

Planning and Public Works Committee

Bill Farmer – 5th District -Chair
Jennifer Mossotti – 9th District –Vice Chair
Linda Gorton – Vice Mayor
Charles Ellinger – At-Large
Steve Kay - At-large
Chris Ford – 1st District
Diane Lawless – 3rd District
Julian Beard – 4th District
Harry Clarke – 10th District
Peggy Henson – 11th District

Staff:
Jenifer Benningfield

**AGENDA
PLANNING AND PUBLIC WORKS
COMMITTEE
February 12th, 2013
1:00pm**

- | | | |
|----|---|-------------------------------------|
| 1. | Approval of January 15 th , 2013 Summary | (1-4) |
| 2. | Working with FCPS to Sustain Salt Services | Kevin Wentz |
| 3. | Tree Board Street Tree Presentation | Karen Angelucci
Tim Queary (5-6) |
| 4. | Amendment of Article 5-1(a) Right-of-Entry | David Barberie (7-16) |
| 5. | Items Referred to Committee | (17) |

Future Committee Meetings

March 12th, 2013
April 16th, 2013
May 14th, 2013
June 11th, 2013
August 20th, 2013
September 17th, 2013
October 8th, 2013
November 12th, 2013
December 3rd, 2013

“Planning and Public Works Committee, to which should be referred matters relating to the Division of Planning and including, but not limited to, matters related to housing, infill and redevelopment, purchase of development rights and historic preservation, and any related partner agencies and the Department of Public Works and its related divisions, including capital improvement projects and any related partner agencies.”



Planning and Public Works Committee
January 15th, 2013
Summary and Motions

Vice Mayor Linda Gorton called the meeting to order at 1:01pm. Council Members Chuck Ellinger, Steve Kay, Chris Ford, Diane Lawless, Julian Beard, Bill Farmer, Jr., Jennifer Mossotti, Harry Clarke, and Peggy Henson were in attendance.

1. Election of Committee Chair

Motion by Ellinger to nominate Farmer to serve as Committee Chair. Seconded by Beard. Motion passed without dissent.

Farmer accepted the nomination.

Motion by Ellinger to elect Farmer as Committee Chair. Seconded by Beard. Motion passed without dissent.

Farmer asked Mossotti to serve as Vice Chair and she accepted.

2. November 20th, 2012 Summary

Motion by Ellinger to approve the November 20th, 2012 summary. Seconded by Gorton. Motion passed without dissent.

3. December 11th, 2012 Summary

Motion by Gorton to approve the December 11th, 2012 summary. Seconded by Ellinger. Motion passed without dissent.

4. Exploring the Use of Alternative Fuel Resources for Fayette County – CNG Update

Farmer reported to Committee members that the ZOTA for CNG fueling stations had been approved by the Planning Commission.

Jamshid Baradaran came to the podium to present. Baradaran told Committee members that General Services has been considering converting to CNG vehicles for three years. They have determined that it is a viable option that will save fuel costs and decrease repair and maintenance expenses. He said that they have determined that the solid waste heavy fleet is where they want to start. 79% of the entire fleet budget is fuel cost. In FY 2012, LFUCG spent over \$5.8MM for fuel alone. Baradaran said that CNG averages \$1-2 per gallon less than diesel/gasoline. It also produces 20-30% less greenhouse emissions. He went on to say that 98% of all natural gas is produced in North America. This reduces the reliance on what is happening outside of North America.

Baradaran referenced his Return on Investment graph and said the numbers are based on having 10 CNG compactors in use. The typical lifecycle of a compactor is 10 years. The savings illustrated was approximately \$800,000 to \$850,000. He went on to reference the O&M cost savings. He said those savings would be approximately \$100,000.

Baradaran said that they have looked at the conversion option but decided that it is not the best option. They want to purchase new CNG vehicles. He said another challenge will be fueling stations. They have looked at potential partnerships, entering into a contract for commercial fueling stations, or using a portable skid.

He said that there will be facility modifications needed and also said that he has had discussions with LexTran about a potential partnership.

Henson asked Baradaran about the mileage of CNG vehicles. He said that the current compactors cost about \$3.40 a gallon to fill and CNG would cost \$1.90 a gallon. CNG technology is 10% less fuel efficient but it still makes sense financially. Henson asked about converting existing vehicles. Baradaran said that by converting the vehicles they would lose 35-50% efficiency. Those vehicles could only be used approximately four more years.

