.

### 2.5 Removal

The Select Board may remove members of the Planning Board by majority vote, for cause, after notice and hearing.

## SECTION 3.0 ORGANIZATION

### 3.1 Officers

Nomination of officers shall be made from among all regular and alternate members of the Board at the annual organizational meeting which shall be held on the first regular Planning Board of the calendar year, and the election shall follow immediately thereafter. The alternate member cannot serve as Chair or Co-Chair.

### 3.2 Administrative Support

The Select Board shall provide an administrative support person for each regular or other special meeting to take minutes and other such as secretarial duties as needed. The Planning Board shall create other offices as it may deem necessary to perform within the authority of this Ordinance.

### 3.3 Meetings

- A. The Chair, or the Co-Chair in the absence of the Chair, shall call at least one (1) meeting per month unless there is no business before the Board. All meetings shall be held in a public building and all records shall be maintained at the Town Office. Executive sessions shall be held in strict accordance with State Law.
- B. The Chair shall preside at all meetings and hearings of the Planning Board. The Chair has the authority to call all work sessions and to preside over executive sessions. The Co-Chair shall act for the Chair in his or her absence.
- C. Any question regarding whether a Planning Board member shall be disqualified from voting on a particular matter because of a conflict of interest shall be decided by a majority vote of the members present except the member whose vote is in question.
- D. The voting quorum as used in this Ordinance shall be 3 of 5 members. The Board shall transact its business by parliamentary procedure in accordance with Roberts Rules of Order. A minimum of 3 affirmative votes is needed to pass any motion. When a motion results in a tie vote the motion fails. In the absence of one of the regular voting members, the alternate member shall be, for that meeting, appointed to voting capacity by the Chair or the Co-Chair in the absence of the Chair.
- E. All records of its resolutions, transactions, correspondence, findings of fact, determinations, consultations, conferences, and recordings shall be deemed public and may be inspected as provided for Title 1 M.R.S. Section 402.

## SECTION 4.0 RESPONSIBILITIES

### 4.1 Authority

The Board reviews and acts upon applications passed on to it by the Code Enforcement Office, the Select Board, or other such Town officials necessary to determine compliance with the Town of China Land Development Code, Subdivision Ordinance, and any other authority assigned to it by ordinance.

#### 4.2 Ordinances and Amendments

The Board shall prepare ordinances and amendments thereto for submission to and adoption by the legislative body in accordance with the process set forth in state statute. By way of public hearings, the people are included in the formulation of new or amended ordinances prior to submission for adoption. This section shall not be deemed to preclude the Select Board from preparing, or directing to be prepared, ordinances and amendments related to land use matters.

#### 4.3 Comprehensive Plan

The Planning Board shall prepare the Comprehensive Plan for submission to the Select Board. Upon favorable recommendation by majority vote by the Select Board it shall be submitted for adoption by the legislative body.

#### 4.4 Activity Reports

The Board shall submit an activity report for inclusion in the annual Town Report.

#### 4.5 Procurement of Goods and Services

The Board shall obtain goods and services that are necessary to its functions within the limit of appropriations made for this purpose.

### SECTION 5.0 MEETING ORGANIZATION

#### 5.1 Regular Meetings

- A. Meetings shall be scheduled at least once monthly at a mutually agreed upon time except that meetings need not be scheduled should there be no business before the Board. The meeting shall be at the Town Office or another venue if the Town Office is not available or insufficient to accommodate expected attendance. The Chair may schedule special meetings on 24 hour notice to the members and the general public. Any such special meetings shall be deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. Any action taken at an emergency meeting shall be confirmed at the next regular meeting.
- B. All meetings shall be open to the public except Executive sessions.

