

ORDINANCE 2021-08

AN ORDINANCE OF THE CITY OF SMYRNA, GEORGIA, PROVIDING FOR THE AMENDMENT OF THE CODE OF ORDINANCES OF THE CITY OF SMYRNA AS IT RELATES TO THE PROCESSING OF VARIANCE REQUESTS.

Amend Section 2-141 under Chapter 2 – Administration of the City Code of Ordinances to change the name of the License and Variance Board to the License Board and to remove the review of variance requests from the responsibility of the License Board.

Sec. 2-141. - License board.

- (a) There is hereby established a license board.
- (b) The license board established by this section shall have the following duties:
 - (1) Act as a hearing officer for applications for licenses to sell alcoholic beverages as specified in subsection 6-114(b).
 - (2) Hear applications for pawn brokers as specified in subsection 22-109(b).
 - (3) Hear applications for any other license or certificate to be issued by the city for which a public hearing is required, including but not limited to the following: precious metals dealers, massage practitioners, and bail bondsmen.
 - (4) Conduct hearings regarding the possible suspension, revocation or other action taken against a license or certificate issued by the city and to impose any sanctions as provided by law.
 - (5) Approve or disapprove applications in a manner consistent with applicable laws.
- (c) Applicants or licensees shall be given notice of the date, time and place when the license board will consider the respective matter. All meetings of the board shall be open to the public.
- (d) The decision of the license board shall be final unless appealed to the mayor and city council within ten days of the date of decision by the license board. Such appeal must be in writing and filed with the city clerk. In the event of an appeal, the mayor and city council, within 30 days of the date the appeal is filed, shall place the matter down for a de novo hearing and take any authorized action concerning the applicant's appeal. Appellants shall be given notice of the date, time and place when the mayor and council will consider the appeal.
- (e) The decision of the mayor and city council on an appeal under this article shall be final unless appeal is made to the Superior Court of the Cobb County. The applicant may appeal a decision of the mayor and city council by filing a petition for writ of certiorari to the superior court in the manner provided by state law.
- (f) The license board shall have no jurisdiction or authority to hear any appeal from or to reverse, modify or set aside any decision of the mayor and city council.
- (g) The license board shall be composed of three regular members and two alternate members, all of whom shall be appointed by the mayor and city council and who shall serve one-year terms and/or until a successor is appointed, except that such service shall be at the pleasure and

discretion of the mayor and council. The alternate member shall only participate in hearings in which a regular member of the board is unable to attend. A quorum shall consist of three regular or alternate members.

- (h) The license board shall meet at such times as is necessary, to be determined by such board, and shall render decisions within a reasonable time. Reasonable time for the purposes of this section shall be no longer than 120 days from the date an application is filed.
- (i) The license board shall select one of its members to serve as chair and one of its members to serve as secretary, to serve at the pleasure of the license board. Minutes and records of all proceedings shall be kept by the secretary or his/her designee and maintained in the office of the city clerk.

(Ord. No. 2005-33, 8-1-05)

Amend Section 6-51 under Chapter 6 – Alcoholic Beverages of the City Code of Ordinances to change the name of the License and Variance Board to the License Board.

Sec. 6-51. - Issuance of photo permit for employees.

- (a) All employees involved in either the dispensing, serving or sale of alcoholic beverages are required to obtain a photo permit from the city police department.
- (b) Employees subject to this provision shall, within 14 days of their first day of work in an establishment holding a license to sell alcoholic beverages, report to the city police department for the purpose of applying for photo permit on such forms as shall be required by the police department. No person may remain employed by any establishment holding an alcoholic beverage license unless the provisions of these sections have been complied with.
- (c) Photo permits are transferable from one licensed premise to another within the corporate city limits. A photo permit shall be valid for a period of two years from the date of issue. At expiration, a new photo permit must be applied for. Photo permits must be made available for inspection upon request by the governing body, police department or city marshal at any time. In case of lost, altered or mutilated photo permits, a replacement must be obtained immediately. If the original photo permit is found after a replacement is issued, then it must be turned in to the permits section at the police department; possession of more than one photo permit is a violation of this section.
- (d) A processing fee is payable to the city upon application for a photo permit. In the event of a lost or mutilated photo permit, a replacement fee shall be payable to the city.
- (e) The city shall have a complete and exhaustive search made relative to any police record of the person applying for the photo permit. No photo permit shall be issued to any person if the following is shown to exist:
 - (1) That employee as a previous or current employee, or as a previous alcoholic beverage licensee, has been convicted of violating any laws, ordinances, or regulations regulating such business if such conviction or arrest occurred within a five-year period immediately preceding the date of application. If there are pending charges alleging violations of such

laws and ordinances or regulations, then action shall be postponed until the charges are adjudicated.

- (2) That employee within a five-year period preceding the date of application shall have been convicted for any felony charged under any of the laws of the several states or of the United States. If there are pending charges alleging violation of a felony, then action shall be postponed until the charges are adjudicated.
- (3) That employee has been convicted of more than one misdemeanor, including traffic violations, involving the use or abuse of any alcoholic beverage, opiate or drug, within the three years preceding the application. If there are pending charges alleging violation of such misdemeanor, then action shall be postponed until the charges are adjudicated provided that conviction of the charge would disqualify the applicant from receiving the photo permit or
- (4) That employee is on parole or probation unless the applicant provides sufficient proof that the employee will not violate the terms of such parole or probation by the employment in an establishment serving alcohol.