Lawless asked if General Services was looking strictly at Waste Management. Baradaran said that next they will look at the fleet in the Division of Streets and Roads. Lawless also asked about vegetable oil. Baradaran said that he has looked into it and it is not a viable option for them. There are also issues with warranties for the vehicles that are currently under warranty.

Lawless mentioned fracking and the impact it has on the environment.

Kay asked about the normal life cycle for these vehicles and was told that there is typically a 10-year, 100,000 mile lifespan. Baradaran said that he has almost completed his in-house model that will include an analysis of age, mileage, and physical condition.

Kay asked if there is a market for old vehicles. Baradaran said that there is market for vehicles that are three to five years old and they will give LFUCG a credit for them. Baradaran said that they do use auctions to sell compactors. He did say, however, that this is hit or miss. The market is not stable but they will consider this option as well.

Mossotti asked about using electric vehicles. Baradaran said that CNG will be used for heavy fleet and went on to say that electric vehicles are usually used for lighter fleet. He said that they purchased one electric vehicle but wants a year to look at pros and cons before purchasing any others.

Clarke asked why they are not going to convert. He asked if there is funding available to purchase new CNG vehicles. Baradaran said they have funding to purchase five to six units.

Commissioner Sally Hamilton provided a brief update on the conversation with LexTran. She said that timing is important. She said a collaborative effort with LexTran is crucial. LexTran is interested in converting their entire fleet to CNG. They would issue an RFP for a fueling station. Hamilton said that LFUCG could get on their contract. LexTran is three to four years out. Hamilton said they issue is if LFUCG gets out ahead of LexTran, LFUCG will need to fuel the vehicles. LFUCG could enter into a short-term agreement with a temporary fueling station. They can issue an RFP for that type of contract.

Farmer said that he was encouraged to hear that there would be decreased maintenance costs. He asked Baradaran about a timeline. Baradaran said the lead time to order the vehicles is 10-12 months.

Henson asked if there is an interest in the private industry. Baradaran said that there is absolutely an interest in the private industry which could increase the demand for fueling stations.

Henson also asked if the mechanics are certified. Baradaran said that the mechanics will get training for no charge to the city when the vehicles are purchased. Henson also asked about safety. Baradaran said they are very safe. He said that they are less likely to explode.

5. Items Referred to Committee

Gorton asked about the FCPS and salt item. Wente will work with FCPS and provide an update in February.

Ford suggested that the Oliver Lewis Project be referred to the Social Services and Community Development Committee because of the new housing and social service needs for that area. He specifically mentioned Davis Bottom.

Gorton suggested leaving the big public works project in Planning and Public Works and referring the social service issues of that project into the Social Services and Community Development Committee.

Motion by Ford to refer the social services aspects of the Newtown Pike Extension issue, particularly the Land Trust and the neighborhood redevelopment to the Social Services and Community Development Committee. Seconded by Gorton. Motion passed without dissent.

Motion by Clarke to adjourn. Seconded by Mossotti. Motion passed without dissent.

Submitted by Jenifer Benningfield, Council Administrative Specialist



Jim Gray
Mayor

www.lexingtonky.gov

Karen Angelucci
Chair

January 9, 2013

Councilmember Bill Farmer, Chair
Planning and Public Works Committee
200 E. Main Street
Lexington, Kentucky 40507

Dear Councilmember Farmer:

On behalf of the Tree Board, I want to thank you for the opportunity to present a number of recommendations for the Council committee to consider following the presentation at the November 19, 2012 meeting. We believe these recommendations would greatly benefit and enhance Lexington's urban forest. In summary, the Tree Board's recommendations include:

1. The landscape examiner position in the Division of Building Inspection which was eliminated several years ago needs to be re-established to enforce Article 18 of the Zoning Ordinance. The lack of resources only allows the Division of Building Inspection to respond to citizen complaints concerning dead and/or missing landscaping on commercial property versus a proactive approach to ensure our landscape plans are enforced. This position shall require a thorough knowledge of trees and shrubs and serve in a proactive capacity for the public to make commercial properties comply with our progressive landscape ordinance.
2. I would like to invite a councilmember to serve on the Tree Board by filling the vacant position as required in the Code of Ordinances, Chapter 17B. We feel that the council person is important to serve as the liaison between the Tree Board and the Council to help us address the public's tree and landscape issues in Lexington.
3. Our last recommendation is to open a dialogue with Commissioner Derek Paulsen regarding the issue of street tree planting locations in new developments. The current requirements do not provide adequate planting space or suitable soil for the planting of new street trees. Street trees do so much for our community but currently are not being installed in a manner that allows the trees to reach maturity providing the maximum social, economic and environmental benefits. We would like to work with Commissioner Paulsen and the committee to craft the appropriate regulatory changes to ensure newly planted street trees have an appropriate place to grow and thrive for future generations.

