



MEMORANDUM

TO: Metropolitan Planning Commission
 FROM: Mike Reynolds
 DATE: March 3, 2014
 SUBJECT: Amendments to MPC's Administrative Rules and Procedures regarding the removal of certain demolitions as a staff responsibility from the City of Knoxville Downtown Design Review Board Administrative Rules and Procedures, and other related changes (3-B-14-OB)

REQUEST

At the request of the City of Knoxville Law Department, the MPC staff has prepared the attached amendments to the Administrative Rules and Procedures of the Metropolitan Planning Commission – Appendix E (City of Knoxville Downtown Design Review Board Administrative Rules and Procedures) regarding the removal of demolitions as a consideration. If approved, these changes would delete references to “demolitions” and clarify that the Design Review Board staff would have the authority to approve applications for “in-kind replacement of building features” and the “removal of non-historic building features facing a publicly-oriented space”. Also, the amendments propose the addition of the City Law Department staff as an ex-officio member of the board (non-voting) and various minor corrections.

BACKGROUND

At the February 14, 2014 MPC meeting, the Planning Commission considered amendments regarding demolitions in the Downtown Design Overlay (D-1) District and the Downtown Knoxville Design Guidelines, and recommended approval (on consent). City Council will consider these amendments on first reading at the March 4, 2014 City Council meeting.

At the February 19, 2014 Downtown Design Review Board (DDRDB) meeting, the board considered amendments to their Administrative Rules and Procedures to be consistent with the amendments to the D-1 overlay district and design guidelines. ***The DDRB recommends approval of the amendments to the Administrative Rules and Procedures, as shown in Exhibit A (Approved 6-0).***

ANALYSIS

The amendments to the DDRB Administrative Rules and Procedures do not change how the board or staff reviews applications, but rather makes the terminology consistent with the amendments to the D-1 overlay district and design guidelines. In Article VII

(Delegation to Staff), Section 2 (Responsibilities), Even though the term “demolition” is deleted, clarity is added to the responsibilities of staff, which does not change the original intent of their authority to approve certain applications.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve the amendments to MPC’s Administrative Rules and Procedures, as shown in Exhibit A, on the condition of City Council approving the related demolition amendments to the D-1 overlay district and design guidelines as previously recommended by MPC.

EXHIBIT

Exhibit A

**APPENDIX E
CITY OF KNOXVILLE
DOWNTOWN DESIGN REVIEW BOARD
ADMINISTRATIVE RULES AND PROCEDURES**

(Language to be removed is ~~struck through~~, and new language to be added is in **bold and underlined type.**)

These Administrative Rules and Procedures are adopted by the Knoxville-Knox County Metropolitan Planning Commission in furtherance of the provisions of ~~Title 4, Section 26 (D 1)~~ **Appendix B, Article V, Section 5.5** of the City of Knoxville Zoning Ordinance creating the Downtown Design Review Board (the "Board").

ARTICLE I - ORGANIZATION

SECTION 1 – MEMBERSHIP

A. Composition

The Board shall consist of ten (10) members appointed by the Mayor with the approval of a majority of the City Council and shall be composed of permanent staff and other rotating members set forth below:

1. Staff (Permanent Members):

- (a) Metropolitan Planning Commission Executive Director (or designee), who shall be an *ex officio*, non-voting member.
- (b) City's Director of Policy ~~Development~~ **and Redevelopment** (or designee)

2. Rotating Members:

- (a) One architect (from a slate recommended by AIA Knoxville)
- (b) One urban design professional with a background in architecture or urban planning (selected from nominations from AIA Knoxville and the local chapter of the American Planning Association)
- (c) Two downtown residents
- (d) Two businesses, development of real estate professionals whose work is largely focused upon Downtown
- (e) A member of the Central Business Improvement District Board (from a slate proposed by the Board)
- (f) A member of the City's Historic Zoning Commission

3. Ex-Officio Members: The following may be called on to serve as non-voting members when cases require their technical and professional expertise.

