

**STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT**

**ZOTA 2013-7: ABATEMENT OF ZONING ORDINANCE VIOLATIONS**

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: See attachment

**STAFF REVIEW:**

This is the last of four enforcement-related text amendments recently initiated by the Planning Commission. All are part of an overall effort to improve the effectiveness of the Zoning Enforcement program that was transferred from the Division of Building Inspection to the Division of Planning on January 1, 2012. A recurring frustration on the part of Zoning Enforcement staff has been the inability to correct relatively simple zoning violations, short of going to court, in situations where a violator is simply not cooperative. Such inability has resulted from the limited authority granted in the Zoning Ordinance for staff to proceed, after a violation has been documented, with “abating” the situation by physically correcting a problem on their own or by hiring a contractor to do so. While expanding the authority to proceed with abatement will have to be done with considerable discretion, the staff believes it is necessary for Zoning Enforcement to be more responsive in situations that involve a zoning violation resulting in a continuing public nuisance.

As outlined in Article 5-9(d) of the Zoning Ordinance, current provisions allow for abatement to proceed only if (a) there is a serious threat to the public health, safety or welfare; or (b) if continuation of a violation would result in irreparable or irreversible damage. An example of a public safety threat that can be abated is the placement of a fence or planting within a “sight triangle” at an intersection that interferes with driver visibility. If an enforcement situation cannot reasonably be considered as falling into one of the above categories, the Zoning Ordinance does not provide for any authority to proceed with abatement. In those situations, if a violator is uncooperative, the staff is forced to pursue some type of court action in order to get a problem resolved, which often results in extensive delays and is generally considered as an inappropriate and ineffective route to have to take.

It is recommended that Article 5 be amended to grant staff the authority to proceed with abatement in situations that may not meet the threshold of public safety or irreparable damage, but do represent a continuing public nuisance. The primary goal of such expanded authority is to be able to deal more effectively with widespread instances of illegal temporary signage (e.g., posters on walls or in windows and signs attached to permitted freestanding business signs) that remain on properties for extended periods of time. This type of signage is inexpensive and easy to install, and involves minimal investment in materials and structural features. Such signage would be relatively simple for staff or a contractor to remove. While temporary signage is the current focus, it is not recommended that expanded abatement authority be limited to that one issue, as other similar issues will undoubtedly be encountered.

The Staff Recommends: **Approval**, for the following reasons:

1. Expanded abatement authority is needed in order for Zoning Enforcement efforts to be more responsive in situations involving a continuing public nuisance. Without such authority, the only option frequently available is to proceed with some type of court action, such as filing a criminal complaint with the Fayette County Attorney’s office, which is not considered an appropriate action in many instances.
2. Adequate safeguards have been included in the proposed amendment to ensure that abatement only proceeds in situations where a violation has been documented and confirmed through the legal process. Given the appeal options available with the issuance of both Notices of Violation and Civil Citations, which represent enforcement steps taken before abatement would proceed, the rights of business operators and property owners will be fully preserved.