

Building Code Board of Appeals

Agenda

**February 21, 2019
City Hall,
Council Chambers
749 Main Street
6:30 PM**

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Approval of Minutes
 - January 17, 2019
- V. Public Comments on Items Not on the Agenda
- VI. Discussion
 - Adopting the Revised Article VIII By-Laws
- VII. Staff Comments
- VIII. Board Comments
- IX. Date of next meeting
 - Upon request
- X. Discussion Items for Next Meeting
- XI. Adjourn

Building Code Board of Appeals

Meeting Minutes

January 17, 2019
City Hall, Conference Maple
749 Main Street
6:30 PM

Call to Order: Geise called the meeting to order at 6:33 PM.

Roll Call was taken and the following members were present:

Board Members Present: Matt Berry
Mason Gatto
Peter Geise

Board Members Absent: Ed Novik
Steve Knapp

Staff Members Present: Chad Root, Chief Building Official
Elizabeth Schettler, Senior
Administrative Assistant

Approval of Agenda:

Berry moved and **Gatto** seconded a motion to approve the agenda as prepared by staff. Voice vote. Motion passed 3-0.

Approval of Minutes:

Berry moved and **Geise** seconded a motion to approve the June 21, 2018 minutes as prepared by staff. Gatto abstained from voting since he was not present at the June meeting. Voice vote. Motion passed 2-0.

Public Comments on Items not on the Agenda:

None heard.

Regular Business:

2019 Board members: Reappointments/vacancy

Staff welcomes new board member Mason Gatto to the Building Code Board of Appeals.

Staff informs the board that we still have two vacant positions, one position being our alternate, and asks the board if they wish to postpone the election of chairman and vice chairman.

Board members are in agreeance to having the election at this meeting. Geise nominates Berry for chairman.

Geise moved and **Gatto** seconded a motion to appoint Berry as chairman. Voice vote. Motion passed 3-0.

Berry nominates Geise for vice chairman.

Berry moved and **Gatto** seconded a motion to appoint Geise as vice chairman. Voice vote. Motion passed 3-0.

Designate agenda posting locations for meetings

Staff reminds the board that the agenda postings are located at the City Hall Lobby, 749 Main Street, Louisville Public Library Bulletin Board, 951 Spruce Street, Louisville Recreation Center, 900 West Via Appia, Police / Municipal Court building, 992 Via Appia, and the City of Louisville website, www.LouisvilleCO.gov.

Geise moved and **Berry** seconded a motion to approve the agenda posting locations mentioned above. Voice vote. Motion passed 3-0.

2019 open government & ethics pamphlet

Staff informs the board that the new open government and ethics pamphlet is attached in the packet.

Staff explains to Gatto the open government training and informs him to contact Meredyth Muth, in the City Clerk's department, for any questions.

Discussion Items:

Review the suspension and revocation process

Staff explains that the process begins with a verified complaint in a written statement. The building official reviews the complaint to determine if there are facts and grounds to require a licensee to appear before the board. If the building official determines there is sufficient evidence, the building official initiates a hearing with the board and provides a written notification to the licensee. A hearing will take place with the board and the board will vote to either suspend or revoke the license.

Approve and sign the revised by-laws

The City Attorney drafted Article VIII, License Suspension or Revocation, into the Building Code Board of Appeals by-laws. Staff asks the board if they see any changes needed or have any comments about the new article.

After reviewing the process, the board asks staff for more clarification on Section 4 of Article VIII in regards to the length of the suspension or revocation. The board also wishes that the terms suspension and revocation be defined more clearly.

The board recommends not voting on this process until the above concerns are addressed in the by-laws.

Review contractor complaint affidavit

The board has no comments or alterations to the proposed contractor complaint affidavit.

Berry moved and **Geise** seconded a motion to approve the agenda posting locations mentioned above. Voice vote. Motion passed 3-0.

Staff Comments:

None heard.

Discussion Items for Next Meeting:

Adopting the revised Article VIII by-laws

Adjourn:

Geise moved and **Berry** seconded a motion to adjourn the meeting. Motion passed unanimously by voice vote. The meeting was adjourned at 7:19 PM.

ARTICLE VIII
License Suspension or Revocation

Section 1, Jurisdiction. The Board's jurisdiction shall apply to all building codes, and amendments thereto, as adopted by reference in Title 15 of the Louisville Municipal Code.

Section 2. Authority. Pursuant to the authority stated in Chapters 5.12 and 15.56 of the Louisville Municipal Code, the Board shall have the power to temporarily suspend or permanently revoke a license or registration if the holder thereof, after a hearing, is found to have committed one or more acts prohibited in the building codes, and amendments thereto, as adopted by reference in Title 15 of the Louisville Municipal Code.