- (a) Metropolitan Planning Commission and Historic Zoning Commission staff
- (b) Building Official (or designee)

- (c) City Engineering Director (or designee)
- (d) Central Business Improvement District staff
- (e) Knoxville Utilities Board staff
- (f) Knoxville's Community Development Corporation staff
- (g) City Law Department staff**

B. Term of Office

Each Rotating Member (after the initial members) of the Board shall be appointed for terms of three (3) years commencing on the date of confirmation of appointment by the City Council. No Member shall serve more than two (2) full terms or six (6) years.

The initial Rotating Members shall be assigned staggered terms of 1 year for two (2) members, 2 years for three (3) members, and 3 years for three (3) members, with the assignment of terms to be established by lot at the first meeting of the Board.

C. Vacancy

In the event a vacancy occurs in any membership position, a successor shall be appointed by the Mayor with approval of the City Council to serve the balance of the term being vacated.

SECTION 2 - OFFICERS

A. Election

The officers of the Board shall consist of a Chair, a Vice-Chair and a Secretary. The Chair and the Vice-Chair shall be elected by a majority of a quorum of the Board for terms of one year at the first regular meeting of the Board in each calendar year. Elected Officers shall be eligible for re-election. Notwithstanding the term of office, each Chair and Vice-Chair shall serve until the election of their successors. If a vacancy occurs in the office of the Chair or Vice-Chair, the Board shall, as soon as practicable, elect a successor to serve their balance of the existing term.

The Secretary shall be the Executive Director of the Knoxville/Knox County Metropolitan Planning Commission, or his/her designee.

B. Removal

The Chair or the Vice-Chair may be removed by a majority vote of the entire Board (not less than six (6) votes) when in the Board's judgment the best interest of the Board and/or the Community will be served.

C. Chair

The Chair shall preside at all meetings of the Board, act as spokesperson for the Board and shall perform such duties as the Board shall from time to time prescribe. The Chair may participate in all discussions, and shall be entitled to vote as any other Member of the Board, but shall not offer nor second any motion before the Board.

D. Vice-Chair

The Vice-Chair shall exercise the duties of the Chair in the absence, disability or disqualification of the Chair. In the event of the absence of both the Chair and Vice-Chair, the Member shall elect a Chair *Pro-Tem*, who shall be empowered with the authority of the Chair only during the pending meeting, with all authority to cease upon adjournment of the meeting.

E. Secretary

The Secretary shall provide and publish notice of meetings and hearings, prepare the agenda, keep records and minutes of meetings and hearings, maintain Board records as public records, attend to Board correspondence, maintain attendance records for each Board member, notify the City Recorder of any members who violate the attendance requirement, and perform other duties normally carried out by a secretary.

ARTICLE II - MEETINGS

SECTION 1 - REGULAR MEETINGS

In December of each year, a schedule of regular Board meetings for the following calendar year shall be adopted by the Board, and published in a newspaper of general circulation in Knox County, Tennessee, and posted in the MPC office. Such schedule shall also be provided to the City Recorder.

SECTION 2 - SPECIAL MEETINGS

Special meetings of the Board may be called by the Chair or any two (2) members of the Board, by written notice stating the date, time, location and purpose of the meeting, provided by the Secretary to each member, not less than five (5) working days prior to the meeting date. Any member of the Board may waive notice of the Special meeting, either before or after the meeting, with such waiver hereby deemed the equivalent of Notice. Attendance at a Special meeting shall constitute waiver of notice, unless the attendance is for the express purpose of objecting to the transaction of business or grounds that the meeting is not lawfully convened.

SECTION 3 - AGENDA

A written agenda shall be furnished by the Secretary to each member of the Board and the news media, and shall be posted at least five (5) days prior to each regular meeting, and at least 24 hours prior to any special meeting.

SECTION 4 - PROXY

Members shall not be permitted to vote by proxy.

SECTION 5 - QUORUM

A majority of the members of the Board shall constitute a quorum.

SECTION 6 - OPEN MEETINGS

All meetings of the Board convened to make a decision or deliberate toward a decision on any matter shall be an "open meeting" in accord with the requirements set forth in TENN CODE ANN. §8-44-101, *et seq.* The Secretary, with the assistance of the City Recorder, shall prepare and provide all appropriate notices and publications. All meetings shall be held in a public place that meets the requirements of the American's with Disabilities Act.

SECTION 7 - VOTING

All matters to be voted on by the Board shall be put in the form of a motion duly seconded. Each member present shall vote and shall not be permitted to abstain or pass on the vote unless such member claims a conflict of interest. Any such member abstaining from the vote shall state for the record the basis and nature of the conflict of interest in conformity with the City's adopted policies on conflict of interest. In the event of any question about the result of a voice vote, or upon the request of any member, a roll call vote shall be taken and recorded. A majority of the votes cast by members

present and voting shall be sufficient for the adoption of any motion, except as otherwise provided, herein. Any motion considered by the Board which fails adoption may be reconsidered at any time prior to adjournment.

SECTION 8 - ATTENDANCE

Any member who is unable to attend a meeting shall advise the Secretary as soon as possible. Any member, who, for reason other than sickness or bona fide emergency, fails to attend three (3) consecutive regular meetings of all meetings or 30% in any calendar year, shall be subject to removal by the City Council.

SECTION 9 - RULES OF ORDER

Roberts Rules of Order may be used as a reference for the conduct of meetings except as otherwise provided by these Rules and Procedures.

SECTION 10 - MINUTES

A record, or minutes, of the proceedings of all meetings shall be kept by a recording secretary, appointed by the Secretary. The minutes shall reflect:

- A. Every motion upon which a vote is taken by the Board.
- B. The names of the members of the Board making and seconding any such motion.
- C. The number of "Yes" votes and "No" votes on each motion.
- D. A record of any roll call vote taken.
- E. The name of any member of the Board that abstains from the discussion and vote on any matter. The minutes shall be published once approved by the Board.

ARTICLE III - DESIGN GUIDELINES FOR CERTIFICATE OF APPROPRIATENESS

In deliberating on an application for certificate of appropriateness in the Downtown Overlay District, properties zoned D-1, the Board (and the Planning Commission, if appropriate) shall use guidelines adopted by the Board and approved by the Knoxville/Knox County Metropolitan Planning Commission and City Council.

ARTICLE IV - APPLICATION PROCEDURE

SECTION 1 - FORM OF APPLICATION AND PROCEDURE FOR CERTIFICATE OF APPROPRIATENESS

Applications for certificate of appropriateness shall be filed on forms approved by the Board and provided to applicants by the Secretary. The required information and procedure for the application is outlined in ~~Article 4, Section 26~~ **Appendix B, Article IV, Section 5.5** of the Knoxville Zoning Code. The Board may require additional information deemed necessary or appropriate. The failure to submit information as outlined in the application or as requested by the Board may be grounds for denial. All applications shall be signed by the property owner, or include a written statement, signed by the property owner, designating the applicant as an agent.

SECTION 2 - TIME FOR APPLICATION

Complete applications must be filed with the Secretary at least 19 days prior to the next regularly scheduled meeting of the Board in order to be included in that meeting's agenda. Applications deemed

incomplete by the Secretary shall not be included on an agenda until all required items are satisfactorily submitted.

SECTION 3 - REHEARING

Any application for certificate of appropriateness which is denied by the Board may be resubmitted for rehearing at any subsequent meeting of the Board if, in the opinion of the Secretary, the resubmittal is accompanied by new relevant information, or modifications which address the reasons for the prior denial.

SECTION 4 - FEES

The Metropolitan Planning Commission may, from time to time, establish a fee schedule for the filing of the applications, which fees shall be collected by the Secretary.

ARTICLE V - HEARING PROCEDURES

SECTION 1 - STAFF REPORTS AND RECOMMENDATIONS

The Secretary shall submit reports and recommendations for those agenda items requiring decisions or recommendations by the Board. Other staff having experience, education, and professional training in the subject matter (including staff from The Metropolitan Planning Commission, City Building Officers, City Engineers, Central Business Improvement District staff, Knoxville Utilities Board staff, ~~and~~ Knoxville's Community Development Corporation staff, and City Law Department staff), may provide input ~~into~~ or additional reports and recommendations. A written report on each application shall be presented to the Board. Oral, written, and graphic presentations may also be used at the Board meeting.

The reports and recommendations shall be accepted as evidence to the same extent as oral testimony and exhibits accepted from applicants, opponents, subjects of an inquiry, other witnesses to the facts, and members of the public who provide information for the record of the proceedings.

SECTION 2 - APPEARANCES

The applicant or any person interested in an application may appear and be heard at a Board meeting in person, by agent, or by attorney. The extent of participation by any party at a meeting shall be at the control of the Chair.

SECTION 3 - DOCUMENTATION

Relevant documents, photographs, maps, plans, drawings, and like items will be received in the record without authentication in the form of legible copies. Relevant comments which are not cumulative or hearsay will be received. Documents and comments may be placed in the record with an objection noted by a member of the Board.

SECTION 4 - CONDUCT OF HEARING

The normal order of hearing, subject to modification by the Chair, shall be:

- Statement of the matter to be heard (chairperson or secretary),
- Presentation by applicant (5-minute limit),
- Presentation by opposition (5-minute limit),
- Rebuttal by applicant (3-minute limit),
- Public comment when appropriate,
- Discussions and deliberation among Board members.
- Vote

Members of the Board may question participants at any point in the hearing.

SECTION 5 - DISPOSITION

As to each application for Certificate of Appropriateness, the Board shall either: (a) approve as requested; (b) approve subject to conditions; (c) approve a modification of the application; (d) deny; (e) table; or (f) postpone, based only upon the unavailability of sufficient data upon which to make a decision. Any denial shall set forth the reasons therefore, in conformity with the Knoxville Zoning Ordinance.

A. Postponement

Postponements of an application for any proposal for Downtown Design Review Board(~~BOARD~~ **"Board"**) action may be permitted as follows:

1. Every motion to postpone action on an application shall include the date of the monthly public meeting at which the application will again be considered.
2. An applicant may postpone an item until the next scheduled public meeting the first time it appears on the ~~BOARD~~ **Board** agenda without ~~BOARD~~ **Board** debate or action. The intent to postpone must be submitted in writing, or by facsimile, and received by the Metropolitan Planning Commission no later than 3:30PM on the second Monday of the month of the meeting. Any request received after this deadline must be acted upon by ~~BOARD~~ **Board** consistent with these administrative rules and procedures.
3. Applicants postponed as described in A.2 may not be returned to the agenda until the meeting to which they have been postponed.

B. Tabling

All tabled applications shall be listed on each month's agenda for the purpose of review only.

1. Adding to the Table – An applicant can request the application be moved to the table. This action must be approved by the ~~BOARD~~ **Board**.
2. Removal from the Table – Proposals shall be removed from the table and placed on the ~~BOARD~~ **Board** agenda for consideration as follows:
At the request of the applicant, during the monthly review of tabled proposals, the Chair or any two members of the ~~BOARD~~ **Board** may request that an application be removed from the table and placed on the agenda for consideration. Such application shall be placed on the agenda for consideration at the next regularly scheduled monthly public meeting. Public notice of the application by publication will be provided in accordance with Article II hereof.
3. Removal from the Table for Purpose of Withdrawal – The applicant may submit a written request to the ~~BOARD~~ **Board** staff to remove the proposal from the table for the purpose of withdrawal. If the Chair or any two members of the ~~BOARD~~ **Board** consent to the request prior to the Closing Date, the application will be placed on the agenda for the next regularly scheduled monthly public meeting for consideration of withdrawal only. Public notice of the application by publication shall not be required.

ARTICLE VI - RECORDS

SECTION 1 - MINUTES

The Secretary shall record all meetings and hearings of the Board on tape, which shall be preserved until the final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the Board at the next regular meeting. Minutes shall be maintained as public records.

SECTION 2 - ORDERS AND DOCUMENTS

The Secretary shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, documents, orders and forms shall be maintained as public records.

ARTICLE VII - DELEGATION TO STAFF

SECTION 1 - STAFF DEFINED

Staff is defined as the Metropolitan Planning Commission Executive Director and the City's Director of Policy Development ~~and Redevelopment~~ and Redevelopment (or their respective designees).