We appreciate your support and interest in improving our urban forest and working with us to make these recommendations a reality. If you have any questions, please e-mail me at: karenangelucci@insightbb.com

Sincerely,


Karen Angelucci, Chair

Cc. Commissioner Derek Paulsen
Commissioner Clay Mason



200 East Main Street

(859) 425-2255



ORDINANCE NO. 98 -2011

AN ORDINANCE AMENDING ARTICLES 5-9, 17-14, 23C-13 AND 26-12 OF THE ZONING ORDINANCE TO PROVIDE FOR CIVIL CITATIONS AND CIVIL PENALTIES RELATED TO ZONING ENFORCEMENT.

WHEREAS, the Lexington-Fayette Urban County Council has initiated these proposed text amendments; and

WHEREAS, the Lexington-Fayette County Planning Commission has considered these proposed text amendments; and

WHEREAS, the Planning Commission did hold a public hearing on these proposed amendments on June 23, 2011; and

WHEREAS, the Planning Commission did recommend APPROVAL of some of these proposed amendments by a vote of 7-0; 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 5-9 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

CIVIL CITATIONS AND CIVIL PENALTIES – To the extent allowable by law, any violations of this Zoning Ordinance may be enforced through the issuance of a civil citation pursuant to KRS 65.8801, et seq., as an additional or supplemental means of obtaining compliance. All citations issued pursuant to this Zoning Ordinance shall be issued by the citation officers cited in Section 14-10 of the Code of Ordinances and referred to the Infrastructure Hearing Board with the citations and the civil process to conform to Sections 16-76 through 16-83 of the Code of Ordinances.

Section 2 – That Article 17-14 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

PENALTIES FOR VIOLATION – Violation of the provisions of these sign regulations shall constitute a misdemeanor, or in the alternative may be punishable by the issuance of a civil citation, which shall be subject to the fines and penalties as set forth in Article 5 for violation of this Zoning Ordinance.

Section 3 – That Article 23C-13 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government is hereby amended to read as follows:

PENALTY AND ENFORCEMENT – Any violations of this Article shall be subject to the penalties provided in Article 5 of the Zoning Ordinance. In addition to those remedies, the Lexington-Fayette Urban County Government retains the right to enforce the provisions of this Article by filing an enforcement action in civil court. Knowingly furnishing false information to the Lexington-Fayette Urban County Government on any matter relating to the administration of this Article shall constitute a violation thereof.

Section 4 – That Article 26-12 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government is hereby amended to read as follows:

PENALTIES – Penalties are set forth under Article 5-8, Penalties for Violations, of the Zoning Ordinance, and Article 5-9, Civil Citations and Civil Penalties. Each act or each healthy tree removed or damaged, except as described in the approved TPP, shall constitute a separate violation.

Section 5 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: August 25, 2011

MAYOR



ATTEST:


Clerk of Urban County Council

PUBLISHED: September 1, 2011-1t

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Recd by KC
 Date: 8/3/11

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

IN RE: **ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS, AND CIVIL PENALTIES** - text amendments to Articles 5, 17, 23, & 26 to provide for right-of-entry, administrative warrants, and civil penalties related to zoning enforcement.

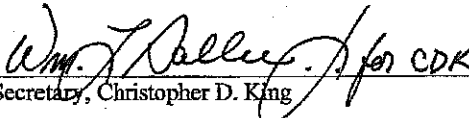
Having considered the above matter on **June 23, 2011**, at a Public Hearing and having voted **7-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL of the proposed amendments to Articles 5-9, 17-14, 23C-13, and 26-12**, for the following reason:

1. Enforcement of and compliance with the Zoning Ordinance has been hampered in the past by the fact that penalties for violations result in a criminal citation, and criminal court proceedings. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Amending the Zoning Ordinance to allow for the use of a civil citation process will be more effective and expedient than the existing criminal process, and should result in greater compliance with the Zoning Ordinance for the local government.

The Urban County Planning Commission does also hereby recommend **DISAPPROVAL of the proposed amendment to Article 5-1(a)**, for the following reason:

1. The Planning Commission has concerns about right-of-entry into private dwellings.

ATTEST: This 3rd day of August, 2011.


 Secretary, Christopher D. King

CAROLYN RICHARDSON
 CHAIR

At the Public Hearing before the Urban County Planning Commission, this text amendment was presented by **Traci Wade**, Senior Planner.

