

ORDINANCE 2019-1788

AN ORDINANCE CREATING A NEW CHAPTER 134, MUNICIPAL APPEALS BOARD, IN ORDER TO ADOPT AND ENSURE COMPLIANCE WITH ORDINANCES OF THE CITY OF MURRAY, SPECIFICALLY ESTABLISHING AN APPEALS BOARD WHERE NO APPEALS BOARD CURRENTLY EXISTS FOR THOSE APPEALS SET FORTH IN ORDINANCES THAT PROVIDE FOR AN APPEAL UPON A FINAL DECISION BY THE ADMINISTRATIVE ACTION OF THE ADMINISTRATOR, DEPARTMENT OR OTHER CITY AGENCY.

WHEREAS, the City of Murray desires to create a new Chapter 134, Municipal Appeals Board, in order to adopt and ensure compliance with the ordinances of the City of Murray to provide an appeals process where none exists or is currently operational; and

WHEREAS, the Murray City Council has reviewed and discussed the following proposed new Chapter 134, and believe the addition is reasonable and necessary.

BE IT ORDAINED by the City Council of the City of Murray, a new Chapter is created to read in its entirety as follows:

134.01 Definitions

Membership, Meetings, Applicability and Powers

134.02 Creation and membership

134.03 Powers

134.04 Members

134.05 Organization of the Board

134.06 Conflict of interest

134.07 Conflict with other ordinances

134.08 Jurisdiction of the Board

Hearing Process and Procedures

134.10 Nature of the hearing

134.11 Application

134.12 Scope of review

134.13 Conduct of the hearing

134.14 Rights of appellant and appellee

134.15 Findings, conclusions and final order

134.16 Appeal to District Court

134.17 Standard of review

134.18 Burden of proof for Appeals Hearing Board

134.19 Record of hearing

134.20 Continuance

**§134.01 DEFINITIONS.**

For the purpose of this subchapter, the following words, terms and phrases when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

“Appeal.” An application to a higher court or body for a decision to be modified or reversed.

“Municipal Appeals Board.” A quasi-judicial body of people appointed by the Mayor and approved by the City Council of Murray, Kentucky, who are appointed to provide the public with a final administrative review process for appeals relating to a wide range of City determinations as provided in Ordinances of the City of Murray.

“Appellee.” A party against whom an appeal is taken and whose role is to respond to that appeal, usually seeking affirmance of the decision from a lower court, or in this case, an Administrator, Department or other Agency of the City.

“Appellant.” A party who appeals a lower court’s decision, or in this case, a decision from an Administrator, Department or other Agency of the City, usually seeking modification or reversal of that decision.

“Substantial Evidence Rule.” The principle that a reviewing court should uphold an administrative body’s ruling if it is supported by evidence on which the administrative body could reasonably base its decision.

**ARTICLE I**

**MEMBERSHIP, MEETINGS, APPLICABILITY, AND POWERS**

**§134.02 CREATION AND MEMBERSHIP.**

(A) There is hereby created within the City, a “Municipal Appeals Board” (“Appeals Board or Board”) which shall be composed of five (5) members, all of whom shall reside in the City for a period of one (1) year prior to the appointment and shall reside therein throughout the term in office.

(B) The purpose of Appeals Board is to establish uniform procedures for conducting appeals from those Murray Ordinances that do not establish a final appeals process and/or appeals board.

(C) This Ordinance shall become effective immediately after approval by the Murray City Council and publication in the local newspaper and/or online sites.

**§134.03 APPLICABILITY AND POWERS.**

(A) The Appeals Board shall have the power to hear and decide final appeals involving the granting, denial, suspension or revocation of certain permits, licenses, taxes, utility rates and other use entitlements set forth by certain Municipal Ordinances, including but not limited to, the Occupational License Tax Ordinance and the Storm Water Utility Ordinance.

(B) The Appeals Board shall have the following powers and duties:

(1) To conduct hearings to determine if the decision made by the Administrator, Department or City Agency was supported by the evidence submitted.

(2) To establish findings of fact and conclusions of law and issue any orders necessary to finalize the review of a decision made by a prior Administrator, Department or City Agency.

(3) To establish times for hearing appeals.

(4) To establish the protocol for each hearing.

(C) It shall be the responsibility of the Board to become familiar with:

(1) All duly enacted ordinances of the City which it may be expected to act upon as well as with the applicable State statutes;

(2) The community goals, desires and policies as set forth in the Murray Comprehensive Plan, which will insure that the goals and policies of the plan are preserved.

#### **§134.04 MEMBERS.**

(A) Members of the Appeals Board shall be appointed by the Mayor, subject to approval by the Murray City Council, to serve a three (3) year term. A member of the Appeals Board may be reappointed subject to the re-appointment by the Mayor and approval of the City Council.

(B) Members of the Appeals Board must be eighteen (18) years of age or older.

(C) Any vacancy on the Appeals Board shall be filled by the Mayor, subject to approval of the City Council, within sixty (60) days of the vacancy.

(D) Appeals Board members are expected to attend all Municipal Appeals Board meetings. An Appeals Board member may be removed from office by the Mayor for misconduct, inefficiency, or willful neglect of duty. Any Municipal Appeals Board member who is absent for three (3) consecutive meetings or twenty (20) percent of the meetings in a calendar year shall be deemed to have resigned his or her appointment. For any other reason, the Mayor must submit a written statement to the member and the City Council setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court of Calloway County.

(E) All members of the Appeals Board must, before entering upon the duties of the office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

(F) Members of the Appeals Board shall be reimbursed for preapproved expenses and compensated fifty (\$50) dollars per meeting attended.

(G) No member of the Appeals Board nor his or her spouse or partner may hold any elected or non-

electd office, paid or unpaid, or any position of employment with the City that is subject to the jurisdiction of the Appeals Board.

(H) The City Attorney cannot be the attorney for the Appeals Board.

#### **§134.05 ORGANIZATION OF THE BOARD.**

(A) The officers of the Appeals Board shall be a Chairperson and a Vice-Chairperson who are members of the Appeals Board and elected by the members of the Appeals Board.

(B) The term of Office of the Chairperson of the Appeals Board shall be one (1) year. The offices of Chairperson and Vice-Chairperson shall be voted upon annually by the members of the Appeals Board at the last Appeals Board meeting of each year for the term commencing January 1 of the succeeding year. In the event of the death, resignation or removal of the Chairperson prior to the expiration of his or her term of office, the successor shall be elected for the unexpired period of the term for which the preceding Chairperson had been designated.

(C) Regular meetings of the Appeals Board shall be held in the City Council Chambers in City Hall, 500 Main Street, Murray, Kentucky, on one day of each month, as needed, to be determined by the Appeals Board and City Clerk. Meetings other than those regularly scheduled shall be special or emergency meetings held in accordance with the requirements of the Kentucky Open Meetings Act. The administrative personnel assigned to the Board shall prepare an agenda for each meeting and handle all other administrative duties as assigned.

(D) The affirmative vote of a majority of the members constituting a quorum of the Appeals Board shall be necessary for any official action to be taken. The presence of at least a majority of the Appeals Board's entire membership shall constitute a quorum.

(E) Minutes shall be kept for all proceedings of the Appeals Board and the vote of each member on any issue decided by the Appeals Board shall be recorded in the minutes.

(F) The City shall provide clerical and administrative personnel for the proper conduct of the duties and functions of the Appeals Board.

(G) The administrative personnel assigned to the Appeals Board shall record all minutes and prepare same for distribution to members, catalog all pieces of documentary evidence submitted, and prepare all Findings of Fact and Final Orders of the Board for distribution.

(H) The administrative personnel shall keep a record of all hearings including: subject of the hearing, identification of each participant, any agreements made between the parties and the Board regarding procedures, the testimony presented, findings of fact and conclusions, the decision of the Appeals Board and the date of issuance of the decision.

(I) The Chairperson of the Appeals Board shall perform all duties required by law and this Ordinance and preside over all meetings of the Municipal Appeals Board. The Chairperson shall rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board.

(J) The Chairperson of the Appeals Board shall, with the assistance of the administrative personnel; arrange for proper and legal notice of hearings; sign all written orders or decisions of the Appeals Board; issue findings of facts and conclusions of law concluding with a decision of the Appeals Board in matters brought before it.

(K) The Vice-Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability or disqualification.

(L) All voting by Appeals Board members shall be by "ayes" and "nays", and shall be entered by the administrative personnel in the record of the Board proceedings. Upon request of any member of the Board, a roll call vote shall be taken on any matter upon which a vote is called, and shall be recorded by the administrative personnel in the record of the Board's proceedings. Absences or failure to vote shall also be recorded in the minutes.

#### §134.06 CONFLICT OF INTEREST.

Any member of the Municipal Appeals Board, who has any direct or indirect financial or personal interest, which shall include any pecuniary benefit to any member of the person's immediate family (grandfather, father, grandmother, mother, wife son, grandson, e.g.) or to his employer or the employer of any member of the person's immediate family, in any matter to be decided, shall disclose the nature of the interest and shall disqualify himself or herself from voting on the matter in which he or she has an interest and shall not be counted for purposes of establishing a quorum.

#### §134.07 CONFLICT WITH OTHER ORDINANCES.

In the event any provisions of this Ordinance is in conflict with any other provisions of this Ordinance, or in the event any provisions of this Ordinance conflict with the provisions of any other Ordinance, the provisions with the stricter standards shall apply.

#### §134.08 JURISDICTION OF THE BOARD.

The Appeals Board shall have jurisdiction to hear and decide appeals provided for by those City Ordinances wherein the appeals process is not otherwise established by the Ordinance.

## ARTICLE II

### HEARING PROCESS AND PROCEDURES

#### §134.10 NATURE OF THE HEARING.

(A) Hearings before the Appeals Board are formal and open to the public. Testimony presented to the Appeals Board is given under oath, and all testimony at the hearing will be recorded. The parties may obtain a copy of the hearing transcript from the Clerk after payment of a fee.

(B) The Appeals Board shall be responsible of establishing protocol for the hearings, including, but not limited to the order of testimony of witnesses and submission of evidence.

(C) Notification of matters to be presented to the Appeals Board, including, but not limited to,

documents and exhibits, must be exchanged between the parties, and provided to the administrative staff for the Appeals Board, clearly identifying that the submittals are for the hearing before the Appeals Board, identifying the hearing by title, and specifying the relevant hearing, no later than ten (10) days prior to the scheduled hearing to enable City staff to prepare the packets for the Appeals Board members.

(D) The Chairperson may waive the time requirements as stated in this subsection .10 for good cause, including occasions when compliance with the time requirement is rendered impossible or impracticable because of the date upon which the hearing is scheduled.

(E) The protocols established by the Appeals Board shall govern all hearings and appeals which the Appeals Board is authorized to conduct pursuant to the Murray Code of Ordinances.

#### §134.11 APPLICATION.

(A) The written Appeal must be filed with the City Clerk within thirty (30) calendar days from the date the decision being appealed is issued, accompanied by a \$50.00 filing fee. These time limits are strictly enforced. This filing fee shall be refunded should the appeal be upheld.

(B) An Appellant may file an appeal in person or have someone else (an agent or attorney) file the appeal for him or her. An agent or attorney must provide the Appeals Board with written authorization either by notice of representation by an attorney or by binding legal authority appointing the agent to act for the Appellant at the same time the written Notice of Appeal is filed with the City Clerk.

(C) The Appellant should submit a one-page, double-spaced written statement explaining the reasons for the appeal at the time the appeal is filed. All exhibits must be submitted at least ten (10) days prior to the Hearing Date.

(D) Once the Appeal is filed, the Appeals Board staff has seven (7) days to set a hearing date and briefing schedule.

(E) The Hearing Date shall be set a minimum of thirty (30) days from the date the City Clerk receives the completed written Appeal Application.

(F) The appeal documents as set forth in §134.11, must be filed at least ten (10) days prior to the Hearing Date to enable the parties to review the briefs and prepare their response to such briefs for the hearing. All hearings shall be recorded.

#### §134.12 SCOPE OF REVIEW.

The Appeals Board shall conduct a hearing, considering, but not limited to, the following :

(1) All material on which Administrator, Department or other City Agency based its determination, including all applicable rules and regulations;

(2) The reasons given by the appellant for requesting review of the determination;

(3) Any briefs submitted by either or both parties arguing their position on the appeal for the Appeals Board's consideration;

(4) Any exhibits that either party may submit;

(5) Any relevant documentary and testamentary material submitted by the appellant; and Any additional information which the Appeals Board, in its discretion, obtains by request or investigation to insure a fair, full and impartial review of the claim.

(6) All testimony of parties or third party witnesses.

(7) Any other evidence determined to be relevant by the Board of Appeals.

#### **§134.13 CONDUCT OF THE HEARING.**

(A) Appeals Board members shall conduct a public hearing on the appeal, listening to arguments and testimony from the appellant(s), permit holder(s), department representative(s), and from interested neighbors and other members of the public.

(B) Hearings shall not be conducted according to technical rules of evidence, however;

(1) Oral evidence shall be taken only on oath or affirmation

(2) Any member of the Appeals Board or the Appeals Board Attorney has the power to administer oaths and affirmations.

(3) Any evidence shall be admitted if it is of the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in Kentucky.

(C) The order of business at the public hearing shall be as follows:

(1) The Chairperson calls the hearing to order;

(2) The Chairperson determines whether a quorum is present;

(3) If a quorum is present, the Chairperson gives a statement of the case and submits all correspondence and documents received to the record of the proceeding for the Appellant and Appellee.

(3) The Appellant is given the opportunity to make an opening statement;

(4) The Appellee is given the opportunity to make an opening statement;

(5) Following opening statements, the Chairperson shall recognize the Appellant to proceed with the presentation of his or her case including, but not limited to, testimony of witnesses, expert witness and presentation of exhibits.

(6) Following the testimony of each witness, the Appellee shall be given the opportunity to cross-examine each witness.

(7) The Chairperson shall then recognize the Appellee to proceed with the presentation of his or her case including, but not limited to, testimony of witnesses, expert witness and presentation of exhibits.

(8) Following the testimony of each witness, the Appellant shall be given the opportunity to cross-examine each witness.

(8) Each party has the right of rebuttal.

(10) The Hearing is closed after all parties have been heard. If additional time is needed, the Hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.

(D) The Chairperson may waive any of the above rules if good cause is shown.

#### §134.14 FINDINGS, CONCLUSIONS AND FINAL ORDER.

(A) Within thirty (30) days following the conclusion of the Appeals hearing, the Appeals Board shall make written findings of fact & conclusions of law to support its decision, based upon the evidence received at the hearing and shall issue a decision affirming modifying or overruling the Appellant's appeal.

(B) The Findings of Fact & Conclusions of Law and the decision of the Appeals Board shall be sent to each party within seven (7) days following the conclusion of the hearing, by registered mail, return receipt requested, or hand delivered to the appellant and appellee by the City of Murray Police Department, Code Enforcement Officer or other appropriate individual.

(C) The decision of the Appeals Board shall be deemed final unless presented to the Calloway District Court for review pursuant to §134.15.

(D) The Decision shall be filed in the office of the City Clerk and shall be made a public record. The date of filing of the decision shall be entered in the official records and minutes of the Board.

#### §134.15 APPEAL TO DISTRICT COURT

An appeal from any final decision of the Appeals Board may be made to the Calloway District Court by either party within thirty (30) days of the receipt of the Appeals Board decision being filed with the City Clerk. The appeal shall be initiated by the filing of a complaint and copy of the Appeals Board's Findings of Fact & Conclusions of Law, and Decision in the same manner as any civil action under the Kentucky Rules of Civil Procedure. The District Court shall conduct a de novo review of the Appeal's Boards decision with the standard of review utilizing the Substantial Evidence Rule. A judgment of the Calloway County District Court may be appealed to the Calloway County Circuit Court for discretionary review in accordance with the Kentucky Rules of Civil Procedure.

#### §134.16 STANDARD OF REVIEW.

(A) The Appeals Board shall not substitute its judgment for that of an administrative officer but shall insure that the determination fully and correctly considered all facts and legal requirements set forth in the relevant statutes and ordinances.

(B) To the extent that the rules and regulations differ from or are consistent with the provisions of the Murray Municipal Code or State and Federal law, the appropriate provision of law will prevail.

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this Ordinance; nor shall any just or legal right or remedy of any character be lost impaired or affected by this Ordinance.

All other sections and provisions of the Ordinances for the City of Murray, not specifically amended herein, shall remain in full force and effect and shall not be considered amended and shall be incorporated by reference as if fully stated herein.

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BOB ROGERS, MAYOR

ATTEST:

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DANNETTA CLAYTON, CITY CLERK

Introduced by the City Council on \_\_\_\_\_ 2019.

Adopted by the City Council on \_\_\_\_\_ 2019.

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