SECTION 2 - RESPONSIBILITIES

Pursuant to Article 4, Section 26 ~~Appendix B, Article IV, Section 5.5~~, the Board hereby delegates to staff the authority to approve applications for new signs, ~~demolition removal of non-historic features on publicly-oriented facades, demolition~~ in-kind replacement of building features, removal of non-historic building features facing a publicly-oriented space, ~~to be replaced~~, replacement of windows at ground level with transparent glass, or other replacements that are consistent with the Design Guidelines and the provisions of the Knoxville Zoning Ordinance.

SECTION 3 - DISPUTES

Any party aggrieved by any staff determination under this Article may appeal the same to the Board. Such appeal must be filed within 7 days of the date of the staff decision being appealed. Form for such appeal shall be made available by the Secretary. The Board shall take final action on any such appeal at its next regularly scheduled meeting at which a quorum is present, unless the appellee requests or agrees to a postponement. Otherwise, the application as submitted by the applicant shall be deemed to have been approved, and a Certificate of Appropriateness shall be issued by the Staff on demand.

ARTICLE VIII - CONFLICT OF INTEREST

Any member of the Board having a conflict of interest regarding a proposal before the Board, shall abstain from any discussion or voting on such proposal, and shall advise the Chair of such conflict prior to the meeting at which the proposal is scheduled to be heard. The Board member will not be considered present for purposes of establishing a quorum. A conflict of interest shall exist under the following conditions:

- A. When a member of the Board or any member of his immediate family has a financial interest in property that is the subject of a proposal being considered by the Board.
- B. When a member of the Board or any member of his immediate family has a financial interest in a company or other entity that is seeking consideration of a proposal by the Board or is actively working for or against the proposed project that is before the Board.
- C. When a member of the Board or any member of his immediate family may receive some private benefit, either direct or indirect from the approval or the disapproval of a proposal being considered by the Board.
- D. When a member of the Board determines in his own mind that there are compelling reasons that will prohibit him from acting in the best interest of the community, or that his participation will create the impression of impropriety in the eyes of the general public.

ARTICLE IX - APPEALS

As to application for Certificates of Appropriateness located within the ~~D-1~~ Downtown Design Guidelines Overlay boundaries of the City of Knoxville, the applicant submitting an application, or any person who was a party for or against the application at the Downtown Design Review Board meeting, may appeal

approval, conditions of approval, or disapproval of such application to the Metropolitan Planning Commission.

- A. Appeal Period: such appeal shall be filed not more than (seven) 7 days from the date of the Design Review Board action being appealed.
- B. Public Hearing on Appeal: the Metropolitan Planning Commission shall hold a public hearing at the earliest practical date after the Review Board action and the required public notice.
- C. Public Notice of Appeal: prior to holding the public hearing on an appeal, at least 15 (fifteen) days' notice of time and place of such hearing shall first have been published in a daily newspaper of general circulation in the City of Knoxville and Knox County. All costs incident to publication of such notice shall be borne by the applicant.
- D. Appeal Procedure: all appeals shall be filed in the code administration office of the Planning Commission which will be responsible for placing such appeal on the agenda of the MPC at the earliest date possible consistent with these regulations.
- E. Filing Appeal: the appeal shall be filed on forms available in the Planning Commission office and shall state the specific conditions, requirements, or grounds for disapproval, being appealed.
- F. Appeal Fee: the standard MPC appeal fee is applicable to appeals filed regarding the Downtown Design Review Board or staff decisions.

ARTICLE X - AMENDMENT

These rules may be amended at any regular meeting of the Board by majority vote of the members of the Board, held not less than seven days after the proposed amendment is delivered to all members. Amendments shall not become effective until approved by the Knoxville/Knox County Metropolitan Planning Commission.

ARTICLE XI - ADOPTION

These rules were originally adopted by vote of a majority of the members of the Board at a public meeting on June 6, 2007 and approved by resolution by the Knoxville/Knox County Metropolitan Planning Commission on June 14, 2007.

Amendments regarding membership and appeal process were voted on and approved by the Board on October 17, 2007. Approved by the Knoxville/Knox County Metropolitan Planning Commission on December 13, 2007. Approved by the City Council on January 29, 2008.

Amendments regarding the responsibilities delegated to staff were voted on and approved by the Board on June 18, 2008. Approved by the Knoxville/Knox County Metropolitan Planning Commission on July 10, 2008.