FINAL REPORT

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OBJECTORS

- Richard Murphy
- S. Charles Hite

OBJECTIONS

- Concerned about right-of-entry and constitutional issues.

VOTES WERE AS FOLLOWS:

AYES: (7) Beatty, Blanton, Copeland, Cravens, Owens, Paulsen, Richardson, Roche-Phillips, Wilson

NAYS: (0)

ABSENT: (4) Brewer, Copeland, Holmes, Paulsen

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for Approval of portions of ZOTA 2011-3, and disapproval of a portion of ZOTA 2011-3, carried.

Enclosures: Copy of Council Resolution initiating this request
Staff Report
Applicable excerpts of minutes of above public hearing

tw/wls/src

Urban County Planning Commission
200 East Main Street, Lexington, KY

Planning Services Section
Zoning Text Amendments

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS,
AND CIVIL PENALTIES**

INITIATED BY: Urban County Council

PROPOSED TEXT: (See attached document)

STAFF REVIEW:

The Urban County Council has initiated a text amendment to Articles 5, 17, 23C, and 26 of the Zoning Ordinance to broaden the means of enforcement for the Division of Building Inspection, namely to allow right-of-entry for the purpose of inspecting, ascertaining and causing to be corrected any violation of the Zoning Ordinance; to allow for an administrative search warrant to be issued by the district court (if entry is denied); and to clarify that civil citations and penalties are allowed in all cases of a violation of the Ordinance.

This text amendment has been recommended by the Building Inspection Task Force, an ad-hoc Committee of the Council. The Task Force was established in October 2009 to complete a comprehensive review of the functions of the Division of Building Inspection, in part to address student housing issues at the time. The Task Force addressed six primary issues, including safety issues and civil administrative enforcement of the Zoning Ordinance. These two issues were discussed by the Task Force multiple times and resulted in the Department of Law drafting the proposed Zoning Ordinance modifications.

The Task Force reported to the Urban County Council's Planning and Zoning Committee in March 2011, and both the safety issue and civil administrative enforcement of the Zoning Ordinance were referred to the full Urban County Council for further consideration. The Council agreed to initiate this text amendment proposal in April, triggering review and a public hearing by the Planning Commission.

The Planning Commission must review the proposed changes to the Zoning Ordinance and make a recommendation to the Urban County Council within 60 days of receiving the proposal, which in this case is by mid-July.

Article 5 of the Zoning Ordinance governs administration, enforcement and violations of the Ordinance. It establishes the Division of Building Inspection as the government's authorized enforcement agent of the Zoning Ordinance, outlines the type of permits required, and specifies how violations of the Ordinance are to be handled. The proposed changes would involve establishing *Article 5-1 Right-of-Entry* to expressly allow for the Division of Building Inspection to enter upon property, land, structures or buildings for the purpose of enforcing the Ordinance. Currently, the Division of Code Enforcement and the Fire Marshall have such authority to address life safety issues inside a structure, but the Division of Building Inspection does not. Additionally, if access is denied by the owner or occupant, the division may seek an administrative search warrant from the Fayette District Court. This section has one qualifying clause, which states that "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." This qualifying language is intended to protect residences from unreasonable inspections and is in accord with the 4th Amendment of the Bill of Rights, which guards against unreasonable search and seizure.

-2-

The remainder of the proposed changes to Articles 5-9, 17-14, 23C-13 and 26-12 all pertain to allowing for civil penalties for violations of the Zoning Ordinance as an alternative remedy to the issuance of a criminal citation and fine. Currently, when a zoning violation occurs, the Division of Building Inspection issues a notice of violation (NOV) to the responsible party identifying the violation and requiring that it be corrected within a specified time. In some cases the violation can be remedied with a change of use, and in other instances a variance or conditional use permit from the Board of Adjustment is the most appropriate solution. There are many violations that cannot be remedied in an immediate fashion, and the Zoning Ordinance (and KRS) read so that for each day a zoning violation continues, a fine can be assessed. If the owner or occupant does not attempt to timely address the violation or continues to refuse to adhere to the Zoning Ordinance after the NOV is issued, the case can be pursued in Fayette District Court as a criminal matter. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Also, a criminal court proceeding can be extremely time consuming and relatively expensive for the local government to pursue, and commonly, the court system does not necessarily prioritize these matters due to its existing case load of other criminal cases, which can be viewed as more serious in nature.

The proposed text amendment would specifically provide that both criminal and civil penalties are available in order to enforce any violation of the Zoning Ordinance. The civil citation process is already set forth as part of Article 5-9, because it was referenced in and utilized to enforce the Erosion Control Ordinance (formerly Article 20 of the Zoning Ordinance). No other provision of the Zoning Ordinance explicitly allows for enforcement through the civil process. The language of Article 5-9 states that "where violations of this Zoning Ordinance provide for the issuance of a civil citation" they can be used by the enforcement agency. Since Article 20 was recently removed from the Ordinance, and is now wholly part of the Code of Ordinances, there are currently no sections of the Zoning Ordinance that allow provide for enforcement through the issuance of a civil citation. With the proposed changes to Article 5-9 and the other references to violations in the Sign Regulations (Article 17-14), Expansion Area Development Exactions (Article 23C-13), and Tree Protection Standards (Article 26-12), there will be an alternative civil process available for enforcement which is expected to be more effective and expedient than the existing criminal process, and which should result in greater compliance with the Zoning Ordinance. In cases where a civil citation is issued and appealed, the Infrastructure Hearing Board will review the case.

The Staff Recommends: Approval for the following reasons:

1. Enforcement of and compliance with the Zoning Ordinance has been hampered in the past by the fact that penalties for violations result in a criminal citation, and criminal court proceedings. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Amending the Zoning Ordinance to allow for the use of a civil citation process will be more effective and expedient than the existing criminal process, and should result in greater compliance with the Zoning Ordinance for the local government.
2. The proposed amendment to Article 5-1 will allow for the Division of Building Inspection, the authorized enforcement agency, to have "right-of-entry" to any land, property, structures or buildings in order to inspect, ascertain or cause to be corrected any violation of the Zoning Ordinance. The new language will allow the Division of Building Inspection to have access similar to that afforded the Division of Code Enforcement and the Fire Marshall in order to address enforcement issues. Additionally, an administrative search warrant from the Fayette District Court will be permitted to further facilitate enforcement of the Zoning Ordinance.

TLW/JRE/DBA/LS
6/1/11

Planning Services/Staff Reports/ZOTA/ 2011/ZOTA 2011-3.doc

June 23, 2011

Minutes
Page 23**C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS**

1. **ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS, AND CIVIL PENALTIES (7/12/11)*** – text amendments to Articles 5, 17, 23, & 26 to provide for right-of-entry, administrative warrants, and civil penalties related to zoning enforcement.

REQUESTED BY: Urban County Council

PROPOSED TEXT: (Note: Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)**ARTICLE 5: ADMINISTRATION, ENFORCEMENT AND VIOLATIONS***Proposed Changes to Provide for Administrative Search Warrants and Civil Fines*

5-1(a) RIGHT OF ENTRY - The Director or his 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, and 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. Whenever the Director or his authorized agent is denied entrance to any property, land, structure or building he 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.

5-9 CIVIL CITATIONS AND CIVIL PENALTIES - To the extent allowable by law, any violation of this Zoning Ordinance may be enforced through the issuance of a civil citation pursuant to KRS 65.8801, et seq., as an additional or supplemental means of obtaining compliance. ~~Where violations of this Zoning Ordinance provide for the issuance of a civil citation, such civil citation shall be construed to provide an additional or supplemental means of obtaining compliance with the Zoning Ordinance.~~ All citations issued pursuant to this Zoning Ordinance shall be issued by the citation officers cited in Section 14-10 of the Code of Ordinances and referred to the Infrastructure Hearing Board with the citations and the civil process to conform to Sections 16-76 through 16-83 of the Code of Ordinances.

ARTICLE 17: SIGN REGULATIONS*Proposed Changes to Provide for Civil Citations*

17-14 PENALTIES FOR VIOLATION - Violation of the provisions of these sign regulations shall constitute a misdemeanor, ~~or in the alternative may be punishable by the issuance of a civil citation, which shall be subject to the fines and penalties as set forth in Article 5 for violation of this Zoning Ordinance.~~

ARTICLE 23C: EXPANSION AREAS DEVELOPMENT EXACTIONS*Proposed Changes to Provide for Civil Fines*

23C-13 PENALTY AND ENFORCEMENT - Any violation of this Article shall be subject to the penalties provided in Article 5 of the Zoning Ordinance. In addition to ~~those~~ [criminal] remedies, the Lexington-Fayette Urban County Government retains the right to enforce the provisions of this Article by filing an enforcement action in civil court. Knowingly furnishing false information to the Lexington-Fayette Urban County Government on any matter relating to the administration of this Article shall constitute a violation thereof.

