

ORDINANCE NO. _____-2014

AN ORDINANCE DELETING SECTION 9-21 OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT PERTAINING TO A FIRE PREVENTION BOARD OF APPEALS; AN ORDINANCE AMENDING SECTION 9-22(a) OF THE CODE OF ORDINANCES RELATED TO FIRE PREVENTION TO CREATE A NEW SECTION 1 WHICH DEFINES THE APPLICABILITY OF THIS SUBSECTION; AMENDING SECTION 9-22(a)(2) OF THE CODE OF ORDINANCES RELATED TO FIRE PREVENTION TO RENUMBER THE OLD SECTION 1 TO SECTION 2 AND TO INCLUDE THE ORDERS OF OTHER MEMBERS OF THE DEPARTMENT, TO PROVIDE FOR A WRITTEN APPEAL WITHIN 10 BUSINESS DAYS INSTEAD OF 30 AND TO PROHIBIT THE FIRE MARSHALL WHO ISSUED THE ORDER FROM BEING THE HEARING OFFICER; AMENDING SECTION 9-22(a)(3) OF THE CODE OF ORDINANCES RELATING TO FIRE PREVENTION TO RENUMBER THE EXISTING SECTION 2 TO BE A NEW SECTION 3 AND TO INCLUDE THE FIRE CHIEF'S DESIGNEE IN THIS SECTION; AMENDING SECTION 9-22(a) OF THE CODE OF ORDINANCES RELATED TO FIRE PREVENTION TO RENUMBER THE OLD SECTION 3 TO NEW SECTION 4 AND TO PROVIDE FOR A WRITTEN DECISION WITHIN 5 BUSINESS DAYS; AMENDING SECTION 9-22(b) OF THE CODE OF ORDINANCES RELATED TO FIRE PREVENTION TO DELETE THE EXISTING SECTION AND REPLACE IT WITH AN APPEAL OF THE FIRE CHIEF'S ORDER AS PROVIDED UNDER STATE LAW; AMENDING SECTION 9-22 OF THE CODE OF ORDINANCES RELATING TO FIRE PREVENTION TO DELETE THE EXISTING SECTION (c) AND REPLACE IT WITH A NEW SECTION (c) PROVIDING THAT ALL ORDERS NOT TIMELY APPEALED SHALL BECOME FINAL.

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

Section 1 - That section 9-21 of the Code of Ordinances be and hereby is deleted in its entirety.

Section 2 - That section 9-22 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 9-22.

(a) *Appeal of Fire Marshal's Order.*

(1) *Application.* This subsection shall not apply in instances in which the order is issued by the fire chief. In addition, this subsection shall not apply in instances in which an emergency order is issued pursuant to state law that directs the property to be closed to the public or vacated by its occupants until the violation is corrected.

(2) *Authorized.* Where any person seeks relief from an order of the fire marshal or other officer or member of the department acting in an official capacity enforcing provisions of this code, including but not limited to matters of code interpretations, that person may request reconsideration of the fire marshal's decision by appealing in writing to the fire chief within ten (10) business [thirty (30)] days of the receipt of the order stating the reasons why relief is sought and what decision the person feels should be forthcoming. The fire chief or his designee shall act as a hearing officer and hear such appeals filed. In no instance shall the designee be the fire marshal issuing the order. A hearing on such an appeal shall be held within thirty (30) days after it is received by the fire chief.

(3) *Notice of hearings.* The fire chief or his designee shall give written notice of hearings not less than ten (10) days in advance. The notice shall state the date, time and place of the hearing and specify the matters to be considered at the hearing. The fire chief shall give such notice to all persons whose pecuniary interests, to the fire chief's knowledge or belief, are to be directly and immediately affected by the hearing. Notice of hearing may ~~may~~ be given by delivery to the person to be notified or his agent or by mailing it, postage prepaid, addressed to him at his principal place of business or residence as last of record in the fire chief's office.

(4) *Conduct of hearing.* Any party to the hearing shall have the right to appear in person and to present evidence in support of his interest. The fire chief shall consider all relevant evidence presented at the hearing and shall render a written decision within five (5) business days after the hearing is completed.

(b) *Appeal of Fire Chief's Order.*

Any appeal of the fire chief's order shall be as provided under the applicable state law.

(c) All orders of the fire department which have not been timely appealed shall become final.

~~[(1)~~

~~After an appeal to the fire chief, any person seeking relief from a decision of the fire chief regarding provisions of this code may appeal to the board of appeals ("board") within thirty (30) days after receipt of written notice of the fire chief's decision. Such appeal shall be in writing and directed to the fire chief. Copies of the appeal shall be promptly transmitted to the board by the fire chief. The appeal shall be prosecuted and considered by the board within forty five (45) days after the filing of an appeal. Upon giving not less than ten (10) business days' notice to the persons interested, a hearing shall be held. The board may, after such hearing, by a majority vote, affirm, annul or modify the action of the fire chief. The decision of the board shall be in writing, and a copy shall be mailed to the appellant within seven (7) business days after the conclusion of the hearing, and any decisions made shall be final.~~

~~(2)~~

~~(i)~~

~~A quorum of the board shall be present at the hearing and shall expedite the hearing and all procedures involved therein. The hearing shall be a *de novo* public hearing.~~

~~(ii)~~

~~Any party to the hearing shall have the right to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence, to examine and cross-examine witnesses, to present evidence in support of his interest. Testimony may be taken orally or by deposition, and any party shall have such right of introducing evidence by interrogatories or deposition as may apply in a circuit court.~~

~~(iii)~~

~~Upon good cause shown, the board shall permit to become a party to the hearing by intervention, if timely, such persons, not original parties thereto, whose pecuniary interests are to~~

~~be directly and immediately affected by the board's order made upon the hearing.~~

~~(iv)~~

~~Formal rules of pleading or evidence need not be observed at any hearing for so long as procedural due process is afforded all parties.~~

~~(v)~~

~~If transcribed, a copy of such record shall be part of the board's record of the hearing; and a copy shall be furnished to any other party to the hearing, at the request and expense of such other party. If no such record is transcribed, the board shall prepare a summary record of the proceeding and evidence.~~

~~(vi)~~

~~The validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance.~~

~~(vii)~~

~~The board may adjourn any hearing from time to time and from place to place but shall give notice as required by KRS 61.805 et seq.~~

~~(3)~~

~~*Hearings; orders.*~~

~~(i)~~

~~In the conduct of hearings under this section and making this order thereon, the board shall act in a quasi-judicial capacity.~~

~~(ii)~~

~~The order may affirm, modify or rescind action theretofore taken.~~

~~(iii)~~

~~The board shall make appropriate findings to support its decision(s).~~

~~(c)~~

~~*Appeal of Orders of Board.*~~

~~(1)~~

~~An appeal from the board shall be taken only from an order on hearing.~~

~~(2)~~

~~Any person who was a party to such a hearing and who is aggrieved by such order may appeal from such order within thirty (30) days after the order on hearing has been mailed to the persons entitled to receive the same.~~

~~(3)~~

~~The appeal shall be granted as a matter of right, and shall be taken to the Fayette Circuit Court.~~

~~(4)~~

~~The appeal shall be taken by filing in the court a verified petition setting forth the grounds for appeal, and by serving a copy of the petition on the board.~~

~~(5)~~

~~Upon receiving the petition on appeal, the board shall forthwith prepare an official certified record which shall contain a copy of all proceedings and orders appealed from and a summary record of testimony and evidence thereof made. Within thirty (30) days after~~

~~the petition was served upon it, the board shall file such official record with the court. It shall be the responsibility of the person filing the appeal to procure and pay for a transcript if required. The board shall cooperate in making any tapes available.~~

~~(6)~~

~~Upon filing of the petition on appeal the court shall have full jurisdiction of the proceeding. Such filing shall not stay the enforcement of the board's order or action appealed from unless so stayed by order of the court in which the appeal is pending.~~

~~(7)~~

~~A case shall be set down by the court for briefs to be filed. A day shall be set for oral arguments if requested by either party or on the court's own motion. The case shall in all respects be expedited as a declaratory judgment suit. No new or additional evidence shall be introduced in the circuit court except as to fraud or misconduct of some party engaged in the administration of this chapter and affecting the order appealed from, but the court shall otherwise hear the case upon the record as attested by the board and shall in all respects dispose of the appeal in a summary manner. Its review shall be limited to determining whether or not:~~

~~(a)~~

~~The board acted within or in excess of its powers.~~

~~(b)~~

~~Legal or procedural due process was afforded the appellant; and~~

~~(c)~~

~~If questions of fact are in issue, whether or not any substantial evidence supports the order appealed from.~~

~~(8)~~

~~The court shall enter a judgment sustaining or setting aside the order of the board appealed from; or, in its discretion, the court may remand the case to the board for the purpose of taking additional testimony or other proceedings.~~

~~(9)~~

~~From the judgment of the circuit court the board or other party to the appeal may appeal to the Kentucky Court of Appeals in the same manner as provided in civil cases.~~

~~All orders of the fire marshal, fire chief or board which have not been appealed within thirty (30) days shall become final.]~~

Section 3 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
PUBLISHED:
00435547