



STAFF REPORT

AGENDA ITEM:

CASE NUMBER: N/A

L.U.C.B. MEETING: November 9, 2017

REPRESENTATIVE:

Josh Whitehead, Secretary, Land Use Control Board

REQUEST:

Amendment to the Board's Bylaws to establish a clear procedure for instances where an applicant fails to appear

EXECUTIVE SUMMARY

In the last few months, there has been an increased number of public hearings where an applicant fails to appear on behalf of his or her case that has been placed on the agenda. This proposed Bylaws amendment establishes a clear procedure for instances where applicants fail to appear. The Board may take one of two actions: 1) it may either hold the case for 30 days or 2) declare the case to be withdrawn, depending on the particular circumstances of the case. For example, if an applicant fails to appear after the case has been held for 90 days, the Board cannot hold it again and must declare it withdrawn, pursuant to both the Unified Development Code and Section III, 6 of the Board's Bylaws.

The following amendment are proposed to the Bylaws (additional language is indicated in **underline, bold** below and in the attached document):

III, C, 8 (new section):

Failure to Appear. In the event an applicant fails to appear before the Board when a public hearing is properly scheduled for his or her case, the Board may either hold the case in abeyance for a period of one month or declare it withdrawn. In either instance, a motion shall be made to that effect and voted upon. In the event the Board holds the case in abeyance, staff with the Office of Planning and Development shall send written notice, via mail or electronic mail, to the applicant that he or she must appear at the next Board meeting or the case will be deemed withdrawn. In the event a case is held in abeyance for one month and the applicant again fails to appear before the Board, the case will be deemed withdrawn without any action required by the Board.

RECOMMENDATION

Approval

Staff Writer: *Josh Whitehead*

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Bylaws of the Memphis and Shelby County Land Use Control Board

*Adopted by the Land Use Control Board, April 14, 2016.
As last amended by the Land Use Control Board, **December 8, 2016.***

Order

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I. Purpose

The purpose of these Bylaws is to replace the Rules, Fees and Legislation adopted by the Land Use Control Board on May 3, 1979, and approved by the Memphis City Council on June 26, 1979, and the Shelby County Board of Commissioners on July 2, 1979.

II. Mission Statement

The Land Use Control Board, through its leadership, recommends long-term public policies consistent with Smart Growth Strategies and administers the Unified Development Code in order to:

- Protect the community's unique character and sense of place
- Encourage the development of great, vibrant, healthy urban streets, open spaces, public places, and neighborhood
- Establish and maintain a Unifying Civic Vision for Greater Memphis
- Promote economically, environmentally, and fiscally sustainable and responsible use of land in service to the common good.

Guiding Principles

The Land Use Board's actions are guided by these principle-based values:

- Fairness
- Wise judgment
- Civic passion
 - Civility and diplomacy
 - Integrity
 - Humanity
 - Consistency
 - Respect for all Memphis and Shelby County Stakeholders

III. Meetings, Committees and Applications

A. Procedure

1. Regular Public Meetings. The Board shall schedule its regular public meeting on the second Thursday of every month or at such intervals as it deems necessary. The time and place of such meetings shall be posted in advance and given wide publicity for the convenience of persons having business before the Board.
2. Special Meetings. Special meetings may be called only by the joint action of the Chair and Vice Chair, or in the absence or disability of either, the Secretary of the Board.
3. Adjourned Meetings. Should the business before the Board not be completed, the Chair may adjourn same to another day or time until the matters on the original agenda are disposed of.
4. Sunshine Law. All meetings of the Board and its committees shall be open to the public.

5. Order of Business. The order of business for public hearings shall be according to the printed agenda, which shall be furnished to the Board members, news media and the public at or before the meeting. Contested applications involving several people in attendance at the meeting may be heard out of order from the printed agenda at the discretion of the Chair.
6. Voting. All matters coming before the Board shall be voted on in public session immediately following the hearing on each case. The vote of each member of the Board shall be recorded and made part of the record.

B. Committees

1. Creation. The Chair may create such committees as he or shall deem necessary to carry out the Board's functions and duties.
2. Members. The Chair shall appoint all committee members; shall designate one member as Chair for one year, expiring with the calendar year, or until a successor has been appointed; and may designate temporary members to serve on any committee in the event of absence or disability or any regular committee members.
3. Meetings. All meetings shall be held upon call of the Committee Chair or upon call of the Board Chair.
4. Quorum. A majority of committee members shall constitute a quorum.
5. Appearances. The Chair of any committee may request any interested party to appear before the committee.

C. Applications

1. Forms. All applications for matters to be brought before the Board shall be made in accordance with the following provisions and with the requirements states on the official application forms. Said forms may be obtained in the Office of Planning and Development.
2. Filing Dates. All applications must be filed and accepted in accordance with the list of Application Deadlines published each year by the Office of Planning and Development.
3. Completeness. To whatever degree practicable, incomplete applications shall not be accepted by the Office of Planning and Development and returned to the applicant with a list of deficiencies. If deficiencies are not discovered until after an application is accepted, the Office of Planning and Development shall inform the applicant of the deficiencies and notify him or her that the item will be held in abeyance until the deficiencies are addressed. If the deficiencies are not discovered until after notice is mailed to adjacent property owners, the application shall be placed on the Board's agenda with a recommendation by the Office of

Planning and Development that the case be held with a list of the application deficiencies. In accordance with Paragraph 9.3.2B(5) of the Memphis and Shelby County Unified Development Code, incomplete neighborhood meeting notification constitutes an application deficiency.