ARTICLE 26: TREE PROTECTION STANDARDS*Proposed Changes to Provide for Civil Fines*

26-12 PENALTIES - Penalties are set forth under Article 5-8, Penalties for Violations, of the Zoning Ordinance, and Article 5-9, Civil Citations and Civil Penalties. Each act or each healthy tree removed or damaged, except as described in the approved TPP, shall constitute a separate violation.

The Zoning Committee Recommended: Referral of the proposed changes to Article 5-1(a) to the full Commission due to concerns about the extent of the proposed regulation; and Approval of the remainder of the proposed text, for the applicable reasons provided by staff.

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

June 23, 2011

Staff Recommended: Approval, for the following reasons:

1. Enforcement of and compliance with the Zoning Ordinance has been hampered in the past by the fact that penalties for violations result in a criminal citation, and criminal court proceedings. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Amending the Zoning Ordinance to allow for the use of a civil citation process will be more effective and expedient than the existing criminal process, and should result in greater compliance with the Zoning Ordinance for the local government.
2. The proposed amendment to Article 5-1 will allow for the Division of Building Inspection, the authorized enforcement agency, to have "right-of-entry" to any land, property, structures or buildings in order to inspect, ascertain or cause to be corrected any violation of the Zoning Ordinance. The new language will allow the Division of Building Inspection to have access similar to that afforded the Division of Code Enforcement and the Fire Marshall in order to address enforcement issues. Additionally, an administrative search warrant from the Fayette District Court will be permitted to further facilitate enforcement of the Zoning Ordinance.

Staff Presentation: Ms. Wade presented the staff report, stating that this proposed text amendment was initiated by the Urban County Council. She noted that the staff had distributed copies of an exhibit handout and a letter of support from the Fayette Alliance to the Commission members prior to the start of the hearing.

Ms. Wade stated that the proposed text amendment would affect Articles 5, 17, 23C and 26 of the Zoning Ordinance, and it is intended to broaden the means of enforcement for the Division of Building Inspection in three ways: first, to allow for right-of-entry for the purpose of inspecting, ascertaining and causing to be corrected any violation of the Ordinance; second, in order to administer a search warrant, if provided for by District Court; and third, to clarify that civil citations and penalties are allowed in all cases for violations. Ms. Wade said that the proposed text was recommended by the Building Inspection Task Force, which was an ad-hoc committee of the Council established in 2009. They completed a comprehensive review of the Division of Building Inspection and its functions with regard six primary issues, two of which affect this proposed text amendment. Those issues, of safety and enforcement, were discussed by the Task Force on multiple occasions, which resulted in the Department of Law drafting the proposed text amendment. The Task Force then forwarded their recommendation to the Planning and Zoning Committee of the Council in March of 2011; Council initiated this proposed text amendment in April.

Ms. Wade said that the proposed changes to Article 5 would result in the addition of a new section regulating right-of-entry. The proposed text would allow Building Inspection to enter upon a property, land, structure, or building for the purpose of enforcing the Ordinance. The Divisions of Code Enforcement and Fire & Emergency Services currently have the authority to address life safety issues, but the Division of Building Inspection does not. Their inability to enforce the Ordinance became a concern during the student housing issues around the University of Kentucky campus two years ago. Ms. Wade noted that, in addition, the text proposed for Article 5-1(a) would allow for the Division of Building Inspection to seek an administrative search warrant from Fayette District Court, and would provide language for protection for individual property owners in residential areas from unreasonable inspections in accordance with citizens' Fourth Amendment rights.

Ms. Wade stated that the remainder of the proposed text amendment involves Articles 5-9, 17-14, 23C-13, and 26-12. Those proposed changes all pertain to allowing civil penalties to be issued as an alternative to the current practice of issuing criminal citations for violations. Under the current process, when Building Inspection identifies a zoning violation, they issue a notice of violation to the offender. That notice would identify the specific violation and provide a time period in which that violation would need to be corrected. If the offender does not correct the violation in a timely manner, or refuses to correct it all, the issue can be forwarded to Fayette District Court as a criminal matter. Overall, there has been a lack of satisfaction with this process, because it has limited success in obtaining compliance in a timely manner; and it can be costly, for both the government and the offender. Additionally, the court system does not prioritize this type of case, so the process can be very lengthy. The proposed text amendment would provide specifically for both civil and criminal penalties in the instance of any violation. Ms. Wade noted that the civil citation process is currently outlined in Article 5-9; in the past, it has been used with the Soil Erosion Control Ordinance. Since that regulation was moved to the Code of Ordinances, there is no section of the Zoning Ordinance that allows for a civil citation process. One of the goals of this change to the process is to achieve greater compliance with the Zoning Ordinance if notices of violation are issued. The citizen in violation would have the opportunity to either pay a fine, or appeal the case to the Infrastructure Hearing Board.

Ms. Wade stated that the staff is recommending approval of this proposed text amendment, for the reasons as listed in the staff report and on the agenda. She said that the staff presented their report to the Zoning Committee at their meeting three weeks ago, and the Committee members had some concerns about the proposed language for Article 5-1(a). The Committee, therefore, recommended referral of that section of the proposed text amendment, and approval of the remainder of the proposed text. The staff is proposing a small change to the initiated text in order to address those concerns. Ms. Wade referred to the exhibit that was provided to the Commission members prior to the hearing, stating that the staff is proposing to delete the following phrase: "...and 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." She

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

June 23, 2011

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noted that the staff had discussed the proposed text with the staff of the Department of Law, who indicated that that text was not necessarily required to maintain the intent.

Commission Questions: Ms. Roche-Phillips stated that, at the Zoning Committee meeting, the members had concerns about providing the Division of Building Inspection the ability to enter properties. At that time, the Committee members requested that the staff conduct research to determine whether other jurisdictions have similar regulations. Ms. Wade answered that, in Kentucky, the city of Louisville has a similar provision in their Ordinance. She also found that Cleveland, Ohio, and Falls Church, Virginia, have such a provision; and the language in their Ordinances was similar to the proposed text.

Citizen Comments: Richard Murphy, attorney, stated that he was one of the attorneys who represented property owners during the discussions of the student housing problems around UK. He said that those discussions brought about the text amendments that changed the definition of "family" and limited the number of unrelated persons residing in a dwelling. Those changes were drafted with a special focus on ease of enforcement. Mr. Murphy contacted representatives of the Greater Lexington Apartment Association, which he represented during the student housing discussions, and learned that they had concerns about allowing the Division of Building Inspection the right to enter a property. He said that he did not believe that police officers could enter a property without probable cause that a crime had taken place; and he was concerned that some tenants, particularly young residents around the University, might not realize that they could refuse a government representative the right to enter the property without a warrant. The Greater Lexington Apartment Association requested that Mr. Murphy ask the Planning Commission to postpone this proposed text amendment in order to allow them to be present, as they were attending a convention at this time. After discussing the issue with Mr. Saltee, Mr. Murphy said he learned that, since the proposed text amendment was initiated by the Council, the Commission had only 60 days to act upon it, which did not allow the members of the GLAA time to fully consider all of its implications. Mr. Murphy said that, if the proposed text amendment was worded differently, he could possibly be in support of it, but the members of the GLAA have serious concerns about it as written. They intend to request postponement from the Council in order to have more time to review and consider it.

Charles Hite, 929 Aurora Avenue, stated that, as a homeowner, he was concerned that the proposed text amendment was in violation of the Fourth Amendment of the U.S. Constitution.

Commission Questions: Ms. Blanton stated that the Zoning Committee members had also had concerns about some of the implications of the proposed text amendment, and asked how Mr. Murphy would word it differently. Mr. Murphy answered that, if it were worded in the negative, i.e., "...were not authorized to enter without a warrant." He added that the resident could also consent to let the Division of Building Inspection staff enter the property.

Department of Law Comments: David Barberie, Department of Law, stated that the proposed text amendment was drafted broadly in order to be applicable to the entire Zoning Ordinance. He said that the Division of Building Inspection currently had the authority to enter business premises during operating hours without permission, and that that would not be affected by the proposed text amendment. Mr. Barberie said that, with regard to private residences, the proposed text amendment would give the Division of Building Inspection the right to enter a residence if the resident permitted them to do so. If the resident did not agree to the search, then a warrant would still need to be obtained. Mr. Barberie noted that that would be very similar to how the law currently operates, but the proposed text amendment would formalize it.

Ms. Roche-Phillips stated that it appeared that the proposed text amendment would apply only to private dwellings, rather than businesses, as Mr. Barberie had stated. Mr. Barberie responded that the specific protection inherent in the proposed text applied only to private residences; there was no need to include businesses, since their rights are different given that they are open to the public. He added that, if a portion of a structure that housed a business was not open to the public, a warrant would have to be obtained unless the owner agreed to allow entry to that portion of the property.