Section 3. Pre-hearing process for suspension or revocation.

A. The Building Official may upon his own motion, and shall upon the verified complaint in writing of any person, require any person licensed or registered under this chapter (licensee) to appear before the Board for a hearing upon five days written notice.

- i. **Motion by Written Statement.** If the hearing process is initiated by Building Official motion, the motion shall be in the form of a written statement, signed by the Building Official, including: citation to the code and section under which the suspension or revocation is being initiated; a concise statement of the facts; the recommended administrative action; a description of any health, welfare, or safety concerns that necessitate an expedited process; and copies of all non-testimonial evidence on which the City intends to rely at the hearing.
- ii. **Verified Complaint by Written Statement.** If the hearing process is initiated by complaint, the Building Official shall review the complaint to determine whether there are facts and grounds to require a licensee to appear before the Board.
 - a. A complainant who requests the Board consider suspension or revocation of a license or registration shall submit a signed and sworn affidavit to the Building Official on a form designated by the Board.
 - b. If the Building Official determines that there are sufficient facts and grounds to require a licensee to appear before the Board, the Building Official shall verify the complaint in the form of a written statement, signed by the Building Official, including: citation to the code and section under which the suspension or revocation is being initiated; a concise statement of the facts; the recommended administrative action; a description of any health, welfare, or safety concerns that necessitate an

expedited process; copies of all non-testimonial evidence on which the City intends to rely at the hearing; and attaching the complaint affidavit.

- c. If the Building Official is unable to determine that there are sufficient facts and grounds to require a licensee to appear before the Board, the complaint may not be verified.
- d. After investigation to determine if there are sufficient or insufficient facts and grounds in a complaint to require a licensee to appear before the Board, the Building Official shall provide the complainant with written notification.

B. The Building Official shall file the signed, written statement to initiate a hearing before the Board with the Secretary of the Board.

C. Upon the receipt of a written statement, signed by the Building Official, a hearing shall be scheduled within thirty (30) days after the filing, but the Board shall consider health, welfare, or safety concerns detailed in the written statement and schedule a hearing as soon as practical, provided proper notice is provided to the licensee.

D. At least five (5) days prior to a hearing, notice of the hearing shall be served to the licensee by providing a copy of the Building Official's written statement that was filed with the Board and the date and time of scheduled hearing. Notice shall be personally served or mailed to the last known address of the person as set forth in the records of the City.

E, At least five (5) days prior to a hearing, the Secretary shall provide each Board member a copy of the a copy of the Building Official's written statement and any documents that were filed with the Board so that the Board members may familiarize themselves with the matter prior to the hearing.

Section 5. Criteria for Revocation. Unless otherwise limited by state law, a license may be revoked on any of the following grounds:

- A. Fraud or misrepresentation:
 - i. Fraud or false statements in the application for the license; and/or
 - ii. Fraud or misrepresentation in the course of conducting the business.
- B. Failure to keep records or make necessary payments to the City:
 - i. Failure to make timely payment of any fees, charges or penalties imposed pursuant to the Louisville Municipal Code; and/or

Commented [DC1]:

DMC Comment as of 2/6/2019:
If you want these criteria to give more direction to the Board, you could make some of these criteria "mandatory" revocation grounds.

My advice is to leave these criteria as they are here, so that the Board can consider these on a more case-by-case basis based on the criteria - including the types and severity of the violations.

ii. Failure to make timely and full payment of taxes due under Title III, Louisville Municipal Code; and/or

iii. Failure to keep and maintain permanent records that, in accordance with accepted accounting practices as determined by the City Finance Director, are necessary for establishing the licensee's tax liability.

C. Misconduct of the business:

i. The licensee conducts the business in a manner contrary to the conditions of the license; and/or

ii. The licensee conducts the business in such a manner as to create a public nuisance as defined by ordinance or by statute or in a manner as to constitute a danger to the public health, safety or welfare; and/or

iv. The conduct of the licensee's business consistently creates excessive need for City services and causes the City to expend public funds beyond normal requirements to protect the public health, welfare and safety; and/or

v. The licensee conducts the business in a manner that would have justified denial of the original application for a license.

D. Repeated violations of one or more ordinances in the Louisville Municipal Code at the licensee's place of business by the licensee or patrons of the business.

E. The business is of such a nature, or is operated in such a manner, that it is frequented by individuals who consistently disrupt the normal and reasonable peace and tranquility of the neighborhood, or who by intimidation, threat, harassment or other hostile conduct seriously disrupt any other business in the immediate neighborhood of the licensee, thereby causing such business unreasonable economic loss.

F. Conviction of any violation of federal, state or municipal law related to the operation of the licensed business.

G. Conducting work in the City with a suspended license, pursuant to Subsection B. of Section 7 of these Bylaws.

H. Upon other grounds provided by ordinance or statute.

Section 6. Criteria for Suspension. Unless otherwise limited by state law, a license may be suspended upon any grounds for license revocation set forth in Section 5 of these Bylaws if:

Commented [DC2]: DMC comment as of Feb 6:

Take a close look at these criteria.

Basically, suspensions would be for:

- Few violations
- Less serious violations
- First or infrequent violations

A. The licensee's violations or actions are based on three or fewer of the grounds set forth in Subsections A., B., C., D., E., or H. of Section 5 of these Bylaws;

B. The licensee's violation is not based on Subsections F. or G. of Section 5 of these Bylaws;

C. The licensee's license has never been suspended or revoked by the City, or the licensee has maintained a license for five or more years; and

D. The nature of the licensee's violations or actions in Section 5 of these bylaws is not severe enough to warrant revocation.

Section 47. Effects of Suspension or Revocation; Reinstatement. ~~Upon the suspension or revocation~~

A. License is null and void. Upon the suspension or ~~revocation~~, a license or registration is null and void, along with all privileges associated. During a period of temporary suspension, no licensee shall exercise any privileges of licensure or registration. No licensee who has had a license or registration suspended or revoked is entitled to obtain the same or any similar license during the period of suspension or revocation, either in the licensee's own name or as a principal in another business that applies for a license.

B. Term of and effect of license suspension. If the Board elects to suspend a license, the license will be suspended for a period of no less than ~~six~~ months and no longer than twelve 12 months. A contractor who holds a suspended license shall not proceed with any construction within the City until the license has been reinstated. Any contractor with a suspended license found doing unlawful activity during the time of suspension will have their license revoked for a period of two years.

C. Term and effect of revoked license. A revoked license will be for no less than one year and no greater than five years unless the Building Official recommends revoking the license greater than five years and it is the second offense against the licensed or unlicensed contractor. If the Board orders revocation of a license or registration, the licensee must surrender the license by delivering it to the Planning & Building Safety Director.

D. Restoration or re-application for licensure. A suspended or revoked license may be restored only if the contractor has completed their licensing sentence and illegal acts have not been found during the time of suspension. The Board, pursuant to these Bylaws, or the City under the Louisville Municipal Code may require the contractor to resubmit the license application and pay associated fees to restore a suspended or revoked license, depending on whether additional information or review is necessary. A contractor who holds a suspended license shall not proceed with any construction within the City of Louisville until the license has been reinstated. Any contractor with a suspended license found doing unlawful activity during the time of suspension will have their license revoked for a period of two years.

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This section appears incomplete in that no distinction is made between a revocation and a suspension. Further elaboration may be useful.

In the case of a revocation, some criteria should be established for what time period must elapse before the contractor may re-apply for a new license (if that's even an option).

For a temporary suspension, the period of the suspension should be specified, as should the necessary steps to achieve restoration of one's license (which may also involve further review and approval by the Building Official and/or the board) within the designated period. It should also be specified that failure to meet or abide by the criteria established by the suspension would then result in a full revocation of said license.

Commented [ES3]: Comments by Ed

ARTICLE IX Public Hearings

Section 5. Testimony.

A. All testimony shall be given under oath or affirmation and all witnesses shall identify themselves by name and address.

B. Any party in interest shall be allowed to present evidence and to cross-examine witnesses personally or by counsel.

Article IX Section 5 Item B "Any party in interest shall..." I don't know what "in interest" means. If it is correct and the lawyers want it fine but I suspect it should be something else.

Section 12. Decisions of the (Board).

A. Following the conclusion of a hearing, the Board may render its decision immediately or take the matter under advisement for further deliberations. The Board may, following the conclusion of a hearing, direct that City staff prepare a draft set of findings, conclusions and order for Board consideration at a subsequent meeting.

Article IX Section 12. Is there a reason for the (Board) to be in parenthesis?

2/12/2019 10:19 AM [dmc] R:\Louisville\Building\By Laws 2019 - Board Comments 01.29.19-Building Comments - DMC revision.doc

Commented [ES4]: Comments by Steve

"In interest" I believe is just broad legal terminology regarding a person or party that I think needs to stay in the language but I can double check on that.

-Liz

Comment from DMC on Feb 6th:

This was in the 2011 by-laws. Liz is correct, "party in interest" is just legal shorthand - rather than listing applicant/licensee/owner...

I'd advise keeping "party in interest" because the phrase is so inclusive. However, if it sounds outdated or confusing, you may want to change it to "interested party."

Commented [ES5]: Comments by Steve

We can remove the parenthesis for the Section 12 title. Must just be a grammatical error.

-Liz

Comment from DMC on Feb 6th:

This was in the 2011 by-laws. But, I don't see a problem with removing parentheses.

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