In the event there is a criminal record discovered that would exclude the issuance of a photo permit, the designated agent of the police department shall issue a letter to the person fingerprinted, to the city clerk, and to the employer, stating that the person is ineligible for employment.

- (5) That employee has any outstanding arrest warrants for whom no service has been perfected.
- (f) Any employee excluded from receiving or holding a photo permit under the terms of this section shall have the right to appeal such exclusion initially to the license board, and then to the governing body, either of whom may in their discretion approve the issuance of a photo permit.
- (g) The failure of an employee to get a photo permit will not prohibit the employee from applying for and receiving one if all other conditions of this section are otherwise met.

(Ord. No. 95-03, § 3-3-23, 5-1-95; Ord. No. 97-16, 12-1-97; Ord. No. 2004-27, 8-2-04; [Ord. No. 2012-16, 7-16-12](#); [Ord. No. 2014-12](#), 9-2-14)

Amend Section 6-162 under Chapter 6 – Alcoholic Beverages of the City Code of Ordinances to change the name of the License and Variance Board to the License Board.

Sec. 6-162. - Criminal penalties for violation of chapter; administrative actions.

- (a) Alleged violations of this chapter may be cited to any court as provided by law and ordinance. Convictions under this chapter shall be punishable in the municipal court by a fine not to exceed \$1,000.00 or imprisonment for 60 days, or both. Convictions may be considered due cause for suspension or revocation of any license by the governing authority.

- (b) The license board may take administrative action under this chapter, including license suspension or revocation independent of court citations or the lack thereof, and independent of the disposition or lack of disposition thereof.

(Ord. No. 95-03, § 3-5-2, 5-1-95; Ord. No. 2003-17, 5-19-03; Ord. No. 2004-27, 8-2-04; Ord. No. 2005-33, 8-1-05)

Amend Section 6-163 under Chapter 6 – Alcoholic Beverages of the City Code of Ordinances to change the name of the License and Variance Board to the License Board.

Sec. 6-163. - Suspension and revocation of license by the license and variance board.

- (a) *Hearing required; due cause prerequisite.* No license which has been issued or which may hereafter be issued by the city to any agent of or any person, partnership, corporation, retail dealer, for sale of any type of alcoholic beverages shall be suspended or revoked, except for due cause as defined in subsection (c) of this section and after a hearing requiring the licensee to appear and show cause to the license board of the city why such license should not be suspended or revoked. At any such hearing, all parties to the hearing shall be entitled to be represented by counsel and shall be entitled to all subpoena powers provided by this Code or the city Charter, together with the right to examine all such witnesses under oath.
- (b) *Notice of hearing.* Notice in writing by the city clerk addressed to the holder of such license stating the time, place and purpose of such show-cause hearing and a statement of the accusation upon which such hearing shall be held shall be delivered to the licensed location. Not less than three nor more than 20 days' notice of such hearing shall be deemed reasonable notice. However, shorter or longer periods shall be authorized as the license board determine that the circumstances justify. Upon application in writing by the license holder, any witness or any party at interest, showing good cause and not for purposes of delay only, the hearing date may be advanced or continued, in which event no further notice shall be required in writing.
- (c) *Definition.* The expression "due cause" for the suspension or revocation of such license shall include, but not be limited to:
 - (1) The violation of any provision of this chapter by the license holder, partner, officer, director, principal stockholder (who owns more than five percent ownership) or any employee engaged in the sale of alcoholic beverages.
 - (2) The violation by the license holder, partner, officer, director, principal stockholder (who owns more than five percent ownership) or any employee engaged in the sale of alcoholic beverages, of any state law or regulation, any county ordinance or regulation, or any other ordinance, regulation or law regulating such businesses, or violation of any regulation made pursuant to authority granted for the purpose of regulating such business, or for the violation of any law of the United States of America, except misdemeanor traffic violations by the above-named persons, corporation or entity;

- (3) The licensee providing false information regarding or the omitting any material fact affecting the license application or any supplemental information required during the term of the license.
 - (4) The sale or offer of sale of any alcoholic beverage to any minor, as defined and prohibited by the laws of the state, or to any person under the age of 21 years; or the failure to "card" or require proof of age, together with proof of the legal ability to purchase alcoholic beverages of any person under the age of 21 years; or
 - (5) The violation of any condition of probation given to a licensee under subsection (f) herein.
 - (6) When the sale of alcoholic beverages at any location shall become a nuisance as defined by state law.
- (d) *Refund of license fee.* In the event of revocation or suspension by the license board, the licensee shall not be entitled to a refund or return of any portion of the license fee.
- (e) *Provisions cumulative.* The remedies and actions provided in this article, including but not limited to the suspension or revocation of the license, shall be cumulative, in addition to and nonexclusive of any other action, civil or criminal, pending, resolved or threatened, regarding the license, location, owner of the business or licensee.
- (f) Authority to suspend or revoke and/or place on probation. At any show-cause hearing, based upon the evidence presented, the license board shall be authorized to suspend such license for any appropriate time, or to permanently revoke such license. In addition to or in lieu of the suspension or revocation, the license board may place the licensee on probation for a period not to exceed five years and may place conditions upon such probation.
- (g) If at the hearing, there is evidence of a violation (involving a minor), the license board may consider the circumstances of the incident in order to determine whether a mitigation is warranted. Such factors include but are not limited to the following:
- (1) Whether the licensee has instituted a policy designed to effectively reduce alcohol sales to minors and whether the policy is written.
 - (2) The nature of such policy and the manner in which it is communicated to employees, administered and followed.
 - (3) The type of employee training done in furtherance of the policy and whether such training is mandatory for all employees.
 - (4) The effectiveness of such policy and training.
 - (5) Whether the age of all customers purchasing or attempting to purchase alcohol is routinely verified prior to sale.
 - (6) Whether the licensee completed a responsible alcohol sales and service policy workshop.
 - (7) The type of offense.
 - (8) The number or frequency of violations under the license or at the subject location and the nature of such previous violations.

- (h) *Provision of schedule.* The governing body may from time to time provide for a schedule prescribing the length of suspensions, revocation, or other penalties as it may determine appropriate to the nature of the offense, the person committing the offense, and other such factors as it may deem appropriate. Such schedule shall be on file with the city clerk.

(Ord. No. 95-03, § 3-5-3, 5-1-95; Ord. No. 2004-27, 8-2-04; Ord. No. 2005-33, 8-1-05)

Amend Sections 111.1 and 111.2 under Chapter 18 – Buildings and Building Regulations (Property Maintenance Code) of the City Code of Ordinances to change the appeal of a code official’s decision from the License and Variance Board to the Mayor and City Council.

111.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the mayor and council, provided that a written application for appeal is filed within 10 days after the date of the decision, notice or order was served. An application for appeal shall be based on the claim that the true intent of this code or rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not apply, or the requirements of this code are adequately satisfied by other means.

111.2 Board of Appeals. The Board of appeals as referred to in this code shall be the mayor and council as established by the City of Smyrna Municipal Code of Ordinances.

Amend Sections 22-105, 22-107, 22-108, 22-109, 22-110 and 22-116 under Chapter 22 – Businesses of the City Code of Ordinances to change the name of the License and Variance Board to the License Board as it pertains to processing pawn broker licenses.

Sec. 22-105. - General qualifications; grounds for denial of certificate.

No application for any certificate under this article shall be granted where the application or the evidence on a hearing before the license board shows any of the following conditions to exist:

- (1) The applicant is of bad moral character or has a bad reputation in the community or does not have sufficient mental capacity to conduct the business for which the application is made.
- (2) The applicant has had any certificate issued under the police powers of any city or other governmental subdivision previously suspended or revoked.
- (3) The applicant, as a previous holder of a certificate to operate a pawnshop, has violated any law, regulation or ordinance relating to such business within a ten-year period immediately preceding the date of application.
- (4) The applicant has failed to obtain any paper or document necessary in pursuance of its business as may be required by any officer, agency or department of the city, state or

United States under authority of any law, ordinance or resolution of the city, county, state or United States.

- (5) The applicant has supplied false information, either upon his/her application or in any communication with any official of the city relative to his/her application.
- (6) The applicant intends to violate any law, ordinance or resolution regulating such business or to violate any regulation made pursuant to authority granted for the purpose of regulating such business.
- (7) The applicant has failed to pay any fee required under this article or has otherwise failed to comply with the provisions of this article.
- (8) The applicant, during the 12-month period next preceding the filing of his/her application, has engaged in any deceptive business practice as defined by section 22-108.
- (9) In addition to subsections (1) through (8) of this section, and in determining whether or not any certificate applied for shall be granted, the following shall be considered in the public interest and welfare:
 - a. If the applicant is a previous holder of a certificate, the manner in which he/she conducted the business thereunder as to the necessity for unusual police observation and inspection in order to prevent the violation of any law, regulation or ordinance relating to such business.
 - b. The location for which the certificate is sought as to traffic congestion, general character of the neighborhood and the effect such an establishment would have on the adjacent and surrounding property values.
 - c. The number of certificates already granted for similar businesses in the trading area of the place for which the certificate is sought.
 - d. If the applicant's spouse shall not be able to meet the qualifications of an applicant, particularly if it appears that the applicant's spouse or another person is using the applicant as a guise or dummy to obtain a certificate.
 - e. If the applicant will be accepting vehicle titles as property pledged, there will be no onsite storage of the vehicles allowed at any time.

(Code 1977, § 14-48; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-107. - Revocation and suspension—Generally.

Subject to the provisions of the following section, the mayor and council or the license board may suspend, revoke or place on probation, with or without conditions, any certificate issued under this article.

(Code 1977, § 14-50; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-108. - Same—Notice and hearing.

- (a) No certificate issued under this article shall be suspended, revoked or placed on probation, with or without conditions, except for due cause as defined in subsection (d) of this section, and only after a hearing before the license board upon a prior written notice to the licensee of the time, place and purpose of such hearing and a statement of the reason why the certificate would be suspended or revoked. Three days' notice shall be deemed reasonable, but shorter or longer periods of notice shall be authorized as the mayor and council may deem the circumstances justify.
- (b) The mayor may suspend an occupation tax certificate or give three days' notice that such certificate is subject to suspension when there is cause to believe that grounds exist for revoking the certificate. This action shall be reviewed at the next regular meeting of the license board or, at the request of the licensee, a special meeting of the license board may be called within three days after such request is filed with the office of the city clerk or his/her designate to affirm or refuse the suspension after the hearing of evidence. A certificate shall not be revoked except upon action by the license board.
- (c) Due cause for the suspension or revocation of such certificate shall consist of any of the following:
 - (1) A licensee commits a deceptive business practice if he/she:
 - a. Uses or possesses a false weight or measure, or any other device for falsely determining or recording any quality or quantity in connection with any sale or services;
 - b. Sells, offers or exposes for sale, or delivers less than the represented quality or quantity;
 - c. Takes or attempts to take more than the represented quantity of any commodity when as buyer or broker he/she furnishes the weight or measure;
 - d. Provides a service which is of an unreasonably lesser quality than the service offered or represented; or
 - e. Engages in any other fraudulent business transaction which is made punishable by the laws of the state.
 - (2) Violation of any laws, ordinances or resolutions regulating such business, or violation of regulations made pursuant to the authority granted for the purpose of regulating such business;
 - (3) The licensee has supplied false information to the city clerk or his/her designate, regardless of when the city clerk or his/her designate shall have become aware of the false information;
 - (4) The licensee has failed to obtain or has suffered the expiration, suspension or revocation of any paper or document necessary in pursuance of its business, as may be required by any officer, agency, authority or department of the city, county, state or the United States

under authority of any law, ordinance or resolution of the city, county, state or the United States;

- (5) The licensee has failed to comply with any provision of this article; or
 - (6) A licensee makes any misrepresentation of fact, whether through advertisement or through any form of direct communication, oral or written, which is intended to mislead the public or to mislead any party with whom the licensee deals in pursuance of the licensed business. The term "misrepresentation of fact," as used in this subsection, shall embrace not only express misrepresentations but also misrepresentations arising by virtue of the licensee's conduct, including acts and omissions. By way of illustration only, and without limiting the scope of this subsection, the expression "due cause" shall consist of any act or practice designated as unlawful in O.C.G.A. § 10-1-393(b)(1)—(11) or declared by the administrator of such law to be unlawful pursuant to regulations made under O.C.G.A. § 10-1-394, subject to the exemptions contained in O.C.G.A. § 10-1-396.
- (d) The license board may specify conditions of operation of the certificate holder during any time of probation. Such conditions shall be on file with the office of city clerk. No probation shall extend over a period of more than 12 consecutive calendar months.

(Code 1977, § 14-51; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-109. - Public hearing on application; approval by mayor and council.

No certificate shall be issued until it has been approved by the city.

- (1) Where the proposed location has been vacant for one year or more or has never been licensed as a pawnbroker, the governing body shall hold a public hearing on the application for a license after notice as required in section 22-110.
- (2) For all other applications, the license board shall hold a public hearing on the application for a license after notice as required in section 22-110.

(Code 1977, § 14-52; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-110. - Notice of intent to engage in business required to be published; processing fee required for pawn and/or swap shop certificates.

- (a) All applicants for certificates under this article shall give notice of the purpose of making such application by advertisement at least one time a week for two consecutive weeks in the newspaper published in the city in which the legal advertisements of the city are carried, which notice shall contain a description of the location of the proposed business and shall give the name of the applicant; and if a partnership, the name of the partners; and if a corporation, the names of the officers and the date and time the license and would hear the application. The advertisement referred to in this section shall be of the type not smaller than ten-point capital and lower case and shall be at least a one-inch column advertisement.
- (b) Upon filing of the application for a pawnshop and/or swap shop certificate with the certificate bureau, the applicant shall deposit a processing fee to cover the cost of advertising,

investigation and processing of the application, and the fee is not refundable. Such fee is in addition to the normal occupation tax certificate fees.

(Code 1977, § 14-52.1; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-116. - Time limit for commencement of business in licensed establishment; forfeiture for nonuse.

- (a) All holders of certificates under this article must, within three months after the issuance of the certificate, open for business the establishment referred to in the certificate, unless the time limit is extended by the license board. Failure to open the licensed establishment within the three-month period shall serve as an automatic forfeiture and cancellation of the unused certificate, and no refund of certificate fees shall be made to the certificate holder.
- (b) Any holder of a certificate under this article who shall begin the operation of the business as authorized in the certificate, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the certificate, shall upon completion of the three-month period automatically forfeit his/her certificate, which certificate shall by virtue of the failure to operate be cancelled without the necessity for any further action of the city.

(Code 1977, § 14-58; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Amend Sections 22-201, 22-204, 22-206, 22-207 and 22-113 under Chapter 22 – Businesses of the City Code of Ordinances to change the name of the License and Variance Board to the License Board as it pertains to processing precious metal dealer licenses.

Sec. 22-201. - Application.

- (a) All persons 18 years or older desiring to obtain a certificate required under this article shall make written application to the city through the office of the city clerk or his/her designate for such privilege, upon forms to be prepared and approved by the mayor and council. Such application shall state the name and address of the applicant; the place where the proposed business is to be located; the nature and character of the business to be carried on; if a partnership, the names of the partners; if a corporation, the names of the officers and stockholders; and such other information as may be required by the office of the city clerk or his/her designate, or the department of police, and be sworn to by the applicant or agent thereof.
- (b) All applicants shall furnish all data, information and records requested of them by the mayor and council or the city clerk or his/her designate, or the department of police, and failure to furnish such data, information and records within 30 days from the date of such request shall automatically serve to dismiss, with prejudice, the application. An applicant, by filing an application, agrees to produce for oral interrogation any person requested by the mayor and council or its duly authorized representative, such as the license board, the city clerk or the department of police, or the city attorney, and who is considered by them as being important in the ascertainment of the facts relative to such certificate. The failure to produce such person,

within 30 days after being requested to do so, shall result in the automatic dismissal of such application.

- (c) All applications for certificates under this article shall be acted upon by the license board after a public hearing and after advertisement as required in this article. No certificate shall be issued until it has been approved by the license board.
- (d) Upon filing of an original application for a certificate under this section, the applicant shall deposit a processing fee to cover the cost of processing the application, advertising and investigation, which shall be nonrefundable and in addition to the normal occupation tax certificate fees.