Mr. Cravens asked if the Planning Commission could postpone this item in order to allow the Greater Lexington Apartment Association time to respond. Ms. Wade answered that the Planning Commission was required to make a decision on this item prior to July 12th, and they had no more meetings scheduled prior to that date. Mr. Cravens asked if it could be postponed if the petitioner agreed. Ms. Wade responded that the Council, rather than the Planning Commission, was the petitioner in this case, and they would have to agree to the postponement.

Legal Comment: Ms. Boland said that KRS 100 requires that, if the local legislature initiates a text amendment, the Planning Commission is required to act upon in 60 days. If the Commission chooses not to act upon it, the item would go directly to the Council, which would eliminate the Commission's ability to comment on it at all. Ms. Boland noted that the Commission could choose to approve, disapprove, or make no recommendation on the proposed text amendment.

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

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Ms. Wade noted that the Greater Lexington Apartment Association might have the opportunity to comment on this item when it goes before the Council.

Ms. Beatty asked why the Council had not heard this request prior to this meeting. Ms. Wade answered that Mr. Murphy intended to request postponement of this item at the Council work session, which would give the GLAA an opportunity to comment. Mr. Murphy added that he was not sure why the GLAA was not invited to participate in the Building Inspection Task Force process. Ms. Wade noted that, since the Council initiated this text amendment, they were familiar with the proposed text. Ms. Boland added that the text would not become an amendment to the Zoning Ordinance until it is acted upon by Council. She said that the GLAA would have the opportunity to not only request a public hearing, but ask that the Council put this item back into committee, and emphasized that this meeting would not be the last opportunity for them to comment on it.

Ms. Wade said that KRS 100 specifically states that the Planning Commission must make a recommendation of either approval or disapproval.

Mr. Cravens stated that Mr. Murphy had raised a good point with regard to the possibility that not all residents are aware of their right to refuse a search of their property. He added that he was also concerned about giving the Division of Building Inspection more rights.

Motion: A motion was made by Mr. Owens and seconded by Mr. Wilson to approve the staff alternative text for ZOTA 2011-3, for the reasons provided by staff. The motion failed, 5-2 (Owens and Wilson in favor; Beatty, Blanton, Cravens, Richardson, and Roche-Phillips opposed; Brewer, Copeland, Holmes, and Paulsen absent).

Commission Question: Ms. Richardson asked if that motion was sufficient for a recommendation of disapproval. Ms. Wade responded that the Commission could choose to disapprove the portion of the proposed text amendment that had generated the most concern, and approve the remainder, if they so chose. Ms. Boland agreed that the Commission could choose to approve only a portion of the proposed text, but noted that they must be prepared to provide a reason for their disapproval of the remainder.

Motion: A motion was made by Ms. Roche-Phillips and seconded by Mr. Wilson to approve the proposed amendments to Articles 5-9, 17-14, 23C-13, and 26-12, for reason #1 provided by staff; and to disapprove the proposed amendment to Article 5-1(a), due to the Commission's concern about right-of-entry into private dwellings.

Discussion of Motion: Mr. Cravens asked if the intent of Ms. Roche-Phillips's motion was to approve the proposed text pertaining to civil penalties, and asked if that would make it easier for a homeowner to be taken to court. Mr. Barberie answered that the civil proceeding would be much less involved, and therefore probably faster, and added that he believed that both sides would obtain a better result.

Action: Ms. Roche-Phillips's motion carried, 7-0 (Brewer, Copeland, Holmes, and Paulsen absent).

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Planning and Public Works Committee Referrals

Item	Referred by	Date	Status
Oliver Lewis Way Project	Blues	04/09/2009	Quarterly Update
Todds Road Widening Phase II	Stinnett	04/15/2010	Quarterly Update
Erecting Large Utility Poles in ROW	Martin	03/12/2010	12/11/2012
Re-Paving Program	Martin	04/13/2011	08/14/2012, 10/16/2012, 12/11/2012
Working with FCPS to sustain Road Salt Services	EQ Link	06/19/2011	11/20/2012
Downtown Traffic Study			Quarterly Update
Review Street Tree and Tree Protection Ordinances	Martin	09/27/2011	11/20/2012
Article 16 Zoning Ord: Off Parking Requirements/StormWater Management	Lawless	11/22/2011	
Emergency Preparedness	Henson	05/17/2012	
Possible Revision of Sign Ordinance	Farmer	06/12/2012	
Design Excellence Update	Kay		Quarterly Update
Exploring the Use of Alternative Fuel Resources for Fayette County	Farmer	07/10/2012	08/14/2012, 01/15/2013
Adult Day Care Centers	Kay	10/11/2012	09/18/2012
Amendment of Article 5-1(a) Right-of-Entry	Gorton	08/18/2011	