

**CITY OF KNOXVILLE**  
**BOARD OF ENVIRONMENTAL APPEALS**

**AUTHENTICATION OF RESOLUTION**  
**REGARDING THE ADOPTION OF**  
**REVISED PROCEDURAL RULES FOR**  
**THE CONDUCT OF HEARINGS**

WHEREAS, the Procedural Rules for the conduct of hearings before the City of Knoxville Board of Environmental Appeals ("Board") were last revised as of January 14, 2010; and

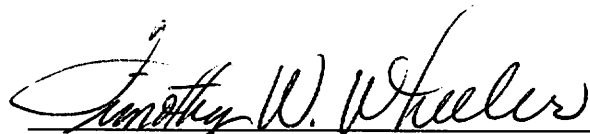
WHEREAS, changes in the manner in which the Board schedules its hearings and in which it conducts hearings have taken place since that last revision; and

WHEREAS, the Board is of the opinion that certain changes in the Procedural Rules should be adopted;

NOW THEREFORE, THE FOLLOWING RESOLUTION was adopted by the Board at its Annual Meeting, held on January 12, 2012, and continued until March 8, 2012:

RESOLVED, that the Procedural Rules, attached hereto as Exhibit A, shall become the rules by which hearings before the Board are conducted.

Effective as of March 8, 2012.

  
\_\_\_\_\_  
Timothy W. Wheeler, Chair

Attest:  \_\_\_\_\_  
Secretary

**RULES OF PROCEDURE FOR  
THE BOARD OF ENVIRONMENTAL APPEALS**

**PUBLIC MEETINGS**

**Open Meetings:** Every meeting of the Board of Environmental Appeals (“Board”) convened in order to make a decision or deliberate towards a decision on any matter shall be an “open meeting” in accordance with the requirements of Tennessee Code Annotated §8-44-101 et seq.

These rules have been formally adopted by the Board of Environmental Appeals as the procedural rules for the conduct of hearings before the Board. These rules are a matter of public record adopted pursuant to the Board’s powers outlined in the City of Knoxville Ordinance No. 0-247-97, commonly known as the “Stormwater and Street Ordinance for the City of Knoxville,” codified at Chapter 22.5 of the Code of Ordinances for the City of Knoxville, and are available to all parties during normal business hours from the City of Knoxville Engineering Department.

The Board reserves the right to waive any part or all of these rules by a majority vote of the Board members present at any hearing; provided, however, no more restrictive rule may be imposed without advance notice to all parties or without the consent of all parties in the event advance notice is not reasonably feasible.

A quorum is required for the Board to take any action. Three members of the Board shall constitute a quorum, and the concurrence of a majority of the Board present and voting in any matter shall be required for a determination of any matter within its jurisdiction.

**SCHEDULING**

The Board shall conduct its Annual Meeting the second Thursday of January each calendar year, unless such meeting is continued or postponed by the vote of a majority of the members of the Board.

The Board shall set aside the second Thursday of each month as the date on which appeals, continued hearings, or other matters are conducted. Reasonable effort will be made to accommodate scheduling requests, in the Board’s discretion, timely received from any party scheduled to appear before the Board. The Board has the authority, and reserves the right, to set hearing dates on any of its regularly scheduled dates, regardless of any party’s request. Any party failing to appear on the date scheduled and at the time scheduled, may be subject to an adverse decision by the Board.

Because the Board’s hearing schedule is a matter of public record, parties intending to appear before the Board are admonished to schedule their other affairs while being mindful of the Board’s hearing dates. Parties are further admonished to

consider the Board's hearing schedule in making a decision to appeal. Absent the concurrence of all parties, or unless the Board, of its own volition, does so, the hearing on any appeal will not be scheduled beyond the 60-day window referenced in Section 22.5-10(2) of the Code of Ordinances for the City of Knoxville. Given the composition of the Board, and given that the Board's hearing schedule is a matter of public record, while reasonable attempts to reach a mutually agreeable hearing date will be made, the Board nevertheless retains the right to set hearing dates, as referenced above.

### **PROCEDURE FOR CONDUCTING MEETINGS**

The order of business conducted at any meeting shall be as follows:

1. Role call.
2. To the extent a quorum is present, official opening of hearing.
3. Brief overview of procedure to be followed for hearing.
4. Disposition of any old business or previously unresolved matters.
5. Itemization of matters on the agenda for the current meeting.
6. Hearing on new matters.
7. Closing.

### **DECISION DATE**

The date on which the Board shall be deemed to have made its decision with respect to any matter coming before the Board shall be the date on which the decision is announced to the public. This shall be the date by which the time for appeal is measured. This date will be confirmed, in writing, to all parties.

