

ORDINANCE NO. _____ -2012

AN ORDINANCE AMENDING SECTIONS 8-4(1), 8-4(4)(a), 8-4(5)(a), 8-4(5)(c), 8-4(5)(e), 8-5(1), 8-5(2), 8-5(2)(b), 8-5(2)(c), 8-5(2)(e), 8-5(3), 8-5(4), 8-6(4), 8-6(10), 8-6(11), 8-6(13)(a)(ix)(d), 8-6(13)(a)(x), 8-6(14)(a), 8-7(5), 8-7(6), 8-8(1), 8-8(2), 8-9(1), 8-9(6) OF THE CODE OF ORDINANCES RELATED TO MINING AND/OR QUARRYING TO CHANGE THE RESPONSIBLE DIVISION FROM BUILDING INSPECTION TO THE DIVISION OF ENGINEERING; AMENDING SECTION 8-4(4)(a) OF THE CODE OF ORDINANCES RELATED TO MINING AND/OR QUARRYING TO INCREASE THE PERMIT FEE TO AN AMOUNT BASED ON THE COSTS TO THE URBAN COUNTY GOVERNMENT IN PERFORMING ANNUAL INSPECTIONS, ASSESSED ON A PER ACRE BASIS AND INCLUDING THE COSTS OF ANY NECESSARY CONSULTANTS, AND PROVIDING THAT THE OPERATOR IS RESPONSIBLE IF THE ACTUAL COSTS EXCEED THE ANNUAL FEE AND THAT THE URBAN COUNTY GOVERNMENT SHALL REFUND ANY DIFFERENCE IF THE ACTUAL COSTS ARE LESS THAN THE ANNUAL FEE; AMENDING SECTION 8-4(5)(d) OF THE CODE OF ORDINANCES RELATED TO MINING AND/OR QUARRYING TO INCREASE THE RENEWAL FEE FROM \$6.00 AN ACRE TO \$18.00 AN ACRE; AMENDING SECTION 8-6(14) OF THE CODE OF ORDINANCES RELATED TO MINING AND/OR QUARRYING TO DELETE THE WORD "BUILDING"; AMENDING SECTION 8-7(2) OF THE CODE OF ORDINANCES RELATED TO MINING AND/OR QUARRYING TO DELETE THE PHRASE "ANOTHER COPY TO THE DIVISION OF BUILDING INSPECTION"; AMENDING SECTION 8-7(7) OF THE CODE OF ORDINANCES RELATED TO MINING AND/OR QUARRYING TO DELETE THE PHRASE "THE DIVISION OF BUILDING INSPECTION"; AMENDING SECTION 8-9(1) OF THE CODE OF ORDINANCES RELATED TO MINING AND/OR QUARRYING TO DELETE THE PHRASE "THE DIVISION OF ENGINEERING AND/OR".

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 8-4(1) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Introduction: Prior to any mining or quarrying on a property, the owner/operator shall submit an application for a mining/quarry permit to the division of engineering. The application shall conform to the requirements as defined herein in subsection (2) of this section. No application shall be deemed to be valid until all requirements as described herein are completed. The division of engineering shall process the application. Where new and/or expanded uses are requested, the board of adjustment may impose specific requirements and/or conditions relating to plans for such an operation as defined in the zoning ordinance. Upon approval by the board, the division of engineering may approve the permit application.

Section 2 – That Section 8-4(4)(a) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

The division of engineering shall issue a nontransferable mining/quarrying permit following the approval of the application and written confirmation that the bond has been posted as defined in section 8-5. Board approval shall be required for new or expanded uses. Beginning on January 1, 2013, the division of engineering shall procure payment for a permit fee based upon the total of the costs incurred by the urban county government in performing the annual inspections required in section 8-8 the previous

year. The fee shall be assessed on a per acre basis for the land to be affected in the next ensuing year. Such fees shall include the costs of retaining any necessary consultants by the government. The annual fee schedule including the calculation shall be made available to the operator upon request.. All fees must be in the form of cash, cashiers check, certified check, or company check. In the event that the actual costs incurred by the government in performing inspections exceeds the above fee, the operator shall be responsible for payment of the difference in cost upon presentation of an invoice or bill by the government. If the actual costs incurred by the government in performing the inspections are less than the above fee, the government shall remit the difference in cost to the operator.

Section 3 – That Section 8-4(5)(a) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Within forty-five (45) days after January 1 each year, the owner, operator or lessee of each mine or quarry shall procure from the division of engineering a permit to operate such a mine or quarry; and such permit shall not be transferable.

Section 4 – That Section 8-4(5)(c) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Request for additional bond may be made at time of renewal. If at renewal time bond is considered to be less than required coverage, notification shall be made in writing from the division of engineering to the operator stating the amount required. The operator shall have thirty (30) days from the date of notification to submit the required bond or appeal the decision of engineering before the board on the issue of additional bond.