- C. No official business may be conducted without a quorum present. A quorum shall consist of 3 members. It shall not include anyone who cannot participate due to a conflict of interest. "Conflict of interest" means direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family, to his or her employer, or the employer of any member of the person's immediate family. It shall also include a situation where the Board member by reason of his or her interest is placed in a situation of temptation to serve his or her own personal, occupational or organizational interest instead of the public's interest. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members present except the member who is being challenged.
- D. In the event a quorum is not present the Board members are authorized to request that the Chair in cooperation with the CEO or Town Clerk reschedule the meeting to another date and to adjourn the meeting. If the date is other than a regular meeting date, the administrative support person shall have the responsibility of providing adequate notice to the Board members, municipal officials and the general public. Except in the case of emergency, adequate notice shall mean a minimum three-day notice.
- E. All comments addressed to the Board or to applicants before the Board shall be made through the Chair.
- F. All matters shall be decided by a vote. A minimum of three affirmative votes is needed to pass any motion. When a motion results in a tie vote the motion fails.
- G. All decisions must be based on whether the applicant has provided sufficient evidence to prove that all applicable law and ordinance requirements have been complied with.

## 5.2 Agendas

- A. Regular meeting agendas shall follow the following format:
  - 1. Call to order and determine the presence of a quorum.
  - 2. Review and approval of minutes of the previous meeting and correspondence.
  - 3. Unfinished Business
  - 4. New Business
  - 5. Other
  - 6. Adjournment

If a public hearing has been scheduled for an application before the Board, it shall be held after the initial presentation by the applicant to the Board.

- B. Agendas shall be posted on the town website at least 3 days before the meeting with the exception of special meetings as provided for in Sec. 5.1.A. Agendas shall include pertinent descriptions of each item to be considered by the Board and expected action by the Board.
- C. Each agenda shall have no more than three public hearings. No application, legislative, public hearing or any other major items of business shall exceed one-hour time of that agenda. The applications may consist of a new or in-process applications and shall include their respective public hearings. These time slots may be increased in length by majority vote of the Board. If additional time is required the matter may be tabled until all the other agenda items are concluded, at which time the Board may, by majority, vote to reopen the discussion. If the Board decides the agenda item requires further discussion, the item shall be placed on the agenda of the next regular meeting or on the agenda of a special meeting held at the convenience of the applicant and Planning Board members.
- D. New applications shall be placed on the next Board agenda consistent with the submission deadlines of the applicable ordinances. The Board reserves the right to revise the order of business on the agenda. Advertising, abutter notification and filing fees are payable in full at the time of submission. The applicant shall be notified of the meeting's date and time. At the initial or subsequent meeting, the Board shall make written findings as to whether the application is complete and notify the applicant of the Board's determination. If the application is found complete, it shall be made available at the Town office for public inspection.
- E. The Board may by majority vote determine that an application is routine and of such a minor nature as to warrant a decision by the Board rather than posting the application for a future meeting.

### Section 5.3 Work Sessions

- A. The Chair may, with the approval of the majority of the Board, call work sessions for the purpose of updating the ordinances and bylaws and other work items relating to the Board's activities, providing the public is notified. A quorum shall be present to conduct any business.
- B. Work sessions are open to the public. The general public shall be barred from addressing the Board. If a Board member asks to hear a person, the Chair may allow them to speak.

#### Section 5.4 Executive Sessions

- A. Upon a vote of at least 3 of the members present and voting, the Board may call for an Executive session to meet with the Town Attorney about pending or potential litigation.
- B. It shall be the Chair's responsibility to ensure that only that business for which the session was called will be discussed, and that no official action be taken.

#### Section 5.5 Site Walks

- A. The purpose of the site walk is for collecting information related to physical factors of a site under consideration by the Board.
- B. Site walks shall be conducted like a regular meeting and decisions shall not be made during the site walk. Notice of a site walk shall be posted at all locations Planning Board meetings are posted.
- C. The public may attend site walks but there will be no public comment or input allowed regarding the application during the site walk to any Board member unless allowed by the Chair.
- D. Minutes shall be taken during the site walk and shall be made available to the Board, the applicant and the public prior to the next meeting at which the application will be considered.

#### Section 5.6 Ex Parte Communications

- A. All Board members shall refrain from discussing pending or potential applications with each other outside of Board meetings. Communications with the public regarding pending or potential applications shall also be avoided. Where communications take place inadvertently, they must be disclosed completely to the Board in the next scheduled public session. This includes all email communication.
- B. Any gathering of three regular or alternate members outside of scheduled meetings where any Planning Board application matters are discussed shall be avoided as it would likely be considered ex parte communication. Any inadvertent gathering where Planning Board application matters were inadvertently discussed shall be reported publicly and completely at the next scheduled public session for purposes of proper disclosure.
- C. No Board member may conduct independent site walks to project locations. All such visits must be conducted as part of a scheduled Planning Board site visit.