(Code 1977, § 14-104; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-204. - General qualifications; grounds for denial of certificate.

No application for any certificate under this article shall be granted where the application or the evidence on a hearing before the license board shows any of the following conditions to exist:

- (1) The applicant is of bad moral character or has a bad reputation in the community, or does not have sufficient mental capacity to conduct the business for which the application is made.
- (2) The applicant has had any certificate issued under the police powers of any city or other governmental subdivision previously suspended or revoked.
- (3) The applicant, as a previous holder of a certificate to operate a pawnshop or precious metals dealers certificate has violated any law, regulation or ordinance relating to such business within a ten-year period immediately preceding the date of application.
- (4) The applicant has failed to obtain any paper or document necessary in pursuance of its business as may be required by any officer, agency or department of the city, state or United States under authority of any law, ordinance or resolution of the city, county, state or United States.
- (5) The applicant has supplied false information, either upon his/her application or in any communication with any official of the city relative to his/her application.
- (6) The applicant intends to violate any law, ordinance or resolution regulating such business or to violate any regulation made pursuant to authority granted for the purpose of regulating such business.
- (7) The applicant has failed to pay any fee required under this article or has otherwise failed to comply with the provisions of this article.
- (8) The applicant, during the 12-month period next preceding the filing of his/her application, has engaged in any deceptive business practice as defined by section 22-207(d)(1) and (6).

(Code 1977, § 14-107; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-206. - Revocation and suspension—Generally.

Subject to the provisions of section 22-207, the mayor and council or the license board may suspend, revoke or place on probation, with or without conditions, any certificate issued under this article.

(Code 1977, § 14-109; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-207. - Same—Notice and hearing.

- (a) No certificate issued under this article shall be suspended, revoked or placed on probation, with or without conditions, except for due cause as defined in subsection (d) of this section, and only after a hearing before the license board upon a prior written notice to the licensee of the time, place and purpose of such hearing and a statement of the reason why the certificate would be suspended or revoked. Three days' notice shall be deemed reasonable, but shorter or longer periods of notice shall be authorized as the mayor and council may deem the circumstances justify.
- (b) The mayor may suspend an occupation tax certificate or give three days' notice that such certificate is subject to suspension when there is cause to believe that grounds exist for revoking the certificate. This action shall be reviewed at the next regular meeting of the license board or, at the request of the licensee, a special meeting of the license board may be called within three days after such request is filed with the office of the city clerk or his/her designate to affirm or refuse the suspension after the hearing of evidence. A certificate shall not be revoked except upon action by the license board.
- (c) Due cause for the suspension or revocation of such certificate shall consist of any of the following:
 - (1) A licensee commits a deceptive business practice if he/she:
 - a. Uses or possesses a false weight or measure, or any other device for falsely determining or recording any quality or quantity in connection with any sale of services;
 - b. Sells, offers or exposes for sale, or delivers less than the represented quality or quantity;
 - c. Takes or attempts to take more than the represented quantity of any commodity when as buyer or broker he/she furnishes the weight or measure;
 - d. Provides a service which is of an unreasonably lesser quality than the service offered or represented; or
 - e. Engages in any other fraudulent business transaction which is made punishable by the laws of the state.
 - (2) Violation of any laws, ordinances or resolutions regulating such business, or violation of regulations made pursuant to authority granted for the purpose of regulating such business.

- (3) The licensee has supplied false information to the city clerk or his/her designate, regardless of when the city clerk or his/her designate shall have become aware of the false information.
 - (4) The licensee has failed to obtain or has suffered the expiration, suspension or revocation of any paper or document necessary in pursuance of its business, as may be required by any officer, agency, authority or department of the city, county, state or the United States under the authority of any law, ordinance or resolution of the city, county, state or the United States.
 - (5) The licensee has failed to comply with any provision of this article.
 - (6) A licensee makes any misrepresentation of fact, whether through advertisement or through any form of direct communications, oral or written, which is intended to mislead the public or to mislead any party with whom the licensee deals in pursuance of the licensed business. The term "misrepresentation of fact," as used in this subsection, shall embrace not only express misrepresentations but also misrepresentations arising by virtue of the licensee's conduct, including acts and omissions. By way of illustration only, and without limiting the scope of this subsection, the expression "due cause" shall consist of any act or practice designated as unlawful in O.C.G.A. § 10-1-393(b)(1)—(11) or declared by the administrator of such law to be unlawful pursuant to regulations made under O.C.G.A. § 10-1-394, subject to the exemptions contained in O.C.G.A. § 10-1-396.
- (d) The license board may specify conditions of operation of the certificate holder during any time of probation. Such conditions shall be on file with the office of city clerk. No probation shall extend over a period of more than 12 consecutive calendar months.

(Code 1977, § 14-110; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Sec. 22-213. - Time limit for commencement of business in licensed establishment; forfeiture for nonuse.

- (a) All holders of certificates under this article must, within three months after the issuance of the certificate, open for business the establishment referred to in the certificate, unless the time limit is extended by the license board. Failure to open the licensed establishment as referred to in this section within the three-month period shall serve as an automatic forfeiture and cancellation of the unused certificate, and no refund of certificate fees shall be made to the certificate holder.
- (b) Any holder of a certificate under this article who shall begin the operation of the business as authorized in the certificate, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the certificate, shall upon completion of the three-month period automatically forfeit his/her certificate, which certificate shall by virtue of the failure to operate be cancelled without the necessity for any further action of the city.

(Code 1977, § 14-116; Ord. No. 94-18, § 3, 12-5-94; Ord. No. 2005-33, 8-1-05)

Amend Sections 22-329 and 22-330 under Chapter 22 – Businesses of the City Code of Ordinances to change the name of the License and Variance Board to the License Board as it pertains to film permits.

Sec. 22-329. - Notice of hearing and grounds for suspension or revocation.

Prior to suspension or revocation of a film production permit, the permittee shall be notified in writing of the grounds for suspension or revocation of the permit, and a hearing shall be held before the license board thereon in accordance with section 2-1441 of the Smyrna Code of Ordinances. Notice of the hearing shall be given to the permittee at least three days prior to the hearing.

([Ord. No. 2012-05](#), 8-20-12)

Sec. 22-330. - Emergency temporary suspension.

If the conduct or activity of the permittee creates an imminent peril to the environment or the public health, safety or welfare, the film production permit may be summarily suspended upon notice to the permittee. The permittee shall be entitled to a hearing before the license board within three working days thereafter.

([Ord. No. 2012-05](#), 8-20-12)

Amend Section 30-32.6(g) under Chapter 30 – Emergency Powers of the City Code of Ordinances to change the appeal of a denial of a building permit from the License and Variance Board to the Mayor and City Council.

30-32.6. *Registration and permitting for repair services.*

- (a) Before building, constructing, repairing, renovating or making improvements to any real property, including; dwellings, homes, buildings, structures or fixtures within an area in the city designated in a declared emergency or disaster, any person, firm, partnership, corporation or other entity must register with the city and secure a building permit that is posted at the work site. Each day any such entity does business in the city without complying with this section 30-32 constitutes a separate offense.
- (b) The cost of the emergency building permit shall be equal to the cost for a building permit under existing regulations. The permit shall only be authorized for repairs.
- (c) When registering and seeking a building permit, any person, partnership, corporation or other entity making application for such permit must, under oath, complete an application, providing the following information:
 - (1) Name of applicant;
 - (2) Name of business and applicable state license(s);

- (3) Permanent address and phone number of applicant and/or temporary local address and 24-hour contact number;
 - (4) Applicant's Social Security number or federal employer identification number;
 - (5) If applicant is a corporation, the state and date of incorporation;
 - (6) Tag registration information for each vehicle to be used in the business;
 - (7) List of cities where the applicant has conducted business within the past 12 months;
 - (8) Georgia sales tax number or authorization, if required;
 - (9) Georgia business license number, if required.
- (d) Failure to submit the required information shall result in a denial of the permit.
- (e) The applicant shall be ineligible for a building permit and the application for the permit shall be denied if any of the following exist:
- (1) The applicant does not have all required licenses authorizing the applicant to conduct the business for which the application is sought.
 - (2) The applicant or any principal, partner, or officer of the applicant, has been convicted or sentenced under first offender status for any felony or for a misdemeanor involving moral turpitude, within a five-year period preceding the date of the application. If there has been an arrest and charges are pending, action on the permit shall be postponed until the charges are adjudicated.
 - (3) The applicant or any principal, partner or officer of the applicant has been convicted of overcharging. If there has been an arrest and charges are pending, action on the permit shall be postponed until the charges are adjudicated.
- (f) *Effective date.* This section shall become effective only upon the signing of a declaration of emergency, stating this section is in effect.
- (g) *Appeal.* The applicant may appeal a denial of a permit to the mayor and council under the procedures set forth in this Code.

Amend Section 46-160 under Chapter 46 – Environment (Stream Buffer) of the City Code of Ordinances to change the review of a variance request from the stream buffer ordinance from the License and Variance Board to the Mayor and City Council.

Sec. 46-160. - Land development requirements.

- (a) *Buffer and setback requirements.* All land development activity subject to this article shall meet the following requirements:
- (1) An undisturbed natural vegetative buffer shall be maintained on both banks (as applicable) of the stream as measured horizontally from the top of the stream bank as follows:

- a. Fifty feet from the banks of any state waters not defined on the current city stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action;
 - b. Fifty feet of the banks of any stream in the city, as defined on the current city stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action where total watershed area (on site and off site area) intercepted is less than or equal to five square miles;
 - c. Seventy-five feet of the banks of any stream in the city, as defined on the current city stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action where total watershed area (on site and off site area) intercepted is equal to five square miles and less than or equal to ten square miles;
 - d. One hundred feet of the banks of any stream in the city, as defined on the current city stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action where total watershed area (on site and off site area) intercepted is greater than ten square miles;
- (2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited, on any stream in the city, as defined on the current city stream buffer map, and as measured from the point where vegetation has been wrested by normal stream flow or wave action where total watershed area (on site and off site area) intercepted is less than or equal to five square miles; grading, filling and earthmoving shall be minimized within this setback.
- (3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.
- (b) *Variance procedures.* Variances from the above buffer and setback requirements may be granted with or without conditions in accordance with the following provisions:
- (1) Where a parcel was platted prior to the effective date of this article, and its shape, topography or other existing physical condition prevents land development consistent with this article, and the community development department finds and determines that the requirements of this ordinance prohibit the otherwise lawful use of the property by the owner, the city mayor and council may grant a variance from the buffer and setback requirements hereunder, provided such variance require mitigation measures to offset the effects of any proposed land development on the parcel.
 - (2) Except as provided above, the city mayor and council shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the city mayor and council. The city shall give public notice of each such public hearing in a newspaper of general circulation within [the] city. The city shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall

be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.

Variances will be considered only in the following cases:

- a. When a property's shape, topography or other physical conditions existing at the time of the adoption of this article prevents land development unless a buffer variance is granted.
- b. Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship as determined at the sole discretion of the mayor and council.

Variances will not be considered when, following adoption of this article, actions of any property owner of a given property have created conditions of a hardship on that property.

(3) At a minimum, a variance request shall include the following information:

- a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
- b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
- d. Documentation of unusual hardship should the buffer be maintained;
- e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
- f. A calculation of the total area and length of the proposed intrusion;
- g. A stormwater management site plan, if applicable; and,
- h. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.

(4) The following factors will be considered in determining whether to issue a variance:

- a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- b. The locations of all streams on the property, including along property boundaries;
- c. The location and extent of the proposed buffer or setback intrusion; and,
- d. Whether alternative designs are possible which require less intrusion or no intrusion;
- e. The long-term and construction water-quality impacts of the proposed variance;

- f. Whether as a result of an exchange of buffer area the net buffer area is not reduced;
- g. Whether issuance of the variance is at least as protective of natural resources and the environment.

(Ord. No. 2005-30, 8-1-05)

Amend Section 50-7 under Chapter 50 – Fire Prevention and Protection of the City Code of Ordinances to change the name of the License and Variance Board to the License Board.

Sec. 50-7. - Outdoor burning.

No outside burning of rubbish/yard waste (as defined in section 50-27) is allowed at any time within the city limits.

- (1) Restrictions on outdoor burning do not apply to the following:
 - a. Grilling or cooking using charcoal, clean wood, propane or natural gas.
 - b. Burning clean wood after obtaining a residential burn permit. This burning must comply with the following provisions:
 - 1. The residential burn permit allows burning clean wood, as defined in section 50-27, only.
 - 2. Residential burn permits will only be issued from October 1 through March 30.
 - 3. Residential burn permits can only be utilized from 9:00 a.m. until one hour before the official time of sunset.
 - 4. Residential burn permits will not be permitted for: the burning of leaves, clean wood bigger than six inches in diameter, plastic, rubber, rubbish or trash.
 - 5. Residential burn permits can be obtained through the fire department on forms or through electronic media as determined by and provided by the city and must be obtained in advance.
 - 6. An applicant who is denied a residential burn permit may appeal that decision to the license board within 30 days of the date of the denial.
 - 7. Any denial of a residential burn permit shall be in writing on forms or through electronic media as determined by and provided by the city.
 - c. Burning of a recreational fire as defined in section 50-27. However, recreational fires within any property used for anything other than a residence for one or two families shall require a special use permit from the fire marshal's office under the following provisions:
 - 1. All special use permit applications must be filed with the fire marshal on forms provided by the city a minimum 14 days prior to the date of the proposed recreational fire.

2. The applicant, as a condition precedent to the issuance of the permit, shall pay for the permit at the price fixed by the mayor and council.
 3. The fire marshal shall make an inspection of the proposed ignition site and assess any potential hazardous conditions. If the fire marshal determines that there are potential hazards at the proposed ignition site the application shall be denied. The fire marshal, within ten business days, shall issue a written decision.
 4. This decision may be appealed to the license board within 30 days of the date of issuance.
 5. A permit under this chapter shall be valid for only the dates, times, and locations approved.
- d. Burning in a chimenea, outdoor fireplace, fire bowl or similar device.
 - e. Fire department practice burns following state and local codes.
- (2) Safeguards/limitations for outdoor burning include the following:
- a. Burning of petroleum-based products, such as tires, plastics, and roof shingles, which produce black smoke, is prohibited.
 - b. Burning of any material in a barrel is prohibited.
 - c. Recreational fires shall not be located within 25 feet of any structure or other combustible material. Conditions which could cause a fire to spread within 25 feet of a structure shall be eliminated prior to ignition.
 - d. Recreational fires referenced in this section must be constantly attended by an adult who must be outdoors within 100 feet of the fire and watching the fire at all times. A charged water hose that can reach the fire or minimum 4A fire extinguisher must be on hand and ready for use if needed for fire control/extinguishment. The nozzle of the charged water hose or fire extinguisher must be kept within 25 feet of the fire.
 - e. Upon event completion, all fires must be extinguished to where no smoldering or hot coals remain.
- (3) The fire chief or designee shall be authorized to ban outdoor burning when:
- a. Atmospheric or local conditions make outdoor burning hazardous.
 - b. It adversely interferes with the enjoyment of life or use of property.
 - c. A resident is adversely affected by the smoke due to a medical condition.

(Ord. No. [2019-09](#), 5-6-19)

Amend Sections 1400, 1401 1403 and 1404 under Appendix A – Zoning of the City Code of Ordinances to change the review of a variance request from the zoning ordinance from the License and Variance Board to the Mayor and City Council.

Sec. 1400. - Variances.

All requests for a variance from the terms of the Zoning Code relating to setbacks, distance requirements between buildings or other substantially similar dimensional regulations, parking, or accessory structures, except when requested as part of a rezoning;, shall be heard by the mayor and council as established by city ordinance.

(Ord. No. 2005-34, 8-1-05)

Sec. 1401. - Variance petitions

- (a) *Filing of petition.* Variance petitions to the mayor and council may be filed by any person aggrieved by the literal enforcement of the requirements of the Zoning Code. Upon receipt of written petition and filing fee, the city administrator, or his designee, shall, within 30 days, schedule a hearing to consider the petition and shall notify the petitioner of such hearing.
- (b) *Requirements of petition.* The following information must be provided with each variance petition:
 - (1) Location of property, to be identified by land lot number, street address, and present zoning classification. Also, general descriptive information such as major streets or other well-known landmarks.
 - (2) Zoning classification of all adjoining property.
 - (3) A comprehensive summary detailing the extraordinary and exceptional conditions which will necessitate a nonconforming use.
 - (4) A copy of any existing plat of the property.
 - (5) Signature of the subject property owners or in the case of a corporation a duly authorized officer.
 - (6) A to-scale site plan, if constructing a new structure or an addition to an existing structure on the subject property.
 - (7) An elevation, rendering or photographic example of the structure, if constructing a new structure or an addition to an existing structure on the subject property. Also, a brief description of building and exterior materials proposed for the structure must accompany elevation, rendering or photographic example.
- (c) *Filing fee.* A filing fee, as determined by the governing body, must accompany each request. A schedule of filing fees approved by the governing body shall be maintained by the city administrator or his designee.

(d) *Procedure.* The petitioner shall bear the burden of demonstrating to the board that the evidence on the record meets the standards outlined in section 1403.

(Ord. No. 2005-34, 8-1-05; Ord. No.2008-2, 1-22-08)

Sec. 1403. - Variance review standards.

In rendering its decisions, the mayor and city council shall consider the following factors:

- (1) Whether there are unique and special circumstances or extraordinary and exceptional conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties in the same district.
- (2) Whether any alleged hardship is self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions from which relief is sought.
- (3) Whether strict application of the relevant provisions of the Zoning Code would deprive the applicant of reasonable use of the property for which the variance is sought.
- (4) Whether the variance proposed is the minimum variance, which makes possible the reasonable use of the property.

(Ord. No. 2005-34, 8-1-05)

Sec. 1404. - Conditions and limitations.

In authorizing any variance the mayor and city council shall include as a part of such variance, any condition, requirements or limitations which the board may believe to be necessary and desirable to protect adjacent properties and the surrounding neighborhood, and to carry out the spirit and purpose of the Zoning Code.

(Ord. No. 2005-34, 8-1-05)

Amend Sections 1700, 1701, 1702 and 1703 under Appendix A – Zoning of the City Code of Ordinances to change the review of appeals of administrative decisions from the zoning ordinance from the License and Variance Board to the Mayor and City Council.

Sec. 1700. - Intent.

It is the intention of this chapter that all questions arising in connection with the administration, interpretation, and enforcement of this Zoning Ordinance shall be presented first

to the director of community development, and that such questions shall be presented to the mayor and council only on appeal from decision of an administrative official.

(Ord. No. 2009-11, 8-17-09)

Sec. 1701. - Who may appeal.

Any person who alleges there is an error in, or who is aggrieved by a decision of the community development director, building inspector, city engineer, or other administrative official in the administration, interpretation, or enforcement of this Zoning Ordinance, may file an appeal with the mayor and council, stating the grounds for such appeal. Appeals of administrative decisions may also be filed for consideration by the mayor and council by any officer, department, or board or commission of the City of Smyrna, affected by any such administrative decision. Said appeal application shall be filed within 30 days of the date of decision of the administrative official.

(Ord. No. 2009-11, 8-17-09)

ec. 1702. - Procedures.

Any appeal received and all papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted by the community development director to the mayor and council. Such appeal shall follow the procedures and notification requirements established under Section 1400 of the Zoning Ordinance.

(Ord. No. 2009-11, 8-17-09)**Sec. 1703. - Stay of proceedings.**

The filing of an appeal stays all legal proceedings in furtherance of the action appealed from, unless the community development director certifies to the mayor and council after the notice of appeal shall have been filed with him or her, that by any reason of acts stated in the certificate a stay would, in his or her opinion, cause eminent peril to life and property. In such case, proceedings shall not be stayed.

(Ord. No. 2009-11, 8-17-09)

Amend Section 1303 under Appendix B – Subdivision Regulations of the City Code of Ordinances to change the review of variance requests from the subdivision ordinance from the License and Variance Board to the Mayor and City Council.

Sec. 1303. - Variances.

The mayor and council may authorize, upon appeal in specific cases, such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will in an individual case result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. A variance may be granted in an individual case of unnecessary hardship upon a finding by the mayor and council that:

- (1) There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape or topography;
- (2) The application of this ordinance to this particular piece of property would create an unnecessary hardship;
- (3) Such conditions are peculiar to the particular piece of property involved;
- (4) Such conditions are not the result of any action of the property owner; and
- (5) Relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of this ordinance.

(Ord. No. 2005-34, 8-1-05)

Amend Section 1.0 under Appendix E – Urban Design District of the City Code of Ordinances to change the review of variance requests from the standards of the urban design district from the License and Variance Board to the Mayor and City Council.

(f) 1.06 Variance Procedure.

The Urban Design Commission may grant design exceptions if a proposed project is a unique and exceptional design concept that architecturally enhances the downtown area. Once a design exception is granted by the Urban Design Commission the applicant must seek approval from the mayor and council through the provisions of Article XIV of the Zoning Ordinance.

This ordinance shall take effect on May 1, 2021 and is passed and duly adopted this 19th day of April 2021.

CITY

SEAL:

The Honorable Derek Norton
Mayor, City of Smyrna, Georgia

ATTEST:

Heather K. Peacon-Corn
City Clerk, City of Smyrna, Georgia

Approved as to form:

Scott A. Cochran, City Attorney