**Redlined by Tim Madison 6-22-2015**

**SECOND AMENDED ORDINANCE NO. 27 - 15**

**By: Timothy G. Madison**

**An ordinance specifying appeals from final administrative orders, adjudications, or decisions of the Bexley Planning Commission, Board of Zoning Appeals, Architectural Review Board, Environmental Review Board, or Main Street Redevelopment Commission to Bexley City Council.**

**WHEREAS,** Bexley City Council desires to allow Bexley property owners the opportunity to appeal the final administrative orders, adjudications, or decisions made by the Bexley City Planning Commission, the Bexley Board of Zoning Appeals, the Bexley Architectural Review Board, and the Bexley Environmental Review Board to Bexley City Council.

**WHEREAS,** Bexley City Council desires this Ordinance to supersede any references to appeals in the Bexley City Ordinances that are inconsistent with this Ordinance and this Ordinance shall govern all Bexley Board and Commission appeals to Bexley Council as of the effective date of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:**

**Section 1.**

That Chapter 1264, Administration and Penalty of the Codified Ordinances of the City of Bexley be amended to enact section 1264.25 as follows:

1264.25 APPEALS TO COUNCIL

Every final order, adjudication, or decision of Bexley City Planning Commission, the Bexley Board of Zoning Appeals, the Bexley Architectural Review Board, or the Bexley Environmental Review Board (hereinafter a “Board” or “Commission”) may be appealed by the applicant or any Bexley property owner that is directly and adversely affected by such decision to Bexley City Council for review and determination as follows:

1. A written notice of appeal utilizing the form prescribed by the Mayor of the City of Bexley (the “Notice of Appeal”) shall be filed with the Clerk of City Council within thirty (30) calendar days after the written decision of the Board or Commission is journalized and the minutes of the meeting are approved. A Notice of Appeal shall set forth the decision of the Board or Commission appealed from and the errors complained of by the appellant. Any claimed errors that are not identified in the Notice of Appeal shall be waived. If the appellant is the applicant, the Clerk of City Council shall serve the Notice of Appeal on the property owners that were entitled to notice of the Board or Commission hearing by regular mail upon receipt of the Notice of Appeal. If the appellant is not the applicant, the Clerk of City Council shall serve the applicant by certified mail upon receipt of the Notice of Appeal, and shall serve the property owners that were entitled to notice of the Board or Commission hearing by regular mail upon receipt of the Notice of Appeal.
2. The fee for filing a Notice of Appeal shall be Two Hundred Fifty Dollars ($250.00) which shall be paid at the time of the filing of the Notice of Appeal.
3. Upon receipt of the filing of a Notice of Appeal, the Clerk of City Council shall notify the Clerk of the Board or Commission from which an appeal has been taken who shall file with the Clerk of Council the record of the proceedings, and all relevant background or other information that was before or taken into consideration by the Board or Commission in making the order, adjudication, or decision being appealed within twenty-one (21) calendar days of receiving the Notice of Appeal from the Clerk of Council. NOTE TO COUNCIL: there are only nine (9) days from when the Board/Commission must give the record to the oral argument.
4. Bexley City Council shall examine the record of decision and hear oral argument by the parties within thirty (30) calendar days of receiving the Notice of Appeal, unless the following apply:
   * 1. If Bexley City Council is in summer recess at the time of receiving Notice of Appeal, Council shall hear argument within sixty (60) calendar days of receiving the Notice of Appeal.
     2. If there is an agreement between the appellant, the appellee, and the City Attorney, an extension may be granted.
     3. Other good cause as determined by Bexley City Council.
5. The Clerk of Council shall give written notice of the oral argument at least fifteen (15) calendar days in advance of the date of the argument to the appellant and appellee by certified mail or personal service and all persons required to be notified of the hearing on the application before the Board or Commission appealed from by regular mail. At least fifteen (15) calendar days before the date of the oral argument the Clerk of Council shall post notice on the City’s website. The notice shall state the time and place of the argument and a summary of the appeal.
6. The appellant or appellee is permitted, but not required, to file a brief on the merits of the appeal. No reply brief or *memorandum contra* brief shall be permitted. All briefs must be served and filed no later than seven (7) calendar days before the oral argument except by leave of Council. Such brief may not exceed fifteen (15) pages in length, double spaced, at no less than a 12-point font. The Clerk of Council shall provide the other parties copies of any filed briefs.
7. At the argument, the appellant and appellee shall present the appeal based upon the following procedures:
   * 1. No new evidence or testimony may be presented.
     2. Argument shall be presented by appellant and appellee in the form of oral argument only and shall be limited to twenty (20) minutes each side. Oral argument shall be based upon the assignments of error submitted with the Notice of Appeal. If more than one (1) appeal is filed, the appeals may be consolidated and each side shall be allowed a total of twenty (20) minutes for argument or such other time as may be determined by Bexley City Council.
8. If upon oral argument, consideration of the record and decision of the Board and Commission, and briefs filed pursuant to section (f), Council finds that Appellant has failed to prove, by clear and convincing evidence, the decision of the Board or Commission appealed from is not supported by the record or is unreasonable or unlawful, it shall affirm the same.
9. Council shall give deference to the findings and conclusions of the Board or Commission being appealed from and shall not substitute its judgment for the judgment of the Board or Commission.
10. Consistent with its findings, Council may affirm, reverse, vacate, or modify the order, adjudication, or decision of the Board or Commission. The concurrence of two-thirds of the members of Council at the argument on appeal is required for Council to reverse, vacate or modify any decision of a board or commission. Absent such a two-thirds majority of the members of Bexley City Council at the argument on appeal, the decision of the Board or Commission is affirmed.
11. The decision of Council shall be subject to appeal as provided in the Ohio Revised Code.
12. Bexley City Council shall issue written Findings of Fact and Conclusions of Law within thirty (30) calendar days after the hearing and serve them on all parties.
13. In any appeal to Council, Bexley City Council may consider and determine any motions filed, make procedural determinations, and for good cause continue or amend any of the periods or deadlines provided in this section except for the time for filing the Notice of Appeal, which cannot be enlarged or altered.
14. This section supersedes any references to appeals to Council in the Bexley City Ordinances that are inconsistent herewith. This Ordinance shall govern all appeals from Bexley Boards and Commissions identified herein to Bexley Council as of the effective date of this Ordinance.