Section 5 – That Section 8-4(5)(d) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

A renewal fee in the amount of eighteen dollars (\$18.00) an acre for previous acres disturbed plus estimated additional acres to be disturbed in the next twelve (12) months must accompany the updated plans and maps. All updated plan(s) and map(s) as described herein must be received by the anniversary date or the permit shall expire.

Section 6 – That Section 8-4(5)(e) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

The division of engineering shall act to approve or deny the renewal application within twenty (20) working days of receipt of a complete renewal application.

Section 7 – That Section 8-5(1) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Bond: An applicant shall not disturb surface acreage or extend any underground shafts, tunnels or operations prior to issuance of a permit and approval of a performance bond covering areas to be affected by the new and/or continued operation of mining/quarrying.

After submission of an original permit application, permit reapplication, or permit renewal in order to conduct mining/quarrying operations has been approved, but before such a permit is issued, the applicant shall file a bond to the benefit of the LFUCG. The bond amount shall be equal of the estimated cost of reclamation. The reclamation costs shall be determined by the division of engineering based upon information submitted by the applicant and any other information available to the division. The bond shall be in a form approved by the division of engineering. Additional increases in the bond may be required annually upon permit renewal as described herein in section 8-4(5)(c). Bond previously posted shall be released for the areas disturbed in the last twelve (12) months if reclamation work has been completed.

The bond shall be conditioned upon the faithful performance of all the requirements and provisions of the reclamation plan and permit and shall cover all mining/quarrying and reclamation operations to be conducted within the permit area. The surety shall be in the form of cash, cashier's check, certified check, certificate of deposit, bank letter of credit or insurance surety bond.

Section 8 – That Section 8-5(2) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Bond Forfeiture: A bond for a permit area shall be forfeited if the division of engineering finds after notice that:

- (a) The permittee has violated any of the terms, regulations or conditions of the bond and has failed to take corrective action;
- (b) The permittee has failed to conduct the mining and reclamation operations in accordance with the regulations and/or conditions of the permit within the time required, and the division of engineering has determined that it is necessary, in order to fulfill the requirements of the permit, to have someone other than the permittee correct or complete reclamation;
- (c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee or surety assumes liability to the satisfaction of the division of engineering for completion of the reclamation work and is, in the opinion of the division of engineering, diligently and satisfactorily performing such work;
- (d) The permittee or surety has failed to comply with a compliance schedule issued pursuant to section 8-13(1); or
- (e) The permittee has become insolvent, been adjudicated as bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court.

The permittee may appeal engineering's forfeiture of bond to the board as provided for in the zoning ordinance.

Section 9 – That Section 8-5(3) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Use of Forfeited Fund: The division of engineering shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area on which bond coverage applied, and to cover associated administrative expenses. Such funds shall be deposited in an appropriate account for the payment of such costs. The owner/operator shall be responsible for any deficiencies in funds required for completion of the reclamation plan. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received.

Section 10 – That Section 8-5(4) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Bond Release: No portion of the guarantee contained in the release of bond required by these regulations will be released until after the final inspection and evaluation of vegetative cover. There shall be allowed a reduction in said bond amount for all reclamation completed at that time. An amount reasonably related to the cost of regrading and revegetation shall be retained for a period of up to eighteen (18) months following the final inspection and evaluation to ensure the completion of any regrading and/or revegetation that may become necessary during this period.

To release bond, the operator shall file with the division of engineering a written report stating under oath that reclamation has been completed on certain acreage and submit the following:

Section 11 – That Section 8-6(4) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Drainage and Sediment Erosion Control: All mining operations shall have adequate drainage, erosion, and sediment control measures incorporated in the mining/quarrying plan and/or reclamation plan and installed in accordance with the plan(s) and/or accepted standards of the division of engineering. If in the event adequate drainage, erosion and sediment control cannot be provided, surface mine permits may be denied.

The operator shall have certified to the division of engineering by a registered professional engineer that the sediment ponds, water impoundments, and diversions have been constructed in accordance with the approved plan(s).

Section 12 – That Section 8-6(10) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Pre-blast Survey: A pre-blast survey shall be conducted if requested by an eligible property owner except for existing operations and except on

properties currently covered by an existing pre-blast survey. A pre-blast survey, if requested by the property owner within ninety (90) days of publication of the notice in the newspaper of highest circulation, shall be conducted by the applicant within the notification area applicable to that zone(s) as defined in the zoning ordinance. In zones where the notification area is less than one (1) mile, property owners within two thousand (2,000) feet of any part of the permit area may request a pre-blast survey within ninety (90) days of publication of the notice in the newspaper of highest circulation. The survey shall determine the condition of dwellings and/or structures and document any pre-blasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, wells, springs and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the pre-blasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

A written report of the survey shall be prepared and signed by the person who conducted the survey. The report shall include recommendations and any special conditions or proposed adjustments to the blasting procedures which should be incorporated into the blasting plan to prevent damage. If the resident or owner or his representative accompanies the surveyor, the report shall contain the name of such person(s). Copies of the report shall be kept on permanent record by the division of engineering and with the Fayette County Court Clerk with recording fees paid by the applicant.

If the property owner disagrees with the results of the survey, he or she shall notify in writing the division of engineering of the specific areas of disagreement.

If a structure is constructed or renovated within the applicable notification area subsequent to a pre-blast survey, then upon request to the division of engineering a survey shall be performed by the operator.

Section 13 – That Section 8-6(11) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Buffer Zone: Except for operations with valid existing rights, the mine or quarry shall not extend within one hundred (100) feet of any adjoining property line without the prior written consent of that adjoining property owner(s) and the approval of the division of engineering.

Section 14 – That Section 8-6(13)(a)(ix)(d) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Seed quality: The seed used must meet the purity and germination requirements of the Kentucky department of agriculture. The division of engineering may, at its discretion, take samples for laboratory testing.

Section 15 – That Section 8-6(13)(a)(x) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Inspections: Inspections for adequacy of vegetation for bond release shall be made by the division of engineering.

Section 16 – That Section 8-6(14) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Inactive Operations: At the option of the owner/operator and with the inspector's concurrence, an operation can remain under permit for an indefinite period during which no mineral or overburden is removed if the following conditions are complied with:

- (a) All disturbed areas are reclaimed to prevent erosion and sedimentation as directed by the division of engineering.
- (b) All drainage structures such as culverts, ditches, etc., are maintained according to the drainage manual.
- (c) All vegetation is maintained (reseeded as necessary) to the inspector's satisfaction.
- (d) All improvements on site, including machinery and equipment, are to be maintained in a reasonable state of repair and condition.
- (e) All portals, shafts and points of entry on the site are secured with a safety barrier(s).
- (f) All points of entry onto the property are secured.

Section 17 – That Section 8-7(2) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

The operator shall annually deposit a true and complete copy of the map within forty-five (45) days after January 1, to the division of planning, and another to the division of engineering; and a map shall be kept at the office of the mine.

Section 18 – That Section 8-7(5) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

If at any time there is reason to believe that any map furnished under this chapter is materially incorrect, so that it will not serve the purpose for which it was intended, the division of engineering may give notice to the owner/operator of the deficiency. If the deficiency is not corrected within thirty (30) days of notice, the division of engineering may have the survey, map or corrections duly made. If the map furnished by the operator is

found to be incorrect, the expense of making the survey, map or corrections shall be paid by the owner, lessee or operator of the mine. Failure to submit this survey as required may be grounds for revocation of the operating permit and/or a conditional use permit.

Section 19 – That Section 8-7(6) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

The correctness of each map shall be certified only by a professional civil or mining engineer registered in Kentucky. All plats, etc. shall be stamped with their seal. The certification shall read as follows:

"I, the undersigned, hereby certify that this map is correct, shows to the best of my knowledge and belief all the information required by this ordinance, _____ and _____ covers the period ending _____ / _____ / _____, _____ Certifying Agent. Acknowledge before me, _____, this _____ / _____ / _____ day of _____".

The division of engineering may reject any map as incomplete if its accuracy is not so attested.

Section 20 – That Section 8-7(7) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

When an underground mine is inactive, abandoned or closed, the operator of the mine shall make or cause to be made a final survey of the mine, to show the entire worked-out area at the time the mine was abandoned or closed. The results shall be extended on the map of the mine previously made, and a copy of the survey shall be filed with the division of planning, and the division of engineering.

Section 21 – That Section 8-8(1) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Leases: Prior to obtaining a permit from the LFUCG, the owner/operator shall ensure that all leases, conditions and/or restrictions to the subject property, or a memorandum thereof specifying the parties and terms thereof are filed in the office of the division of engineering.

Section 22 – That Section 8-8(2) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Notice of Permit Issuance: Upon issuance of a permit for mining/quarrying, the division of engineering shall file in the office of the Fayette County Court Clerk a notice of permit issuance. The notice shall set forth the names and addresses of property owners identified in the permit application, the address of the property covered by the permit, and the location of permitting files maintained by the division of engineering. The division of engineering shall file the notice in the book in which certificates of land use restrictions are filed pursuant to KRS 100.3681. The failure to file, to file on time, or to complete the notice properly or accurately shall not affect the validity or enforceability of any permit issued by the division

of engineering. Nothing herein shall affect the running of time for any appeal or other act for which a time limit is prescribed by law.

Section 23 – That Section 8-9(1) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

The division of engineering shall be authorized to inspect the mining operation, and shall enlist other consultant's assistance as needed for said inspections.

Section 24 – That Section 8-9(6) of the Code of Ordinances for the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

The inspector provided by the division of engineering shall have a thorough and practical knowledge of mining/quarrying as required by KRS 351.060. This may include but not be limited to a degree in mining engineering from a recognized institution or an associate degree in mining technology from a recognized institution. The inspector shall comply with all applicable Mining, Safety, and Health Administration (MSHA) certifications and requirements. If the LFUCG does not have the required expertise, the LFUCG shall contract for such services.

Section 25 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: