



Lexington-Fayette Urban County Government

200 E. Main St
Lexington, KY 40507

Legislation Text

File #: 1004-25, **Version:** 1

An Ordinance amending Section 13-13(b) of the Code of Ordinances of the Lexington-Fayette Urban County Government to create a Recovery Residence License and establish fees relating thereto; creating a new Article of Chapter 13 of the Code of Ordinances of the Lexington-Fayette Urban County Government (Article VII - Recovery Residences), adopting state law requirements for certification of recovery residences; exercising concurrent local authority regarding recovery residences by requiring individuals or entities operating recovery residences to obtain a Recovery Residence License for each recovery residence and to provide the information required for a Recovery Residence License, including proof of certification; adopting enforcement procedures by authorizing civil citations and civil penalties for violations and establishing appeal procedures, abatement requirements, and rehousing requirements; designating the Administrative Hearing Board as the Code Enforcement Board with jurisdiction to hear appeals; authorizing liens and such other relief as may be appropriate to enforce compliance with the requirements for recovery residences; and authorizing the Div. of Revenue to adopt any amended policies or procedures to effectuate the purposes of this Ordinance, all effective upon passage of Council, as amended. [Council Office, Hall]

WHEREAS, the Lexington-Fayette Urban County Government acknowledges the need for effective recovery residences to help enable recovery from alcoholism and drug addiction as part of comprehensive addiction recovery services in Fayette County; and

WHEREAS, the lack of minimum operating standards or regulations relating to recovery residences, recovery homes, sober living residences, and alcohol-free, drug-free, and other intoxicating substance-free homes for unrelated individuals have created an environment at times unsafe, hazardous, and detrimental towards the community and persons in need of such recovery services, prompting a need for appropriate regulation; and

WHEREAS, Section 156b of the Kentucky Constitution is the enabling constitutional permission for the Kentucky General Assembly to afford local governments the power to pass laws which are "in furtherance of a public purpose" and the General Assembly has duly enacted KRS 82.082 generally known as the "Home Rule" authority to cities to promote health, safety, morals, or general welfare of the people; and

WHEREAS, this authority is exercised by the Lexington-Fayette Urban County Government pursuant to KRS 67A.060, which provides that urban county governments may exercise the constitutional and statutory rights, powers, privileges, immunities, and responsibilities of counties and cities of the highest class within the county and/or which may be authorized for or imposed upon urban county governments, and pursuant to KRS 67A.070, which further provides that urban county governments may enact and enforce within their territorial limits such tax, licensing, police, sanitary, and other ordinances not in conflict with the Kentucky Constitution as they shall deem requisite for the health, education, safety, welfare, and convenience of the inhabitants of the county and for the effective administration of the Lexington-Fayette Urban County Government; and

WHEREAS, the Kentucky General Assembly duly enacted KRS 222.500 through 222.510, effective July 1st, 2024, to provide for a certification program for recovery residences; and

WHEREAS, in recognition of the need for regulations in the interest of protecting the

community and vulnerable populations in need of recovery services, the Lexington-Fayette Urban County Government now desires to exercise concurrent jurisdiction to regulate recovery residences to the fullest extent authorized under the laws of the United States and the Commonwealth of Kentucky.

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

Section 1 - That a new Section 13-13(b)(27) of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows, with subsequent subsections sequentially renumbered consistent with the addition of the new Section 13-13(b)(27):

	Subject to fee	Minimum Fee	Date due
(27)	Recovery Residence	\$200.00 per year for the first recovery residence, then \$100.00 for each additional recovery residence	Yearly

Section 2 - That Article VII of Chapter 13 of the Code of Ordinances be and hereby is created, to be titled "Recovery Residences," and to read as follows:

ARTICLE VII. - RECOVERY RESIDENCES

Section 13-93. - Definitions.

The terms used in this article shall have the following meaning:

- (a) *Cabinet* means the Kentucky Cabinet for Health and Family Services or its designee;
- (b) *Certifying Organization* means:
 - (1) The Kentucky Recovery Housing Network;
 - (2) The National Alliance for Recovery Residences (NARR);
 - (3) Oxford House, Inc.; and
 - (4) Any other organization that develops and administers professional certification programs requiring minimum standards for the operation of recovery residences that has been recognized and approved by the Cabinet;
- (c) *Director* shall mean the Director of the Lexington-Fayette Urban County Government, Division of Revenue.
- (d) *Recovery Residence* means any premises, place, or building that:
 - (1) Holds itself out as a recovery residence, alcohol, illicit drug, and other intoxicating substance-free home for unrelated individuals, or any other similarly named or identified residence that promotes substance use disorder recovery through abstinence from intoxicating substances; and
 - (2) Provides a housing arrangement for a group of unrelated individuals who are recovering from substance use disorders or to a group of parents who are recovering from substance use disorder and their children, including peer-to-peer supervision models; and
 - (3) Does not include any premises, place, or building that is licensed or otherwise approved by the Cabinet or any other agency of state government to operate as a residential or inpatient substance use treatment facility.

For the purposes of this article, "recovery residence" shall be construed inclusively to include all NARR Levels (Types) of recovery residences, as defined by NARR and as may be amended from time to time, including:

- (i) Level I/Type P (Peer-Run);
- (ii) Level II/Type M (Monitored);
- (iii) Level III/Type S (Supervised);

- (iv) Level IV Type C (Clinical Provider).
- (e) "Recovery support services":

(a) Means activities that are directed primarily toward recovery from substance use disorders and includes but is not limited to mutual aid self-help meetings, recovery coaching, spiritual coaching, group support, and assistance in achieving and retaining gainful employment; and

(b) Does not include any medical, clinical, behavioral health, or other substance use treatment service for which a license or other approval is required under state law.

Section 13-94. - Certification.

(a) Pursuant to KRS 222.502, no individual or entity shall, except as provided in subsection (b) of this section, establish, operate, or maintain a recovery residence, recovery home, sober living residence, alcohol, illicit drug, and other intoxicating substance-free home for unrelated individuals, or any other similarly named or identified residence that promotes substance use disorder recovery through abstinence from intoxicating substances or represent, promote, advertise, or otherwise claim to operate a recovery residence, recovery home, sober living residence, alcohol, illicit drug, and other intoxicating substance-free home for unrelated individuals, or any other similarly named or identified residence that promotes substance use disorder recovery through abstinence from intoxicating substances in Fayette County, unless that individual or entity has:

(1) Been certified by a certifying organization; and

(2) Provided proof of certification by a certifying organization to the Cabinet in the form and manner prescribed by the Cabinet; and

(3) Provided proof of certification by a certifying organization to the urban county government in the form and manner prescribed by the urban county government.

(b) Pursuant to KRS 222.502, the provisions of this subsection shall not apply to the following:

(1) A recovery residence that is recognized as a part of the Recovery Kentucky Program administered by the Kentucky Housing Corporation; or

(2) A recovery residence that is:

(i) Owned or operated by an entity that is exempt, in part or in whole, pursuant to 42 U.S.C. sec. 3607 or 12187 from compliance with the Americans with Disabilities Act, Pub. L. No. 101-336, or the Fair Housing Act, Pub. L. No. 100-430; and

(ii) Affiliated with a religious institution that is organized under 26 U.S.C. Sec 510(c) for charitable religious purposes;

unless the recovery residence accepts Medicare or Medicaid funds.

(c) Notwithstanding subsection (a) of this section:

(1) A recovery residence operating without certification from a certifying organization on the effective date of this ordinance shall be permitted to continue to operate for a period of not more than six (6) months following the effective date, if the recovery residence provides the urban county government with written proof that it initiated a certification process with a certifying organization prior to the effective date of this ordinance; and

2) A recovery residence that seeks to begin operating after the effective date of this ordinance may be permitted by the urban county government to operate for a period of not more than six (6) months if the recovery residence provides the urban county government with written proof that it has initiated a certification process with a certifying organization.

Section 13-95. - Applicability of State Law; Concurrent Local Authority

Recovery residences in Lexington-Fayette County shall comply with all requirements set forth in KRS 222.500 through KRS 222.510, as they may be amended from time to time. Pursuant to the home rule authority reserved to the urban county government by Section 156b of the Kentucky Constitution, KRS 82.082, and KRS 67A.060 and 67A.070, respectively, the urban county

government exercises concurrent local authority to regulate recovery residences.

Section 13-96. - Recovery Residence Licenses; Requirements.

(a) Subject to the provisions of Section 13-94(c), no person or entity shall operate a recovery residence at any locations in Lexington-Fayette County unless that person or entity has obtained a valid business license and the required Recovery Residence License for each recovery residence operating at those locations, as provided in Section 13-13 of the Code and as further specified in this article.

(b) The Director may promulgate such forms and procedures as reasonably necessary for the orderly and efficient processing of recovery residence license applications and renewals. Provided, however, that an applicant shall be required to provide the following as part of its application for a recovery residence license, for purposes of ensuring compliance with all applicable laws and regulations:

(1) Address of each proposed recovery residence;

(2) Name, address, telephone number, and email address of the applicant;

(3) Name, address, telephone number, and email address of the operator of the recovery residence, if different from the applicant;

(4) Name, address, telephone number, and email address of an emergency contact that resides or is otherwise located in Lexington-Fayette County, Kentucky, or within twenty-five (25) miles of the recovery residence;

(5) The number of bedrooms in the recovery residence and maximum occupancy of the recovery residence, up to the occupancy limit of (a) eight (8) persons consistent with the definition of "family or housekeeping unit" under Section 1-11 of the Zoning Ordinance or (b) as otherwise approved by the Board of Adjustment as a reasonable accommodation under the Fair Housing Act;

(6) Proof of certification by a certifying organization as required by Section 13-94, substantially in the same form provided to the Cabinet;

(7) A zoning compliance permit issued by the division of planning for each recovery residence;

(8) A copy of the deed establishing ownership of the property used for a recovery residence; if the applicant does not own the property to be used for the recovery residence, the applicant shall provide a copy of their lease or rental agreement for the property;

(9) If the applicant is leasing or renting the property upon which the recovery residence is being operated, an affidavit signed by the owner of the property acknowledging permission for and use of the property as a recovery residence shall be provided in the form and manner prescribed by LFUCG;

(10) An affidavit of compliance with KRS 222.500 through KRS 222.510;

(11) Proof of valid business and occupational licenses;

(12) Copies of any notices of violation, citations, or other judicial or administrative actions filed or issued against the applicant within the 12-month period preceding the application;

(13) An affidavit confirming that the applicant complies and shall continue to comply with all aspects of applicable building codes, fire codes, and all other applicable state, federal, and local laws or regulations;

(14) A written transition plan for rehousing residents of the applicant's recovery residence(s), should rehousing become necessary in the event of closure, cessation of operations, or final enforcement action;

(15) Any other reports, data, documentation, or information requested by the urban county government to enable the urban county government to ensure compliance with all applicable laws and regulations.

(c) All applications for a recovery residence license or for renewal of a recovery residence license shall be accompanied by the fee set forth in Section 13-13 for recovery residence licenses.

(d) A recovery residence license shall cover all recovery residences owned by the licensee holding the license.

(e) All recovery residence licenses and renewals shall expire upon the earlier of (1) June 30 following the most recent application or renewal; (2) a change in licensee or ownership of a dwelling unit used as a recovery residence; or (3) any suspension or revocation of certification by a certifying organization or any failure to obtain certification from a certifying organization as required by KRS 222.502 or this article.

(f) The Director may refuse to issue a license to an applicant or to renew the license of a licensee in the following circumstances:

(1) When the applicant or licensee intentionally or knowingly makes a false statement as to a material matter in an application;

(2) When the applicant or licensee fails to complete any part of the application;

(3) When the applicant or licensee has failed to pay any fee, tax, fine, or penalty related to a violation of this article;

(4) When the property submitted for registration or renewal as a recovery residence is subject to unsatisfied penalties, fines, or liens assessed or levied by the government for any reason;

(5) When the applicant or licensee is not in compliance with any applicable federal, state, or local law or regulation, including, without limitation, mandatory zoning, building, safety, maintenance, health, sanitation, fire, electrical, plumbing, and mechanical codes.

(g) The director may revoke the license of any recovery residence licensee when any one of the circumstances provided in section (f), above, occurs. A licensee whose recovery residence license is revoked is not eligible to apply for another recovery residence license for the dwelling unit in which the license was revoked for a period of one (1) year.

(h) The director may revoke, suspend, or refuse to renew or issue a license on a dwelling unit basis.

(i) Relevant divisions and departments with necessary information for the director to perform their responsibilities under this article should provide such information to the director at their request. Members of the public may also provide complaints and relevant evidence indicating violation of this article to the director.

Section 13-97. - Duties of a Licensee.

In addition to certification as required by Section 13-94 and the obligation to obtain and maintain the license as required by Section 13-96, it is the duty of a licensee under this article to comply with the following requirements:

(a) Immediately notify the urban county government in writing, including the Director and the Program Coordinator for the LFUCG Substance Use Disorder Intervention Program, of any change in certification status including, but not limited to, any suspension or revocation of certification by a certifying organization.

(b) Consent to the posting on the urban county government's website of the name, telephone number, NARR Level (Type) of each recovery residence operated, and certified status of each recovery residence operated by the individual or entity in Fayette County.

(c) Notify in writing, at the time the applicant applies for a license, any existing neighborhood association or homeowner's association for the neighborhood(s) in which the licensee's recovery residence(s) are located and all abutting property owners of each recovery residence operated by the applicant that the recovery residence has been certified and provide proof of notification to the urban county government.

(d) Clearly disclose the following, pursuant to KRS 222.506, by inclusion in any

advertising and by posting such a notice in a conspicuous location inside the residence (including local emergency contact information):

- (1) Notice that the recovery residence is not a treatment facility;
- (2) A list of services offered by the recovery residence; and

(3) If the recovery residence is exempt from certification pursuant to KRS 222.502(1)(b), notice that the recovery residence is exempt from certification requirements.

(e) Comply with all administrative regulations or policies promulgated by the urban county government to carry out the provisions of this article.

(f) Comply with the Uniform Residential Landlord Tenant Act (URLTA), KRS 383.500 *et seq.*, which has been adopted by the urban county government, Section 12-54 of the Code of Ordinances, as to every recovery residence under the license, and further ensure that every recovery residence under the license complies with all applicable planning and zoning rules, and all other ordinances and regulations.

Section 13-98. - Enforcement.

It shall be unlawful for any person, firm, corporation or other legal entity in Fayette County to be in conflict with or in violation of any provision of this article or KRS 222.500 through 222.510, and LFUCG may exercise all legal authority and standing to take appropriate action to obtain compliance and/or to compel a recovery residence that is operating in violation of this article or KRS 222.500 through 222.510 to cease operation, as authorized by KRS 222.504.

(a) *Civil Citation.* Pursuant to Section 14-10 of the Code of Ordinances of the Lexington-Fayette Urban County Government, enforcement proceedings under this article shall be initiated by the issuance of a citation by an authorized citation officer for violation(s) of this article; in lieu of immediately issuing a citation, a citation officer may give notice that the violation(s) shall be remedied within a specified period of time and, if the person to whom notice is given fails or refuses to remedy the violation within the time specified, the citation officer is authorized to issue a citation and order to abate. Enforcement proceedings for this article, including but not limited to notice of violations, the issuance of civil citations, the imposition of civil penalties, and appeal procedures, shall be governed by Chapter 2B of the Code of Ordinances.

(b) *Civil Penalty.* Any person or entity that owns, establishes, or maintains a recovery residence without a valid certification pursuant to KRS 222.500 through 222.510, without a valid license pursuant to Section 13-96, or who otherwise violates any other requirement of this article shall be subject to a maximum civil fine of \$1,000 for each violation. Each day that a violation continues after notice of the offense has been served shall constitute a separate violation. The penalty set forth herein is in addition to any other penalty authorized by federal law, state law, or local ordinance.

(c) *Transfer of Ownership.* It shall be unlawful for the owner of any recovery residence or structure or premises upon whom has been served a notice of violation or a citation to sell, transfer, mortgage, lease, or otherwise dispose of such dwelling unit or structure or premises to another owner until the provisions of the notice of violation or citation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of any notice of violation or citation and has furnished to the citation officer a signed and notarized statement from the grantee, transferee, mortgagee, or lessee, acknowledging receipt of such notice of violation or citation and fully accepting responsibility without condition for abating the violation as required by the terms of the violation or citation.