### **RULES FOR PRESENTATIONS BEFORE THE BOARD**

1. At least five (5) business days prior to a hearing, copies of the following documents shall be assembled by the City and at least seven (7) copies shall be provided to the Board and one (1) copy to the Appellant:
  - (a) Notice of Violation for each matter to be heard;
  - (b) The letter to the party providing justification for the Notice of Violation and detailing the City's calculations of the amount of any penalty assessed;
  - (c) The grading permit and the plan (if applicable);
  - (d) Written explanation of the basis for the citations in Notice of Violations if not clearly set forth in any of the documents to be provided pursuant to this Section 1;
  - (e) The appeal letter written by the cited party and;
  - (f) Any and all other correspondence between the City and the cited party with respect to the matters to be heard.

2. At least two (2) business days prior to any hearing, each party shall cause to be filed with the Board ten (10) copies of any exhibits such party intends to tender at the hearing.

3. To the extent any party wishes to introduce exhibits at the hearing which have not been tendered in accordance with Paragraph 2 of these Rules, each party shall provide ten (10) copies of such party's respective exhibits to the Board prior to the commencement of the hearing on such party's appeal. It shall not be error on the part of the Board for any Board member to fail to consider any exhibit in the event less than ten (10) copies of each exhibit are provided to the Board.

4. The procedure for conducting hearings will be as follows:

- (a) The court reporter will swear all witnesses.
- (b) The sequestration rule will not apply and all witnesses shall be allowed to remain in the room unless otherwise ordered.
- (c) Each party shall supply its exhibits to the Board, with enough copies such that every Board member has a complete set of all documents, with an additional copy of each exhibit provided to Board Counsel and to the Court Reporter. In order to introduce any exhibit at the hearing, compliance with this Section 5(c) is required; enough copies must be tendered such that each Board member, Board Counsel, and Court Reporter has a complete set. It shall not be error on the part of the Board for any Board member to fail to consider any exhibit in the event less than ten (10) copies of each exhibit are provided to the Board.
- (d) Each party shall have up to ten (10) minutes to give an opening statement or overview of such party's position on the matter being appealed.
- (e) The City shall bear the burden of proof, and shall present its proof first.
- (f) Each party shall have one (1) hour to present its proof. The non-presenting party shall have the opportunity to cross-examine any witness or witnesses, which cross-examination shall not be attributable to the presenting party's time allotment.
- (g) Each party's sixty (60) minute presentation shall be followed by a fifteen (15) minute time allotment for the other party to recall any witness for cross examination; each party shall also have up to fifteen (15) minutes to offer rebuttal or sur rebuttal proof if they so choose.
- (h) Board members may ask questions during any phase of the hearing; provided, however, the time taken by such questions and required response shall not be considered as a part of the allotted time for the party's presentation.
- (i) If due process requires any additional time be allotted for the presentation of a party, or if the Board deems additional time to be appropriate for any reason, the additional time granted to one party entitles the other party to the same amount of additional time.
- (j) Additional time for any party's presentation shall be deemed granted so long as no objection is made by the non-presenting party.
- (k) At the end of the presentations, including cross-examination and rebuttal time, there will be a public forum. Up to four (4) speakers not affiliated with either party will be given up to five (5) minutes each to speak to the

Board. In the event more than four (4) speakers wish to address the Board, an equal number of pro-appellant and pro-appellee speakers will be selected.

- (l) Following the public forum, the parties will have fifteen (15) minutes each for closing argument. The City will present first and may reserve any portion of its fifteen (15) minutes to follow the cited party's presentation. The cited party will have fifteen (15) minutes following the City's initial closing.
- (m) Following closing arguments, the Board shall openly deliberate and render its decision as provided under the Ordinance.
- (n) The Board's decision shall also be communicated to the parties via first class mail; provided, however, the Decision Date, for appeal or any other purpose, shall be the date on which the decision is announced to the public.

5. Notwithstanding any other provision of these rules or procedures, the Board may, but shall not be required to, waive the time constraints set forth herein at the Board's sole and absolute discretion, including waiving the time constraints by not enforcing them.

6. There shall be no video taping, or other electronic transmission or recording which includes images, of any meeting of the Board without the express written consent of the Board. Requests to do so shall be tendered to each of the following no later than fourteen (14) days prior to the hearing date:

the Appellant,  
City Engineering,  
City of Knoxville Law Department, and  
Counsel to the Board.

In order to be considered, each of the recipients must actually receive the request by that date which is fourteen (14) calendar days prior to the hearing date. In the event any recipient objects, the objecting recipient shall communicate that objection to the other parties receiving notice as well as to the person making the request, and the request shall be deemed denied, even in the event another party has agreed. In the event no other party has objected by the hearing date, the Board shall make its own independent decision at the beginning of the hearing.

### **REVISION OF RULES**

The Board shall have the discretion to amend, modify, revise, waive, or suspend these rules at any Board meeting; provided, however, that in the event the meeting at which any revised rules are adopted is to be conducted pursuant to the provisions of the proposed revised rules, if adopted, the parties shall receive notice of the revised rules no less than five (5) calendar days prior to such meeting.

The vote of a majority of the members of the Board is necessary to revise these rules.