#### Section 5.7 Hearings

- A. The Board by majority vote at a regular or special meeting may schedule a public hearing on any application within the time limits established by ordinance or on any item the Board determines to be of sufficient public interest to warrant a public hearing.
- B. Agendas shall be emailed to the Board members, posted on the Town's website and posted to the Town's email distribution list, if any, at least 7 days before the meeting with the exception of special meetings as provided for in Sec. 5.1.A. Agendas shall include pertinent descriptions of each item to be considered by the Board and expected action by the Board.
- C. The Board will strive to conduct public hearings in a fair and efficient manner that permits a thorough exploration of the issues to be considered.
- D. The order of business.
  - 1. The Chair calls the hearing to order and determines whether there is a quorum.
  - 2. The Chair then describes the purpose of the hearing, the nature of the application before the Board and the general procedures to be followed.
  - 3. The Board determines whether the applicant has sufficient right, title or interest to appear before the Board.
  - 4. The Board determines whether it has jurisdiction over the application.
  - 5. The applicant is given the opportunity to present his or her case without interruption.
  - 6. The Board may then ask questions of the applicant through the Chair.
  - 7. The Chair reads written public comment that has been submitted at least 48 hours prior to the meeting before the attending public speaks.
  - 8. The Chair opens the public hearing and recognizes individuals requesting to speak, generally beginning with the municipal officers, abutters and ending with any other member of the public. The Chair shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
  - 9. During the public hearing, all statements must be made through the Chair and all questions and discussion between the public, the applicant and Board members must be made through the Chair.
  - 10. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued at a later date. All interested



parties shall be notified of the date, time and place of the continued hearing, and the reasons for the continuance.

11. Upon such request made prior to or during the hearing, the Chair may permit persons participating in any hearing pursuant to this Ordinance to file written statements with the Board for inclusion in the record after the conclusion of the hearing within such time and upon such notification to the other participants as the Chair may require. Any such written statements must be submitted within 48 hrs. of the conclusion of the public hearing.
12. The Board and its consultants have the right to prepare findings and conclusions at any public meeting prior to the decision being finalized.
13. The Board may waive any of the above rules upon good cause shown by majority vote.

## ARTICLE 6.0 DECISIONS

### 6.1 Minimum Vote Requirements

Decisions by the Board shall be made within the time limits established by state law and ordinance. A minimum of three affirmative votes is needed to pass any motion. When a motion results in a tie vote the motion fails.

### 6.2 Record of Planning Board Decisions

The final decision on any matter before the Board shall be issued as a written order signed by the Chair or designee. The transcript or testimony, if any, and exhibits, together with all papers and requests filed in the proceedings and signed minutes of the meetings/hearings shall constitute the record. All decisions shall become part of the record and shall include a specific statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial therefore. At a minimum, the record should specifically state that the applicant has/ has not met all applicable state statutory requirements, all applicable municipal ordinances, and all applicable municipal regulations and those legal documents shall be specifically referenced.

### 6.3 Applicable Review Standards

The Board in reaching said decision shall be guided by standards specified in the applicable ordinance or regulation.

### 6.4 Notice and Filing of Decision

Notice of any decision, including the findings and conclusions/minutes, shall be sent by mail or hand delivered to the applicant within 30 days of being rendered. Decisions of the Board shall be immediately filed in the Town office and shall be made public record.

The date of the filing of each decision shall be entered in the official records and minutes of the Board.

## SECTION 7.0 AMENDMENTS

### 7.1 Initiation of Amendments

Amendments to this Ordinance initiate from the Planning Board, Select Board, or by the people in the form of a petition. Such a petition must be signed by a number of voters equal to at least 10% of the number of votes cast in the Town at the last gubernatorial election. Proposed amendments to ordinances are included as articles in the warrant for a regular or special Town Meeting or referendum ballot and are voted upon by the people.

If passed, these amendments become a part of the Ordinance. Amendments may be in the form of additions to, deletions from or changes to the Ordinance.

## SECTION 8.0 APPEALS

Appeal of the decision of the Board is governed by state law and local ordinances.