



STAFF REPORT

AGENDA ITEM:

CASE NUMBER: N/A

L.U.C.B. MEETING: July 14, 2016

REPRESENTATIVE:

Josh Whitehead, Secretary, Land Use Control Board

REQUEST:

Amend Board Bylaws to allow attaching conditions to rejected cases

EXECUTIVE SUMMARY

In instances where the Board rejects cases, whatever conditions are recommended by staff and/or made during the meeting by the Board are not attached to the set of conditions forwarded to the Memphis City Council or Shelby County Board of Commissioners. This is due to the fact that all motions are made in the affirmative, so if a motion to approve as conditioned by staff is rejected, the only conditions forwarded to the legislative bodies are those submitted by the applicant in its original application.

The recommended amendments to the Bylaws that are attached to this staff report will address this issue by allowing the Board to reconsider any item that is rejected. This reconsideration would occur immediately after a case is rejected. The motion to reconsider must be made by a member of the Board who had voted on the prevailing side of the matter. For a rejected case, this would be parties who had voted “no.” A second is required, but the person seconding the motion need not have voted on the prevailing side. The entire Board will vote on the motion to reconsider. Once the item is reconsidered, any Board member may make an affirmative motion to recommend rejection, but with the conditions recommended by the staff and/or Board.

The following amendments are proposed to the Bylaws (additional language is indicated in **yellow highlights** in the attached document):

Bylaw IV, D, 1: Language is recommended to this section of the Bylaws entitled “Making Motions” that will require the mover of a motion to indicate whether the conditions set out by staff are included in the Board’s approval. This motion could also indicate whether any friendly amendments suggested during the Board meeting are included, as well.

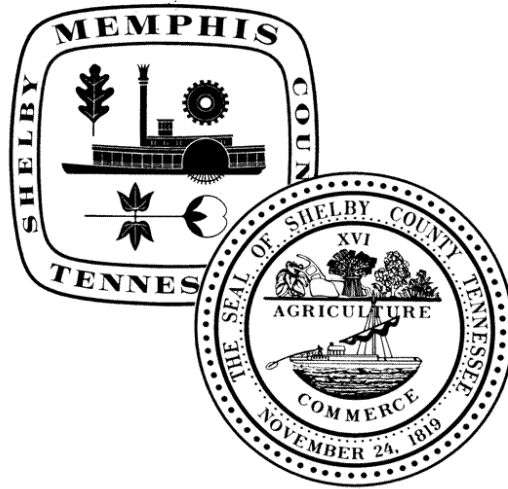
Bylaw IV, D, 4: This new section entitled “Rejected Cases” sets out recommended language for both 1) the reconsideration of rejected cases and 2) how to go about making an affirmative motion to reject a case in an effort to forward the case to the legislative bodies with certain conditions. This section also articulates that it will only apply to those cases that are forwarded to the legislative bodies as a matter of course; it would not apply to correspondence cases, which are approved or rejected outright.

RECOMMENDATION

Approval

Staff Writer: *Josh Whitehead*

E-mail: josh.whitehead@memphistn.gov



Bylaws of the Memphis and Shelby County Land Use Control Board

Adopted by the Land Use Control Board, April 14, 2016.
Amended by the Land Use Control Board, July 14, 2016.

Order

- I. Purpose
- II. Mission Statement
- III. Meetings, Committees and Applications
 - A. Procedure
 - B. Committees
 - C. Applications
- IV. Attendance, Quorum and Public Hearings
 - A. Attendance
 - B. Quorum
 - C. Procedure for Public Hearings
 - D. Voting
- V. Conflict of Interest Statement

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.

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. Case is called by Committee Chair
2. Staff presents introduction and description of case
3. Board members ask questions of staff
4. Applicant and supporters make presentation (10 minutes maximum)*
5. Board members ask questions of applicant and supporters
6. Opposition makes presentation (10 minutes maximum)*
7. Board members ask questions of opposition
8. Rebuttal by applicant (3 minutes maximum)
9. Board members ask questions of applicant
10. Committee Chair makes a motion to approve
11. Once seconded, the Board Chair will call for discussion
12. 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
13. 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 or added by the Board shall not be forwarded to the legislative body since the motion to approve the case failed. However, if a member of the Board voting on the prevailing side of a rejected case wishes to include any conditions recommended by staff or the Board, he or she may make a motion to the following effect:

Mr. Chairman (or Madame Chair), I move that we reconsider Agenda Item (insert agenda number here) so we can forward that item to the City Council (or Board of County Commissioners) with the conditions crafted by staff (and the Board).

If that motion is seconded by any member of the Board and passes by a vote of all members present, any Board member may make a motion to the following effect:

Mr. Chairman (or Madame Chair), I move that we forward Case No. (insert case number here) to the City Council (or Board of County Commissioners) with a recommendation of rejection from this body and with the conditions articulated in the staff report (and/or amended by this body this morning).

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.