



The Fayette Alliance

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Knox van Nagell, J.D.

LFUCG Planning Commission
Government Center
200 East Main Street
Lexington, KY 40507

June 23rd, 2011

Dear Planning Commissioners,

My name is Knox van Nagell, and I am writing this letter on behalf of The Fayette Alliance.

The Fayette Alliance is Lexington's only land-use advocacy organization dedicated to achieving a sustainable, livable Lexington that benefits all of us by preserving our renowned rural landscape and related agricultural industries in Fayette County, while strengthening our city through responsible development and improved infrastructure.

If meaningfully pursued, this growth approach will better our city and protect our productive and beautiful farmland—creating a quality of life crucial to Lexington Fayette County's economic and environmental success today and in the future.

In furtherance of this mission, The Fayette Alliance respectfully requests that you recommend APPROVAL of ZOTA 2011-3: **AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS, AND CIVIL PENALTIES.**

The proposed changes to the Zoning Ordinance are as follows (**Note: Text underlined is an addition, while text ~~dashed through~~ is 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 violations 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 Urban County Council initiated the above changes to expand the available tools used by the Division of Building Inspection to identify violations of our Zoning Ordinance, and enforce its requirements. Namely, they are:

- Allowing a “right-of-entry” for the purpose of inspecting, ascertaining and causing the correction of any Zoning Ordinance violation;
- Allowing the district court to issue an administrative search warrant in the event entry is denied; and
- Clarifying that civil citations and penalties are allowed in all cases involving Zoning Ordinance violations.

These changes will improve the quality of life in our community.

By authorizing a “right of entry”, inspectors will gain needed access inside those buildings that have zoning ordinance violations—greatly improving LFUCG’s ability to inspect, address and remediate public safety issues created by such violations.

Currently, the Division of Code Enforcement and the Fire Marshall have the authority to enter into private property structures to address life safety issues, but the Division of Building Inspection does not.

Under the proposed text amendment, Building Inspection may seek an administrative search warrant from district court to enter the premises if the agent has reason to believe a violation exists inside, and access is denied by the owner or occupant of the structure.

The text amendment has one qualifying clause, which states: "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 language protects residences from unreasonable inspections and is in compliance with the 4th Amendment Bill of Rights—which guards against unreasonable search and seizure.

In addition, authorizing civil citations and penalties in the event the Zoning Ordinance, Sign Regulations, Expansion Area Exaction Fee Requirements, and/or Tree Protection Standards are violated will provide an efficient and expedient enforcement process at Building Inspection's disposal.

Today, only criminal citations and penalties are used—which at times can be cumbersome and expensive for LFUCG to pursue due to the extensive caseload in our local court system. With the proposed changes, Building Inspection will have an effective regulatory framework at their fingertips, in which both criminal and civil penalties can be used to enforce the Zoning Ordinance depending on the nature of the violation, etc.

The Fayette Alliance commends the Council for initiating these needed changes to Building Inspection. For decades, Lexington has struggled to comprehensively enforce the Zoning Ordinance—as most recently evidenced by the housing and neighborhood issues affecting the U.K. Campus, Cardinal Valley, and several other areas throughout our city. This text amendment is a major step in the right direction—giving LFUCG the tools it needs to address violations, and carryout the requirements of our Zoning Ordinance.

Lexington-Fayette County has a proud history of innovative land-use planning. However, the implementation of our Zoning Ordinance is the connection between the "vision" for and the "building blocks" of our community. This link is the cornerstone of our physical and natural environment—impacting how we live, work, and function. Without it, our best-laid plans go to waste; precious opportunities are squandered; and our public safety is compromised.

With more effective options to enforce our zoning ordinance on the table, LFUCG will be able to promote sustainable development that is a win-win for our entire community. Therefore, The Fayette Alliance respectfully requests that you recommend **APPROVAL of ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHTS-OF-ENTRY, ADMINISTRATIVE WARRANTS, AND CIVIL PENALTIES.**

Thank you for your consideration, and dedication to Lexington-Fayette County.

Sincerely,

Knox van Nagell, J.D.