

ORDINANCE NO. 005 - 2023

AN ORDINANCE AMENDING ARTICLES 5-1, 5-7, 7-6(a)(7) AND (8), 7-6(e), AND 7-8 OF THE ZONING ORDINANCE TO UPDATE THE ZONING ORDINANCE TO REFLECT ORGANIZATIONAL CHANGES AUTHORIZED BY THE URBAN COUNTY COUNCIL RELATED TO ZONING ENFORCEMENT FUNCTIONS. (PLANNING COMMISSION).

WHEREAS, the Planning Commission has reviewed and considered a text amendment to Articles 5-1, 5-7, 7-6(a)(7) and (8), 7-6(e), and 7-8 of the Zoning Ordinance to update the zoning ordinance to reflect organizational changes authorized by the Urban County Council related to zoning enforcement functions. The Planning Commission did recommend APPROVAL of the staff alternative text by a vote of 9-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

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

Section 1 – That Article 5-1 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended as follows:

Sec. 5-1. Administration and enforcement.

The Directors of the Divisions of Planning and Building Inspection, and the Directors' authorized agents of the Lexington-Fayette Urban County Government, shall administer and enforce this Zoning Ordinance, except where other Divisions of the Lexington-Fayette Urban County Government have been assigned such responsibility as provided herein. The Director of Building Inspection, or the Director's authorized agent, shall promptly investigate all written complaints of violations and record all findings and actions in the official records, which shall be available in the Offices of the Division holding enforcement responsibility. The Directors shall use the best efforts to prevent violations. If the Directors, or the Directors' agent, finds any of the provisions of this Zoning Ordinance are being violated, the Director of Building Inspection, or the Director's agent, may cite the violator to district court, may assess civil penalties through an administrative process, may seek a restraining order or injunctive relief, may order the stoppage of work which is determined to have created or contributed to conditions that pose a threat to the public health, safety or welfare, or may order the action necessary to correct the violation and to enforce the provisions of this Zoning Ordinance. The Directors of Planning and Building Inspection shall make records of all official actions relating to the administration and enforcement of the provisions of this Zoning Ordinance, including, but not limited to, written records of all complaints and actions taken with regard thereto, all violations discovered with actions taken thereto, and the final disposition of all such matters.

- (a) *Right of Entry.* The Director of Building Inspection or their authorized agent is authorized to enter upon property, land, structures or buildings, at reasonable times for the purpose of inspecting, ascertaining and causing to be corrected any violation of this Zoning Ordinance. The Director is hereby empowered to prescribe, adopt, promulgate, and enforce reasonable rules, regulations, and/or guidelines pertaining to administrative inspections of properties for zoning

violations which are not otherwise inconsistent with the Zoning Ordinance and constitutional restrictions of unreasonable searches and seizures. Whenever the Director or their authorized agent is denied entrance to any property, land, structure or building, they may apply to the district court for a warrant allowing entrance and inspection. This authority shall apply to the interior of occupied, private dwellings only when the inspecting agent has reason to believe that a zoning violation exists in the dwelling.

Section 2 – That Article 5-7 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended as follows:

Sec. 5-7. Complaints regarding violations.

Whenever a violation of the provisions of this Zoning Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Director of the Division of Building Inspection or the Director's authorized agent. The Director shall initiate an investigation of each case. Complaints involving building code matters shall be referred to the appropriate section within the Division of Building Inspection or to the Division of Code Enforcement, depending upon appropriate jurisdiction; or, in the case of landscape matters regulated under Article 18 of this Zoning Ordinance, the complaint shall be referred to the Director of the Division of Environmental Services for investigation and, if warranted, enforcement action; or, in the case of land disturbance permits authorized under Chapter 16 of the Code of Ordinances, the complaint shall be referred to the Urban County Engineer or the Urban County Engineer's authorized agent for investigation and, if warranted, enforcement action. The Directors of the Divisions of Planning, Building Inspection, Environmental Services, Code Enforcement, Public Safety, Historic Preservation, or the Urban County Engineer, or their authorized agents (as appropriate) shall record properly such complaint, immediately investigate, and take action thereon as provided by this Zoning Ordinance.

Section 3 – That Articles 7-6(a)(7), 7-6(a)(8) and 7-6(e) of the Zoning Ordinance of the Lexington-Fayette Urban County Government are hereby amended in pertinent part as follows:

Sec. 7-6. Specific powers.

