

ORDINANCE NO. _____ - 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:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
PUBLISHED:

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