4. Filing Fee. All applications must be accompanied by the appropriate filing fee, except applications by certain governmental agencies. Fees shall be made in accordance with the Land Use Controls Fee Schedule, as adopted by the Memphis City Council and Shelby County Board of Commissioners.
5. Notice of Hearing. Notice shall be mailed in accordance with the various chapters of Article 9 of the Unified Development Code.
6. Continuances. Continuances for a period not to exceed 90 days may be approved by the Board with the acquiescence of the applicant. Continuances for a period not to exceed 30 days may be approved by the Board without the acquiescence of the applicant.
7. Reapplications. Restrictions on reapplications are provided in Article 9 of the Unified Development Code.
8. **Failure to Appear. In the event an applicant fails to appear before the Board when a public hearing is properly scheduled for his or her case, the Board may either hold the case in abeyance for a period of one month or declare it withdrawn. In either instance, a motion shall be made to that effect and voted upon. In the event the Board holds the case in abeyance, staff with the Office of Planning and Development shall send written notice, via mail or electronic mail, to the applicant that he or she must appear at the next Board meeting or the case will be deemed withdrawn. In the event a case is held in abeyance for one month and the applicant again fails to appear before the Board, the case will be deemed withdrawn without any action required by the Board.**

IV. Attendance, Quorum and Public Hearings

A. Attendance

1. In order to understand the facts for each application before the Board, it is necessary that Board members attend the following meetings:

Field Trip:	as called by the Chair
Executive Session:	9:00AM, second Thursday of each month
Public Hearing:	10:00AM, second Thursday of each month

2. By Joint Resolution/Ordinance No. 2524, “three (3) successive unexcused or unexplained absences from any regular or special meeting shall be grounds for

termination at the will and pleasure of the appointing authority without the necessity of a hearing or notice and their action shall be final.” Members who cannot attend any of the above meetings shall notify the Secretary at least one (1) week prior to the meeting so that an alternate may be obtained for the public hearing. Members are encouraged not to be tardy or leave meetings prior to official adjournment. Habitual non-compliance with these attendance rules shall be reported by the Chair or Secretary to the appointing authority for appropriate action.

B. Quorum

1. Quorum. Pursuant to Section 28-19 of Joint Resolution/Ordinance No. 2524, the presence of seven (7) members of the Board shall constitute a quorum.
2. Required Votes. The Board’s interpretation of Section 28-19 of Joint Resolution/Ordinance No. 2524 shall be that the following votes are required for approval of a motion:

10 members present	- 6 yes votes
8 or 9 members present	- 5 yes votes
7 members present	- 4 yes votes

3. Recusals. A member who is recused shall not be counted as present for a quorum for that particular vote thereby reducing the necessary number of affirmative votes required to approve a motion. A member may substitute an abstention for a recusal for the purposes of maintaining a quorum.

C. Procedure for Public Hearings

1. A consent agenda shall first be established for those cases without opposition. If any member of the Board or from the audience objects to a particular case being placed on the consent agenda, that case shall not be placed on the consent agenda. In addition, cases with speakers’ cards submitted to the Secretary before the consent agenda is approved shall not be eligible for the consent agenda, except for those cases that are placed on consent as held items to be heard during a subsequent Board meeting and were furthermore indicated as held cases on the agenda set the prior Friday.
2. After the consent agenda is approved, the order of the regular agenda shall be set.
3. Once the regular agenda is set, each case is called by Committee Chair
4. Staff presents introduction and description of case
5. Board members ask questions of staff
6. Applicant and supporters make presentation (10 minutes maximum)*
7. Board members ask questions of applicant and supporters
8. Opposition makes presentation (10 minutes maximum)*
9. Board members ask questions of opposition

10. Rebuttal by applicant (3 minutes maximum)
11. Board members ask questions of applicant, supporters or opposition
12. Committee Chair makes a motion to approve
13. Once seconded, the Board Chair will call for discussion
14. During Board discussion, Board members may ask additional questions of staff, applicant, supporters and opposition and shall allow equal time to applicant/supporters and opposition
15. Chair calls for a vote

*The Chair may elect to allow additional time to both sides. The Chair may also elect to provide individual speakers a certain allotment of time, provided both sides are provided equal time.

D. Voting

1. Making Motions. All motions shall be made in the affirmative. All motions shall indicate whether the conditions recommended by staff as indicated in the staff report are part of main motion for approval. In all cases, “yes” votes will mean the motion should be approved and “no” votes will mean the motion should be rejected.
2. Method of Voting. All votes shall be one of the following words: YES or NO.
3. Tie Votes. In case of tie votes or failure to maintain a majority vote, the motion is considered to have failed and is rejected or, for matters that require final action by the legislative bodies according to the Unified Development Code, will be sent forward to the respective legislative body with a recommendation of rejection.
4. Rejected Cases. In the event a case that requires legislative body approval is rejected by the Board, the conditions proposed by staff and included in the staff report; as well as those added, deleted or amended by the Board during the Board meeting; shall be included in the resolution forwarded to the legislative body.

V. Conflict of Interest Statement

The adopted policy of the Land Use Control Board shall require that any member of the Board recuse himself or herself from any participation in the discussion of or voting on any matter on the meeting agenda in which he or she has a direct or indirect personal interest.

The member shall vacate his or her seat during deliberation on any matter from which he or she has recused himself or herself.