The Board of Adjustment shall have the following powers:

- (a) *Conditional Use Permits.* The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the planning area of uses which are specifically named in this Zoning Ordinance, which may be suitable only in specific locations in the zone only if certain conditions are met and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood.
- (7) The Division of Building Inspection shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the Division of Building Inspection shall report the fact in writing to the Chairman of the Board of Adjustment and the Division of Planning. The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearings shall be furnished to the landowner at least one (1) week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Division of Building Inspection are true and that the landowner has taken no steps to comply with them between the date

of the report and the date of the hearing, the Board of Adjustment may authorize the Division of Planning to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

(8) Once the Board of Adjustment has granted a conditional use permit, and all of the conditions required are of such type that they can be completely and permanently satisfied, the Division of Building Inspection, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit, which is on file with the County Clerk. Thereafter, said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

(e) *All Other Appeals.* Appeals to the Board may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal or decision of the Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. Such appeal shall be taken within thirty (30) days after the appellant or their agent receives notice of the action appealed from, by filing with the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. The Division of Planning shall forthwith transmit to the Board papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the Board, any interested person may appear and enter their appearance, and all shall be given an opportunity to be heard.

Section 4 – That Article 7-8 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended as follows:

Sec. 7-8. Recording.

All variances and conditional use permits approved by the Board shall be filed as a land use restriction and recorded at the expense of the applicant at the office of the County Clerk.

Section 5 – That this Ordinance shall become effective upon the date of its passage.

PASSED URBAN COUNTY COUNCIL: January 31, 2023



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: February 9, 2023-1t

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Recd by _____

Date: _____

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: PLN-ZOTA-22-0018: AMENDMENTS TO ARTICLES 5 & 7 REGARDING ZONING ENFORCEMENT – a petition for a Zoning Ordinance text amendment to amend Articles 5 and 7 regarding Zoning Enforcement.

Having considered the above matter on **November 17, 2022**, at a Public Hearing and having voted **9-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** for this matter for the following reasons:

1. These amendments to the Zoning Ordinance are necessary to implement the adopted organizational changes within the Divisions of Building Inspection and Planning in order to better manage interpretation and enforcement of the Ordinance, as well as the permitting process.

ATTEST: This 6th day of January, 2023.



Secretary, Jim Duncan

LARRY FORESTER
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Autumn Goderwis, Principal Planner in the Division of Planning.**

OBJECTORS

- None.

VOTES WERE AS FOLLOWS:

AYES: (9) Barksdale, Bell, de Movellan, Forester, Meyer, Michler, Penn, Pohl, and Worth
NAYS: (0)
ABSENT: (2) Davis and Nicol
ABSTAINED: (0)
DISQUALIFIED: (0)

Motion for **Approval** of **PLN-ZOTA-22-00018** carried.

Enclosures: Initiation Minutes- September 8, 2022
Staff Report
Planning Commission Recommended Text
Applicable excerpts of minutes of above meeting

B. ZONING ORDINANCE TEXT AMENDMENT INITIATION – Ms. Wade requested the Planning Commission initiate a Zoning Ordinance text amendment to authorize changes in enforcement functions, transferring a number of responsibilities from the Division of Planning to the Division of Building Inspection.

Action – A motion was made by Mr. Penn, seconded by Mr. Pohl, and carried 7-0 to initiate a Zoning Ordinance text amendment to transfer zoning enforcement responsibilities to the Division of Building Inspection.

Staff Comments – Mr. Duncan reminded the Commission members of the upcoming work session, and gave an overview of the items that would be covered.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will **NOT** be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. MEETING DATES FOR SEPTEMBER AND OCTOBER

- Work Session, Thursday, 1:30 p.m., 3rd Floor Conference Room, Phoenix Building September 15, 2022
- Technical Committee, Wednesday, 8:30 a.m., 3rd Floor Conference Room, Phoenix Building..... September 28, 2022
- Zoning Items Public Hearing**, Thursday, 1:30 p.m., 2nd Floor Council Chambers, Government Center **September 22, 2022**
- Subdivision Committee, Thursday, 8:30 a.m., 3rd Floor Conference Room, Phoenix Building.....October 6, 2022
- Zoning Committee, Thursday, 1:30 p.m., 3rd Floor Conference Room, Phoenix Building.....October 6, 2022
- Subdivision Items Public Hearing**, Thursday, 1:30 p.m., 2nd Floor Council Chambers, Government Center..... **October 13, 2022**

X. ADJOURNMENT

The meeting was adjourned at 3:02 p.m.