(d) *Appeals.* Any person issued a civil citation, for which civil penalties have been imposed and/or subject to an order to restrain, correct or abate a violation of this article may appeal to the Administrative Hearing Board in accordance with Section 12-6 and Chapter 2B of the Code of Ordinances. All decisions of the Administrative Hearing Board shall become final unless appealed to

Fayette County District Court within thirty (30) days of issuance of the order.

(1) Pursuant to KRS 65.8821, the Administrative Hearing Board established in Section 12-6 of the Code of Ordinances and assigned hearing officer(s) shall have the authority to subpoena information from any person to determine whether there has been a violation of any ordinance that the board or hearing officer has jurisdiction to enforce. Any such subpoena shall:

(1) Be served upon the person, or its registered agent, if applicable, via certified mail;

(2) Identify the provision(s) of any ordinance that the government has reason to believe may have been violated; and

(3) Describe with reasonable specificity the evidence supporting the government's reasonable belief that a violation of said ordinance has occurred.

(e) *Abatement*. If a final order requires abatement of the violation(s) by the removal or termination of an unlawful occupancy or by cessation of operations as a recovery residence, the recovery residence shall be given not less than sixty (60) days during which it shall be permitted to continue operations for the sole purpose of relocating the current residents.

(f) *Lien*. The urban county government shall possess a lien on each property used as a recovery residence that is in violation of this article in accordance with Section 2B-9 of the Code of Ordinances for all final citations issued under this section.

(g) *Other Relief*. In addition to the penalties provided herein, the urban county government is authorized to bring and prosecute civil actions for violations of this article as appropriate, including, without limitation, actions for injunctive relief and declarations of right, in any court of competent jurisdiction. Moreover, nothing herein is intended to limit nor shall be construed to limit or otherwise preclude the urban county government from enforcing other violations of the Code, concurrently with its enforcement of this article or otherwise, to the maximum extent authorized by law, including but not limited to structural and nuisance violations under Chapter 12 of the Code and public nuisance violations under Chapter 12 of the Code, including the pursuit of escalating enforcement action, alone or together, regarding same.

(h) *Immediate action by government*. Nothing contained in this article shall prohibit the urban county government from taking immediate action to restrain, correct, abate, and/or remedy a violation of its ordinances when there is reason to believe that the existence of the violation presents imminent danger, a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

(1) In the event that immediate action by the government is necessary, the Program Coordinator for the LFUCG Substance Use Disorder Intervention Program shall be the urban county government's central coordination point of contact.

(2) The Program Coordinator for the LFUCG Substance Use Disorder Intervention Program shall take lead on any immediate action necessary to restrain, correct, abate, and/or remedy a violation, and shall consult with such other departments or divisions of the urban county government as necessary to initiate immediate action, including but not limited to the Department of Law, the Department of Housing Advocacy and Community Development, and/or the Department of Social Services, and shall further consult with such other public agencies as appropriate, including but not limited to the Fayette County Health Department, the Cabinet and/or the Cabinet's designee, and/or the certifying organization.

(i) Nothing provided herein shall restrain the power of the director under this article to deny, revoke, or fail to renew a recovery residence license.

Section 13-99. - Rehousing.

(a) *Transition Plan; Notice*. If a recovery residence closes or is otherwise unable to continue operating, either because the recovery residence operator intends to cease providing services or because of any pending enforcement action against the recovery residence

operator as to the residence, the recovery residence operator shall execute and submit a transition plan, substantially in the same form provided with their license application pursuant to Section 13-96, to rehouse the affected residents. Recovery residence operators shall provide not less than sixty (60) days advance notice to the affected residents prior to closing or discontinuing operations. Failure to abide by these requirements shall be grounds for denial of a license to operate recovery residences in the future and may result in additional enforcement action, as appropriate.

(b) *Rehousing Assistance.* If rehousing of the residents of a recovery residence becomes necessary for any reason, including but not limited to an unplanned closure of the recovery residence, the Program Coordinator for the LFUCG Substance Use Disorder Intervention Program shall work with the Cabinet or its designee to aid the residents in identifying and securing alternative housing.

Section 3 - That 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, but this Ordinance shall not be enforced for a period of six (6) months from its effective date to allow individuals and entities operating recovery residences adequate time in which to comply with this Ordinance.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF THE URBAN COUNTY COUNCIL

PUBLISHED:

1004-25:MSC:4898-1349-9514, v. 1