

- 4. **ZOTA 2013-7: ABATEMENT OF ZONING ORDINANCE VIOLATIONS** – petition for a Zoning Ordinance text amendment to provide clarification about the government’s ability to abate a violation of the Zoning Ordinance.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Note: Underlined text below indicates an addition, while ~~text-stricken-through~~ indicates a deletion to the current Zoning Ordinance.

ARTICLE 5: ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

**5-9(d) ABATEMENT** – When there is reason to believe that the violation poses a serious threat to the public health, safety or welfare; or in situations where damage resulting from continuation of the violation would be irreparable or irreversible; or if the violation represents a continuing public nuisance, the government may, without further notice, proceed to abate the conditions. In the case of a continuing public nuisance, abatement involving the removal of structures or materials shall only take place after a civil citation has been issued and has not been appealed to the Infrastructure Hearing Board, or after an appealed civil citation has been upheld by the Infrastructure Hearing Board. ~~In such cases,~~ the government may, in addition to any fine imposed herein, charge the responsible person, persons or entities with the cost of abatement, including equipment expense, disposal fee, if any, and an administrative fee of seventy-five dollars (\$75.00). The Urban County Government may file a lien for such abatement, in accordance with section 16-81 of the Code of Ordinances and KRS 65.8835. Citations, if issued, shall not preclude the government from abating the conditions and billing the responsible person, persons or entities for the cost of abatement.

The Zoning Committee made no recommendation on this request.

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.

Staff Presentation: Mr. Marx presented the staff report, and stated that, under the current provisions of the Zoning Ordinance, the Zoning Enforcement section has the authority to pursue abatement action themselves, or by hiring a contractor; but that authority is limited to situations that threaten the public health, safety, or welfare, or create irreparable harm. He said that, under those standards, he was unaware of any such case within the past 12 years, so that provision is not helpful in resolving zoning violations. The staff is recommending the expansion of abatement authority to include continuing public nuisances.

Mr. Marx stated that a question had arisen at the Zoning Committee meeting with regard to how zoning abatement fits into the enforcement process. He said that the Zoning Enforcement staff first investigates and documents complaints. If a zoning violation is found, a formal legal document called a Notice of Violation is issued to the property owner, identifying the specific provision of the Ordinance that is violated and providing the property owner with a time frame in which the violation can be remedied. If the violation is not remedied within that time frame, civil penalties are assessed, with fines ranging from \$75 for a first offense to \$300 for a fourth offense. Mr. Marx said if, at that point, the property owner chooses to allow the situation to continue, the staff has two means of recourse: either file a criminal complaint with the Fayette County Attorney’s Office; or file an injunctive relief request with Circuit Court. The staff believes that, in many situations, the assessment of fines is not a stringent enough penalty, but taking the property owner to court is overkill.

Mr. Marx displayed a photograph of an ongoing signage violation, noting that it was the type of situation about which the staff often receives complaints. He said that the staff did not believe it would be appropriate to take the property owner in that situation to court. The proposed text amendment would give staff the authority to either remove the signs themselves, or hire a contractor to do so. Mr. Marx stated that the staff believed that the proposed text amendment would make the abatement process more timely and efficient. He displayed several more photographs of situations where abatement actions would be appropriate.

Commission Questions: Ms. Plumlee asked if the current fee scale increases incrementally. Mr. Marx answered affirmatively.

Mr. Cravens stated that he did not agree with the proposed text amendment. He asked if the threat of taking a property owner to court was typically effective. Mr. Marx answered that it worked in some cases. In a recent situation, LFUCG pursued

\* - Denotes date by which Commission must either approve or disapprove request.



the avenue of a trial with a six-person jury for a junkyard owner, wherein the judge had little knowledge of zoning issues. Mr. Cravens asked if there was a mediation process available. Mr. Marx responded that, in that case, the property owner did go through mediation, but it was not successful. Mr. Cravens said that he believed that it would be unsafe to expect Zoning Enforcement staff members to physically remove signage from a property.

Mr. Owens asked if the penalty amount increased with each successive violation for the same issue. Mr. Marx answered affirmatively. Mr. Owens suggested that the \$75 charge was not enough for the amount of effort expended by the staff in pursuit of these cases, and the staff should consider increasing the fine for a first penalty to \$150.

Citizen Comment: There were no citizens present to comment on this request.

Action: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-2 (Brewer absent; Blanton and Cravens opposed) to approve ZOTA 2013-7, for the reasons provided by staff.