PS/TW/TM/CG

Larry Forester, Chair

Janice Meyer, Secretary

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Article 5 ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

Sec. 5-1. Administration and enforcement.

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(Code 1983, § 5-1; Ord. No. 263-83 , § 1, 12-15-1983; Ord. No. 371-2000 , § 1, 12-14-2000; Ord. No. 268-2004 , § 1, 11-4-2004; Ord. No. 122-2011 , § 3, 9-29-2011; Ord. No. 53-2013 , § 1, 5-23-2013)

Sec. 5-7. Complaints regarding violations.

Whenever a violation of the provisions of this Zoning Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Director of the Division of Planning Building Inspection or the Director's authorized agent. The Director shall initiate an investigation of each case. Complaints involving building code matters shall be referred to the appropriate section within the Divisions of Building Inspection or to the Division of Code Enforcement, depending upon appropriate jurisdiction; or, in the case of landscape matters regulated under Article 18 of this Zoning Ordinance, the complaint shall be referred to the Director of the Division of Environmental Services for investigation and, if warranted, enforcement action; or, in the case of land disturbance permits authorized under Chapter 16 of the Code of Ordinances, the complaint shall be referred to the Urban County Engineer or the Urban County Engineer's authorized agent for investigation and, if warranted, enforcement action. The Directors of the Divisions of Planning, Building Inspection, Environmental Services, Code Enforcement, Public Safety, Historic

Preservation, or the Urban County Engineer, or their authorized agents (as appropriate) shall record properly such complaint, immediately investigate, and take action thereon as provided by this Zoning Ordinance.

(Code 1983, § 5-7; Ord. No. 263-83, § 1, 12-15-1983; Ord. No. 371-2000, § 1, 12-14-2000; Ord. No. 1-2011, § 5, 1-13-2011; Ord. No. 122-2011, § 9, 9-29-2011; Ord. No. 124-2017, § 1, 8-31-2017)

Article 7 BOARD OF ADJUSTMENT

Sec. 7-6. Specific powers.

The Board of Adjustment shall have the following powers:

- (a) *Conditional Use Permits.* The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the planning area of uses which are specifically named in this Zoning Ordinance, which may be suitable only in specific locations in the zone only if certain conditions are met and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood.
- (7) The Division of Planning Building Inspection shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the Division of Planning Building Inspection shall report the fact in writing to the Chairman of the Board of Adjustment and the Division of Planning. The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearings shall be furnished to the landowner at least one (1) week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Division of Planning Building Inspection are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the Board of Adjustment may authorize the Division of Planning to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.
- (8) Once the Board of Adjustment has granted a conditional use permit, and all of the conditions required are of such type that they can be completely and permanently satisfied, the Division of Planning Building Inspection, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit, which is on file with the County Clerk. Thereafter, said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.
- (e) *All Other Appeals.* Appeals to the Board may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal or decision of the Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. Such appeal shall be taken within thirty (30) days after the appellant or ~~his~~ their agent receives notice of the action appealed from, by filing with the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. The Division of Planning shall forthwith transmit to the Board papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At

any hearing by the Board, any interested person may appear and enter his their appearance, and all shall be given an opportunity to be heard.

(Code 1983, § 7-6; Ord. No. 263-83, § 1, 12-15-1983; Ord. No. 61-87, § 1, 4-16-1987; Ord. No. 152-87, § 1, 7-9-1987; Ord. No. 175-88, § 1, 7-14-1988; Ord. No. 25-94, § 1, 2-24-1994; Ord. No. 307-2002, § 1, 12-5-2002; Ord. No. 129-2009, § 10, 7-2-2009; Ord. No. 96-2010, § 7, 6-10-2010; Ord. No. 122-2011, §§ 12—14, 9-29-2011; Ord. No. 133-2016, § 1, 7-7-2016)

Sec. 7-8. Recording.

All variances and conditional use permits approved by the Board shall be filed as a land use restriction and recorded at the expense of the applicant at the office of the County Clerk.

(Code 1983, § 7-8; Ord. No. 176-86, § 1, 8-28-1986; Ord. No. 61-87, § 1, 4-16-1987)



STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

PLN-ZOTA-22-00018: AMENDMENT TO ARTICLES 5 AND 7 REGARDING ZONING ENFORCEMENT

APPLICANT: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: SEE ATTACHED (Note: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

STAFF REVIEW:

The purpose of this text amendment is to update the Zoning Ordinance in order to reflect organizational changes authorized by the Urban County Council on August 30, 2022, related to zoning enforcement functions. At that time, the Council authorized the transfer of five positions (one Zoning Enforcement Officer Sr., three Zoning Enforcement Officers, and one Staff Assistant from the Division of Planning to the Division of Building Inspection).

For just over ten years, the Division of Planning has held all responsibility for interpretation and administration for the Zoning Ordinance, including Zoning Enforcement. This ZOTA represents a return of certain tasks back to the Division of Building Inspection, where Zoning Enforcement was carried out for many years prior to 2012. The Division of Planning will continue to interpret and administer the Zoning Ordinance through the issuance of Zoning Compliance Permits, or Zoning sign-offs on building permits. These activities allow the Division of Planning to help guide the actions and decisions of business operators and builders at the early stages of business development. However, the task of enforcement, including responding to and investigating zoning complaints, as well as conducting annual reviews of conditional use permits will return to the Division of Building Inspection.

This text amendment includes revisions primarily to Article 5 which delineates which Division is responsible for activities regulated in the Zoning Ordinance. There are also minor changes to Article 7 which details the powers and proceedings of the Board of Adjustment, as the task of inspecting active conditional uses on an annual basis will be transferred to the Division of Building Inspection.

Zoning Enforcement work is typically carried out by Zoning Enforcement Officers utilizing on-site inspection of properties and is generally similar to other activities conducted by Building Inspectors within the Division of Building Inspection which involves extensive work in the field. Not infrequently, zoning compliance complaints may also include matters related to building code and/or permitting issues. Providing both zoning enforcement and building inspection within the same Division should help the local government provide cooperative and consistent services to residents. Because Zoning Compliance Permitting and Zoning sign-offs will remain with the Division of Planning, interdivisional communication and collaboration will continue to be of great importance. The delegation of duties provided for within the proposed text will allow for both Divisions to remain involved and accountable for the activities governed by the Zoning Ordinance. Additionally, the proposed text is necessary to update the Zoning Ordinance to reflect organizational changes already approved by Council, which return Zoning Enforcement duties to the Division of Building Inspection.



The Staff Recommends: **Approval** of the proposed text amendment to the Zoning Ordinance, for the following reasons:

1. These amendments to the Zoning Ordinance are necessary to implement the adopted organizational changes within the Divisions of Building Inspection and Planning in order to better manage interpretation and enforcement of the Ordinance, as well as the permitting process.



- 3. **PLN-ZOTA-22-0018: AMENDMENTS TO ARTICLES 5 & 7 REGARDING ZONING ENFORCEMENT** – a petition for a Zoning Ordinance text amendment to amend Articles 5 and 7 regarding Zoning Enforcement.

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: No Recommendation.

The Staff Recommends: Approval. for the following reasons.

- 1. These amendments to the Zoning Ordinance are necessary to implement the adopted organizational changes within the Divisions of Building Inspection and Planning in order to better manage interpretation and enforcement of the Ordinance, as well as the permitting process.

Staff Text Amendment Presentation – Ms. Autumn Goderwis presented and summarized the staff report and recommendations for this text amendment. Ms. Goderwis indicated that this text amendment returns certain tasks that were the responsibility of the Division of Planning to the Division of Building Inspection. The Division of Planning retains Zoning Compliance Permitting and sign-offs for building permits, but the Division of Building Inspection is responsible for Zoning Enforcement. Additionally, Ms. Goderwis stated that the Division of Building Inspection would conduct annual zoning inspections for conditional uses.

Ms. Goderwis concluded her presentation by stating that staff was recommending approval of the text amendment and could answer any questions the Planning Commission may have.

Zoning Action – A motion was made by Mr. Penn, seconded by Ms. Barksdale and carried 9-0 (Davis and Nicol absent) **PLN-ZOTA-22-00018: AMENDMENTS TO ARTICLES 5 & 7 REGARDING ZONING ENFORCEMENT** to approve for reasons provided by staff.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.