**Section 2.**

Section 1222.04(c) of the Codified Ordinances of the City of Bexley for the Bexley Environmental Review District shall be amended to delete the last two sentences as follows:

1222.04 ENVIRONMENTAL REVIEW BOARD APPROVAL.

(a) Approval shall be obtained from the Environmental Review Board prior to any new construction or any remodeling, reconstruction or other change which would come within the provisions of this chapter.

(b) The responsibility of review and approval or denial of the application for approval shall rest with the Board. All applications for approval shall be made to the Mayor or his or her designee at least six days before a regularly scheduled Board meeting. The applicant shall submit with the application drawings, materials, sketches and such other items that indicate or identify the proposed exterior and environment of any new or existing building or structure within the Environmental Review District. The Board has the authority to approve variances to the Zoning Ordinance related to lot size, building setbacks, building height, parking requirements, signage, and other environmental review matters.

1. The Board shall review and approve, approve with modifications or conditions or disapprove such applications within forty-five days of the meeting unless the application is tabled at the request of the applicant or the Board. The City shall maintain, as an official record of the approval, minutes of the meeting. ~~Any applicant may appeal the decision of the Board to Council by filing a notice of appeal with the Clerk of Council within fourteen days after the decision of the Board is rendered. The decision of Council shall be final.~~

**Section 3.**

Section 1223.04(c) of the Codified Ordinances of the City of Bexley for the Bexley Architectural Review District shall be amended to delete the last two sentences as follows:

1223.04 CERTIFICATE OF APPROPRIATENESS.

(a) No certificate of appropriateness shall be issued until an application has been filed with the Board. Such application shall be on a form furnished by the Board and shall, at a minimum, contain information regarding the elements for review set forth in Section 1223.03.

(b) Subject to Section 1223.03(c), the responsibility of review and approval or denial of the application for approval shall rest with the Board. All applications requiring review by the Board, rather than the staff, shall be made to the Board or its designee at least fourteen days before a regularly scheduled Board meeting; provided, however, that the Board may, for good cause, waive the fourteen-day advance filing requirement and, in the case of changes to a plan previously approved by it, may reduce any applicable time period for notice to other property owners, and consider a new or amended application at any regular or special meeting of the Board.

(c) The Board shall review and approve, approve with modifications or conditions or disapprove each such application. An application may be tabled at the request of the applicant or the Board. The City shall maintain, as an official record of the Board’s decision on an application, minutes of the meeting at which the application was considered. ~~Any applicant may appeal the decision of the Board to Council by filing a notice of appeal with the Clerk of Council within fourteen days after the decision of the Board is journalized in minutes approved by the Board. The decision of Council shall be final.~~

**Section 4.**

That the following Section 5 of Second Amended Ordinance 41-08 be and hereby is repealed.

~~Section 5. That appeals from any decision made by this newly created City Planning Commission may be made directly to Bexley City Council.~~

**Section 5.**

That Section 1224.03(a) of the Codified Ordinances of the City of Bexley for the Bexley Main Street District shall be amended to incorporate the provisions of Second Amended Ordinance 41-08 by adding the following language:

1224.03 MAIN STREET DISTRICT PLANS REVIEW.

(a) Main Street Redevelopment Commission. The Main Street Redevelopment Commission shall sit as the Main Street and Campus Planning District review authority. The Planning Commission shall sit as the Main Street Redevelopment Commission. The Main Street Redevelopment Commission shall exercise all administrative authority within the Main Street and Campus Planning Districts for the purposes of the Planning and Zoning Code (Part 12 of the Codified Ordinances). With respect to the Main Street and Campus Planning District, the Main Street Redevelopment Commission shall have all authority that would, but for this section, otherwise have been within the authority of Planning Commission and Board of Zoning Appeals, subject to the provisions of this Chapter.

**Section 6.**

That this ordinance shall be applied prospectively to any application filed after its effective date. It shall not affect the appeal of any application that has been filed with a Board or Commission

prior to the effective date of this ordinance.

**Section 7.**

That this Ordinance shall go into effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

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Richard Sharp, President of Council

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk of Council

Approved: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

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Benjamin Kessler, Mayor

**Ordinance Timeline:**

First Reading: May 26, 2015

Second Reading: June 9, 2015

Third Reading: