

**COMMISSIONERS ORDINANCE NO. O-2023-016**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, REPEALING, IN FULL, SECTIONS 32.060 THROUGH 32.080 OF THE CODE OF ORDINANCES AND RE-ENACTING THE SAME SECTIONS 32.060 THROUGH 32.081 THEREOF REGARDING THE HISTORIC PRESERVATION COMMISSION.**

WHEREAS, changes and updates to the existing Historic Preservation Commission have become necessary to more fully set forth the parameters for its establishment and operation,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, as follows:

**SECTION 1**

That Chapter 23: Boards and Commissions, Sections 32.060 through 32.080 of the Code of Ordinances shall be and are hereby repealed, in full, and re-enacted as Sections 32.060 through 32.081 thereof, as set forth in the attached. (18 pages.)

**SECTION II**

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded, published, and effective upon publication.

PASSED 1<sup>st</sup> READING: August 31, 2023

PASSED 2<sup>nd</sup> READING: September 25, 2023

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Thomas L. Guidugli Jr., Mayor

ATTEST:

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Tiffany Myers, City Clerk

## HISTORIC PRESERVATION COMMISSION

### §32.060 ESTABLISHMENT

- (A) Under the authority granted pursuant to KRS 82.026, as may be amended, there is hereby established the Newport Historic Preservation Commission, that may be hereinafter referred to as "the Commission."
- (B) The Commission is established for the purpose of:
  - (1) Protecting, enhancing, and perpetuating the distinctive historical and/or architectural characteristics of Newport which represent elements of the City's social, cultural, economic, political, and architectural history;
  - (2) Stabilizing and improving property values of Newport's landmarks and historic districts;
  - (3) Protecting and enhancing the City's attractiveness to tourists and visitors and the support of business and industry thereby provided;
  - (4) Fostering civic pride in the value of notable accomplishments of the past; and
  - (5) Promoting and assisting in development and growth, where the development or growth is consistent with the inherent value of the historic buildings, places or areas of Newport.

### §32.061 DEFINITIONS

For the purpose of this subchapter on the Historic Preservation Commission, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All other words shall be assigned their usual and customary meaning.

- (A) **ALTERATION.** Any act or process which changes one or more of the exterior architectural features of a structure designated for preservation. Painting or repainting of a structure shall not be considered an ALTERATION unless it involves the painting of a masonry or brick surface which has not been previously painted. The use of fluorescent paint or colors is prohibited.
- (B) **BOARD OF COMMISSIONERS.** The governing body of the City of Newport, Kentucky.
- (C) **CERTIFICATE OF APPROPRIATENESS (COA).** A certificate from the HPO or Commission authorizing plans for alteration, construction, moving, or demolition of a landmark, a landmark site or a structure which is located within a historic district.
- (D) **CERTIFIED LOCAL GOVERNMENT.** A government meeting the requirements of the National Historic Preservation Amendments Act of 1980 (Pub. Law No. 96515), as now in existence or as may hereafter be amended, and the implementing regulations of the U.S. Department of the Interior and the Kentucky Heritage Council.
- (E) **PLANNING AND DEVELOPMENT DIRECTOR.** The City employee appointed to oversee planning, development, and code enforcement in the City of Newport, Kentucky, or their designee.
- (F) **COMMISSION.** The Historic Preservation Commission for the City of Newport, Kentucky.
- (G) **DEMOLITION.** Any act or process other than natural causes or as a result of neglect, which destroys, in part or in whole, a structure.
- (H) **HISTORIC PRESERVATION OFFICER (HPO).** The Planning and Development Director or their designee that is designated as the person authorized to enforce the Historic Preservation Guidelines, review all applications for Certificate of Appropriateness, promote the Historic Districts and landmarks in the City, and any other role as established in this ordinance.
- (I) **HISTORIC DISTRICT.** An area which constitutes a distinct section of the City that has been designated a historic district in compliance with the provisions of [§32.075](#).



- (J) LANDMARK. A structure or site meeting one or more of the criteria contained in §32.075(A) that has been designated as a landmark in compliance with the provisions of §32.075.
- (K) LANDMARK SITE. The land on which a landmark and related structures are located, or land that meets the criteria of §32.075(A), either of which are designated as a landmark site in compliance with the provisions of §32.075
- (L) PERSON. The owner(s) of a landmark, landmark site, a property in the historic district or any contractor or subcontractor working thereon.
- (M) PRESERVATION-RELATED PROFESSIONAL. A person who has training or experience in the fields of architecture, history, archaeology, architecture history, planning, or related fields.

#### **§32.062 POWERS AND DUTIES**

- (A) The Commission shall have the powers, duties and authority granted by KRS Chapter 82, as now enacted or as may be hereafter amended, and those granted it by the code of ordinances of the City.
- (B) The Commission shall take action necessary and appropriate to accomplish the purpose of this subchapter, the Newport Code of Ordinances, and to participate in the Kentucky Certified Local Government program, as may be applicable. These actions may include, but are not limited to:
  - (1) Conducting a survey of historic buildings, historic areas, and cultural resources in the City and preparing a plan for their preservation;
  - (2) Recommending the designation of historic districts and individual landmarks or landmark sites;
  - (3) Regulating changes to designated property through the COA process, including proposed alterations that are visible to the public; demolitions, moving of structures, and new construction;
  - (4) Adopting guidelines for changes to designated landmarks, landmark sites, or properties and structures within a historic district;
  - (5) Serving as an architectural and design review board as may be required by the Newport Code of Ordinances;
  - (6) Working with and advising the federal, state, and county governments and other parts of City government; and
  - (7) Advising and assisting property owners and other persons and groups, including neighborhood organizations, who are interested in historic preservation.
- (C) In addition, these actions may include initiating plans for the preservation and rehabilitation of individual historic buildings and undertaking educational programs, including the preparation of publications and the placing of historic markers.
- (D) In the development of the certified local government program, the City may ask the Commission to perform other responsibilities that may be delegated to the City under the National Historic Preservation Act.
- (E) In making its survey of historic buildings and areas, the Commission shall conduct this work in accordance with the guidelines of the Kentucky Heritage Council. The Commission shall provide that its survey and preservation plan shall be maintained and continued. The Commission shall use the preservation plan to assist the City in its overall planning efforts.
- (F) The Historic Preservation Officer is authorized to have the roles and authorities of the Commission where specifically established in this ordinance or where authorized by the Commission.

### **§32.063 RULES AND REGULATIONS**

- (A) The Commission shall have the authority to adopt bylaws for the transaction of business.
- (B) The Commission shall have the authority to adopt all rules and regulations necessary to carry out its action under the provisions of this subchapter.
- (C) The bylaws, rules, and regulations promulgated by the Commission shall be submitted to the Board of Commissioners for approval.

### **§32.064 COMPOSITION**

- (A) The Commission shall consist of seven members who shall be appointed by the Mayor subject to the approval of the Board of Commissioners, all of whom shall be residents of the City and who shall have demonstrated an interest in historic preservation.
  - (1) At least two members shall be residents of the East Row Historic District;
  - (2) At least one member shall be a resident of the York Street Local Historic District; and
  - (3) At least two members shall meet the qualifications of a preservation-related professional.
- (B) Any subsequent local districts that may be created shall also be required to have a representative member thereof. No more than two members shall reside outside of the local designated historic district.

### **§32.065 TERM**

Each member of the Commission shall be appointed for a term of two years or until the appointment of their successor.

### **§32.066 COMPENSATION**

Members of the Commission shall serve with a compensation not to exceed \$150 per meeting.

### **§32.067 OATH**

All members of the Commission shall, before entering upon their duties, qualify by taking the oath of office prescribed by the Constitution of the Commonwealth of Kentucky.

### **§32.068 CODE OF ETHICS AND CONFLICTS OF INTEREST**

All Commission members shall be subject to the provisions of Chapter 39 of the Newport Code of Ordinances.

### **§32.069 OFFICERS**

- (1) The Officers of the Commission shall consist of, at a minimum, a Chairperson and Vice Chairperson as elected by the Commission. The Chairperson shall preside at all meetings of the Commission. They shall call meetings of the Commission when required. The Chairperson shall act as spokesperson for the Commission and shall have such other duties as are normally conferred on such officer by parliamentary procedure.
  - (2) The Vice Chairperson shall serve as Chairperson during the temporary absence or disability of the Chairperson. In the event of the Chairperson's absence, due to resignation or other causes, the Vice Chairperson shall perform the Chairperson's duties until such time as the Commission shall elect a new Chairperson.
- (B) The Commission may appoint a Secretary or other officers as it deems necessary to serve in a manner as established by the Commission.



#### **§32.070 FILLING OF VACANCIES**

- (A) The appointment of new members and filling of vacancies shall be made by the Mayor subject to approval of the Board of Commissioners.
- (B) Vacancies of any officers shall be filled by the Commission, as needed, in the same manner as the original election of applicable officer in [§32.069](#).

#### **§32.071 REMOVAL OF MEMBERS**

Any member of the Commission may be removed by the Mayor, with the approval of the Board of Commissioners, for inefficiency, neglect of duty, malfeasance, or violation of Chapter 39 of the Newport Code of Ordinances. Any member so removed shall have the right of appeal to the Circuit Court, as provided by law.

#### **§32.072 MEETINGS**

- (A) The Commission shall hold regular meetings as it deems necessary for the transaction of its business, based upon a schedule on file in the Office of the City Clerk. All meetings of the Commission shall be open to the public in accordance with State law. The Commission will, at a minimum, hold at least four meetings per year.
- (B) A simple majority of the total membership of the Commission shall constitute a quorum and be required to hold a public meeting.
- (C) A simple majority of members present at a meeting or hearing of the Commission shall be required to concur when making any decisions required by the Commission.
- (D) All meetings shall be advertised, shall have a previously available agenda, and shall comply with the Kentucky Open Meeting Statute.

#### **§32.073 RECORDS**

- (A) The Commission shall keep minutes of its proceedings, including regulations, transactions, findings and determinations, and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the fact, all of which shall, upon approval, be filed in the office of the Commission.
- (B) A copy of the minutes of the Commission shall be provided if requested by a party, at the expense of the requesting party, and the minutes shall constitute the record. The minutes shall be filed in the Office of the City Clerk and shall be a public record.
- (C) A transcript of the entire proceedings of the Commission meeting shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

#### **§32.074 ADOPTION AND AMENDMENT OF GUIDELINES**

- (A) There is adopted the East Row Historic District Design Review Guidelines as now adopted and as may hereafter be amended, by reference, the same as if fully set forth in this subchapter. Such guidelines shall apply to all landmarks, landmark sites, and properties within historic districts unless otherwise specified.
- (B) After the initial adoption of any guidelines, the Commission may amend the guidelines it has adopted, provided it holds a public hearing on the changes and submits the proposed changes to the Board of Commissioners for its review and approval in the same manner as they were adopted (See [§32.075](#)).

## **§32.075 DESIGNATION OF LOCAL HISTORIC DISTRICTS, LANDMARKS, OR LANDMARK SITES**

The following subsection shall address the processes and review criteria for designating local historic districts, landmarks, or landmark sites.

### **(A) Designation Criteria**

In considering any area, place, structure, work of art, or object in Newport as a local historic district, landmark, or landmark site, the City shall be required to demonstrate that such designation meets one or more of the following criteria as part of the applicable review procedure:

- (1) Its value as a reminder of the cultural or archaeological heritage of the City, state, or nation;
- (2) Its location as a site of a significant local, state, or national event;
- (3) Its identification with a person or persons who significantly contributed to the development of the City, state, or nation;
- (4) Its identification as the work of a master builder, designer or architect, whose individual work has influenced the development of the City, state, or nation;
- (5) Its value as a building that is recognized for the quality of its architecture and that retains sufficient elements showing its architectural significance;
- (6) Its distinguishing characteristics of an architectural style valuable for the study of a period, method of construction or use of indigenous materials;
- (7) Its character as a geographically definable area possessing a significant concentration or continuity of sites, buildings, objects, or structures, united by past events or aesthetically by plan or physical development; or
- (8) Its character as an established and geographically definable neighborhood, united by culture, architectural style, or physical plan and development.

### **(B) Designation of Local Landmarks or Landmark Sites**

#### **(1) Step 1 – Initiation**

The designation of a local landmark or landmark site may be initiated by the City Manager, after administrative consideration or direction from the Board of Commissioners, or by the filing of an application for designation by a property owner, any resident of Newport, or any organization in Newport. A person or an organization proposing a designation shall give the Commission the names and addresses of the owners of the subject properties and the owners of all adjoining property, as listed on the tax rolls of the City.

#### **(2) Step 2 – Notification and Scheduling of Public Hearing**

- (a) The Commission shall assemble information about the local landmark or landmark site district being considered for designation and shall schedule a public hearing on the proposed designation.
- (b) Advertised notice of the hearing shall be given in accordance with KRS Chapter 424 and, at a minimum, shall include:
  - (i) Written notice given by first-class mail to the owners of all properties under consideration at least 15 days prior to the public hearing. Such written notice shall also be sent to any owners of lots that adjoin the subject landmark or landmark site. Written notice shall be considered sufficient when it is mailed to the person listed on the tax rolls of the City; and
  - (ii) The conspicuous posting of a sign on the property that is the subject of the application.

**(3) Step 3 – Commission Review and Recommendation**

- (a) The Commission shall hold a public hearing regarding the proposed designation with the notice as required above.
- (b) Prior to such hearing, the Commission shall establish the guidelines that shall apply to the subject local landmark or landmark site. Such guidelines shall be considered and acted upon as part of any designation. The Commission shall have the authority to utilize the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, general guidelines applicable to all landmarks or landmark sites in the City, or special guidelines specific to the subject local landmark or landmark site.
- (c) After evaluating the testimony received at its public hearing, survey information, and other material it has assembled, the Commission shall have up to 12 months after a new designation is proposed to make its recommendation to the Board of Commissioners with a written report on the local landmark or landmark site under consideration. The report shall contain information about structures and sites which have been identified for inclusion in the proposed designation.

**(4) Step 4 –Board of Commissioners Review and Decision**

- (a) The Board of Commissioners shall review the information forwarded from the Commission and make a decision to approve, modify, or deny the proposed designation within 60 days after receiving the Commission's recommendation.
- (b) The Board of Commissioners shall make their decision by the enactment of ordinances.

**(5) Step 5 – Notification of Designation**

Within 30 days of the Board of Commissioner's decision, the Commission shall notify each owner of the decision relating to their property and shall arrange that the designation of a property as a local landmark or landmark site be recorded in the land records of Campbell County. The Commission shall also give notice of the decision to the government offices in the City and Campbell County, which shall retain them for future reference.

**(C) Designation of Local Historic Districts**

The following is the procedure for the designation of a local historic district, which requires a zoning ordinance amendment for a related overlay district.

**(1) Step 1 – Initiation**

The designation of a local historic district may be initiated by the City Manager, after administrative consideration or direction from the Board of Commissioners, or by the filing of an application for designation by a property owner, any resident of Newport, or any organization in Newport. A person or an organization proposing a designation shall give the Commission the names and addresses of the owners of all properties within the historic district and the owners of all lots that adjoin the district, as listed on the tax rolls of the City.

**(2) Step 2 – Notification and Scheduling of Public Hearing**

- (a) The Commission shall assemble information about the local historic district being considered for designation and shall schedule a public hearing on the proposed designation.
- (b) Advertised notice of the hearing shall be given in accordance with KRS Chapter 424 and, at a minimum, shall include:

- (i) Written notice shall be given by first-class mail to the owners of all properties under consideration at least 15 days prior to the public hearing. Such written notice shall also be sent to any owners of lots that adjoin the subject historic district. Written notice shall be considered sufficient when it is mailed to the person listed on the tax rolls of the City; and

**(3) Step 3 – Commission Review and Recommendation**

- (a) The Commission shall hold a public hearing regarding the proposed designation with the notice as required above.
- (b) Prior to such hearing, the Commission shall establish the guidelines that shall apply to the subject local historic district. Such guidelines shall be considered and acted upon as part of any designation. The Commission shall have the authority to utilize the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, general guidelines applicable to all historic districts, or special guidelines specific to the subject local historic district.
- (c) After evaluating the testimony received at its public hearing, survey information, and other material it has assembled, the Commission shall have up to 12 months after a new designation is proposed to make its recommendation to the Planning and Zoning Commission with a written report on the local historic district under consideration. The report shall contain information about the district and the structures and sites within the district which have been identified for inclusion in the proposed designation.
- (d) The Commission's recommendation shall be made to the Planning and Zoning Commission to form the base of an application for a zoning map amendment to a Design Review Overlay District that will have the same boundaries as the proposed local historic district.

**(4) Step 4 – Planning and Zoning Commission Review and Recommendation**

- (a) The Planning and Zoning Commission shall review the Commission's recommendation as part of a zoning map amendment process.
- (b) The review process and resulting recommendation to the Board of Commissioners shall be in the same form, and with the same public notice, as required by Article XVII of the Newport Zoning Ordinance.

**(5) Step 5 –Board of Commissioners Review and Decision**

- (a) The Board of Commissioners shall review the local historic district designation and the related zoning map amendment simultaneously.
- (b) The Board of Commissioners shall review the information forwarded from the Historic Preservation Commission and the Planning and Zoning Commission, and make a decision to approve, modify, or deny the proposed designation in accordance with the provisions of Article XVII of the Newport Zoning Ordinance.
- (c) The Board of Commissioners shall make their decision by the enactment of two ordinances. One ordinance shall be required for the designation of the local historic district, and a second ordinance shall be required for the related zoning map amendment to a Design Review Overlay District.



**(6) Step 6 – Notification of Designation**

Within 30 days of the Board of Commissioner's decision, the Commission shall notify each owner of the decision relating to their property and shall arrange that the designation of a property as that located within a local historic district be recorded in the land records of Campbell County. The Commission shall also give notice of the decision to the government offices in the City and Campbell County, which shall retain them for future reference.

**(D) Nominations to the National Register of Historic Places**

The designation of any landmarks, landmark sites, or historic district to the National Register of Historic Places shall follow the procedural requirements of Kentucky Heritage Council.

**(E) Amending or Rescinding of Designation**

- (1) The amendment or rescission of any designation shall be accomplished through the same steps as were followed in the original designation.
- (2) Passage of any ordinance to rescind a designation shall relieve the owner or owners of any properties from any duties or penalties related to this subchapter on historic preservation.

**(F) Moratorium on Demolition During Designation Process**

- (1) A moratorium on all demolition of any structure shall be in effect in areas proposed for designation as a landmark, landmark site, or historic district until such time that the Board of Commissioners has approved, modified or disapproved the proposed designation.
- (2) During the period of any moratorium, approval for or the denial of, any request for demolition shall be required in accordance with the COA process and historic preservation guidelines set forth herein.

**§32.076 CERTIFICATE OF APPROPRIATENESS (COA)**

**(A) Purpose**

Newport's local historic districts, special design areas, local landmarks, and local landmark sites are a visible reminder of the history, architecture, and cultural heritage of the city, state, and nation. In an effort to preserve the character of these areas, buildings, and sites, the city has established reasonable development standards and design guidelines for buildings and structures within historic districts or for landmarks and landmark sites outside of a historic district. The purpose of the COA is to provide a method of review for the construction, expansion, alteration, demolition, or other modification of the buildings and structures in local historic districts and design review overlay districts or for local landmarks and local landmark sites outside of historic districts.

**(B) Applicability**

- (1) Unless specifically exempted by this code of ordinances, no person shall carry out any exterior alteration, addition, restoration, reconstruction, demolition, removal of exterior architectural elements, construction that alters the architectural style of existing structures, new construction, or moving of a site, structure, or building that is a locally designated landmark or landmark site, or that is within a locally designated historic district, without an approved COA. Furthermore, no changes in appearance of such property or structure shall be made, including, but not limited to, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, latticework, decorative trim, fences, walls, retaining walls, steps, soffits, paving, or other exterior elements which affect the appearance and cohesiveness of the local historic district, design review overlay district, local landmark, or local landmark site without first obtaining an approved COA in accordance with this section.
- (2) Site improvements such as the establishment of a parking lot or structure, landscaping, or other site work shall also be subject to this section unless otherwise waived by the HPO.

- (3) Projects and activities that are exempt from the COA process are the following:
- (a) Ordinary repair and maintenance of a building or structure which does not change or alter the exterior appearance of the building or structure;
  - (b) Changes in occupancy not involving structural or exterior work;
  - (c) Interior electrical wiring, HVAC or plumbing work on an existing structure; and
  - (d) Interior building renovations which will not alter and/or affect the exterior elevations and facade of the building or structure or any architectural features that are visible from the outside.

**(C) COA Review Authority**

- (1) All applications for a COA that include any of the following work shall be subject to review by the Commission in accordance with [§32.076\(G\)](#):
- (a) Construction, expansion of floor area, moving, or demolition (partial or complete) of all new or existing buildings and structures; or
  - (b) Any substantial change in building materials, building elements (e.g., doors, windows, architectural ornamentation, etc.) as may be determined by the HPO.
- (2) All other applications for a COA shall be reviewed by the HPO in accordance with [§32.076\(F\)](#).
- (3) The HPO shall have the authority to forward a COA application to the Commission for review pursuant to [§32.076\(G\)](#) if the HPO finds:
- (a) That the proposed use or development could potentially create significant impacts on an adjacent property based on the intensity or proximity of the proposed use, construction, alteration, or other modification; or
  - (b) There is difficulty in interpreting the application of a standard, guidelines, or other regulation as it pertains to the subject application.

**(D) Determining the Significance of a Structure and Related Applicability**

- (1) When making decisions or recommendations about changes to structures subject to the COA requirement, the HPO or Commission, as applicable, shall have the authority to make a determination of the historical or architectural significance of the structure based on this section.
- (2) In cases where there is an adopted historic inventory, the HPO or Commission, as applicable, shall utilize the information in the historic inventory to make a determination of the significance (historic, non-historic contributing, historic noncontributing, and noncontributing).
- (3) Where a historic inventory has not been adopted, the HPO or Commission, as applicable, shall determine whether a structure or site is historic, non-historic contributing, historic, non-contributing, and non-contributing based on the structure's or site's:
- (a) Value as a reminder of the cultural, historical, or archaeological heritage of the City, state, or nation;
  - (b) Location as a site of a significant local, state, or national event;
  - (c) Identification with a person or persons who significantly contributed to the development of the City, state, or nation;
  - (d) Identification as the work of a master builder, designer, or architect whose individual work has influenced the City, state, or nation;



- (e) Value as a building that is recognized for the quality of its architecture and that it retains sufficient elements showing such architectural significance;
  - (f) Example of an architectural style or period; and/or
  - (g) Character as a contributing element in the applicable historic district.
- (4) For structures that the HPO or Commission, as applicable, finds are not historic non-contributing or non-contributing, the HPO or Commission, as applicable, may relax or waive the standards or guidelines that apply to the project.
  - (5) If the HPO or Commission, as applicable, finds that the structure is historically or non-historic contributing, the standards and guidelines of this code may be fully applied at the discretion of the HPO or Commission, as applicable.

**(E) Initiation**

- (1) The Planning and Development Department shall forward every application for a permit that would authorize an exterior alteration visible to the public, new construction, demolition or relocation affecting a local landmark, a local landmark site or a property in a local historic district to the HPO. The HPO shall give the applicant a form requesting additional information regarding the application.
- (2) When a person wishes to undertake an exterior alteration, visible to the public, affecting a landmark, a landmark site or a property in a historic district which does not require a building permit, that person shall apply directly to the HPO for a COA.
- (3) An application for a COA may be initiated by the property owner or other person with authority to file an application as authorized by the property owner.

**(F) COA Review Procedure by the HPO**

The review procedure for a COA subject to review by the HPO shall be as follows:

**(1) Step 1 – Application**

The applicant shall submit an application in accordance with the provisions of this subchapter on the Historic Preservation Commission.

**(2) Step 2 – HPO Review and Decision**

- (a) The HPO may distribute the application to other staff members and other city departments to solicit comment on the proposed COA application.
- (b) Within 30 days after the application is determined to be complete, the HPO shall make a decision on the application. In making its decision, the HPO may approve or deny the application. The HPO shall also have the authority to forward the application to the Commission for review pursuant [§32.076\(G\)](#).
- (c) Prior to finalizing approval of the application, the HPO shall have the authority to provide comments to the applicant regarding necessary revisions to bring the application into full compliance. The application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, and documents to the HPO.

**(3) Step 3 – Zoning Permit Application**

- (a) Following the formal approval of the COA application, the HPO shall issue a COA.

- (b) Following issuance of a COA, the applicant may immediately submit an application for a zoning permit. The applicant may also request simultaneous application review of the COA and zoning permit. In no case shall there be a decision on a zoning permit where a COA is required unless an approval of a COA has been granted prior to the final decision on the zoning permit.

**(G) COA Review Procedure by the Commission**

The following procedure shall apply to any application subject to review by the Commission or any application the HPO determines should be reviewed by the full Commission.

**(1) Step 1 – Pre-application Conference (Optional)**

- (a) Prior to filing an application, an applicant may request a meeting with the HPO or city staff for a pre-application conference to discuss the subject application.
- (b) An applicant may also request to meet with the Commission during a scheduled work session to discuss the proposed application and development. Such request shall be submitted to the HPO in writing at least 14 days in advance of the Commission's next meeting.
- (c) The applicant shall supply preliminary information to the HPO. The applicant shall submit such information according to the established deadlines of the Commission's next meeting.
- (d) The purpose of the pre-application conference shall be to review the draft site plan with the HPO and other staff members, as appropriate, and to identify any initial conflicts between the application, this code, and any applicable design guidelines.
- (e) No action can be taken by the HPO or Commission until the applicant submits an actual application and/or plan to the City pursuant to the laws and policies of the City. Therefore, all discussions that occur between the applicant and HPO and/or Commission prior to the date applicant submits an actual application and/or plan, including, but not limited to, any informal meetings with the HPO, are not binding on the City and do not constitute official assurances or representations by the City or its officials regarding any aspects of the plan or application discussed.

**(2) Step 2 – Application**

- (a) The applicant shall submit an application in accordance with the provisions of this subchapter on the Historic Preservation Commission.
- (b) In making application, the HPO or Commission may request that the applicant provide exhibits, plans, sketches, examples of materials, renderings, or other documentation to assist in their decision.
- (c)

**(3) Step 3 – HPO Review**

- (a) Upon determination that a COA application is complete, the HPO shall refer the application to the Commission.
- (b) Prior to the Commission meeting for the subject application, the HPO shall review the application and may prepare a staff report.



**(4) Step 4 – Commission Review and Decision**

- (a) The Commission shall review the application during a scheduled public meeting within 45 days after the completed application is received by the HPO, unless extenuating circumstances exist or upon the agreement of the applicant and the HPO or the Commission. In reviewing the application, the Commission shall at a minimum, consider the staff report from the HPO, if submitted, the applicable design guidelines, and the review criteria of this subchapter.
- (b) Within 60 days after the completed application is received by the HPO, the Commission shall make a decision; however, the Commission may extend the time for decision an additional 60 days, when the application is for demolition or new construction. In making its decision, the Commission may approve, approve with modifications, or deny the application.
- (c) If the Commission fails to decide on an application within the specified time period, the application shall be deemed approved.
- (d) If the Commission approves the COA with some modification, the COA application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, plans, and documents to the HPO that will illustrate the development as approved by the Commission including any approved changes or modifications.
- (e) If the application is denied, the Commission shall give its reasons for the denial using the criteria used in this subchapter.
- (f) In making its decision, the Commission may prepare a list of routine alterations, which shall receive immediate approval without a public hearing when an applicant complies with the specifications of the Commission. The list shall include suggested paint colors appropriate for different types of buildings.

**(5) Step 5 – Zoning Permit Application**

- (a) Following the formal approval of the COA application, the HPO shall issue a COA.
- (b) Following issuance of a COA, the applicant may immediately submit an application for a zoning permit. The applicant may also request simultaneous application review of the COA and zoning permit. In no case shall there be a decision on a zoning permit where a COA is required unless an approval of a COA has been granted prior to the final decision on the zoning permit.

**(H) COA Review Criteria**

**(1) General Review Criteria for all COA Applications**

Decisions on a COA application shall be based on consideration of the following general review criteria:

- (a) The proposed development is in compliance with all the requirements of this code and other related codes and ordinances enforced by the city;
- (b) The proposed development is in compliance with the applicable base zoning district and any applicable overlay districts;
- (c) The proposed development meets all the requirements or conditions of any applicable development approvals (e.g., conditional use approvals, variance approvals, etc.);
- (d) The proposed development complies with the applicable design guidelines;

- (e) In its considerations of whether an application is deserving of an approval, the HPO or Commission, as applicable, may also consider the cost of modifications or other proposals, where costs for a particular action or inaction may be unreasonable given existing conditions of a structure, site, or area.
- (f) The HPO or Commission, as applicable, shall encourage alterations and repairs to historic structures and to structures in historic districts in the spirit of their existing architectural style; however, additions in styles different than the existing structure may be approved if such additions complement the existing architectural style. The HPO or Commission, as applicable, shall be flexible in its judgment of plans for alteration, repair, or demolition of structures, sites, and areas of little historic or cultural value except where such alteration, repair, or demolition would seriously impair the historic value and character of surrounding structures or of the surrounding area. It is not the intent of this subchapter to limit alteration or repair to any one period of architectural style.
- (g) In making a decision on an application, the Commission shall be aware of the importance of finding a way to meet the current needs of the applicant. The Commission shall also recognize the importance of approving plans that will be reasonable for the applicant to carry out.

**(2) Additional Review Criteria for the Moving of Historic Structures**

- (a) The Commission may authorize the moving of a historic structure or structure in a historic district through a COA application.
- (b) The Commission may approve a COA for the moving of a structure within the same historic district if the move will enhance the character of the overall district or not substantially alter the district.
- (c) In general, the Commission shall consider the following criteria for the moving of historic structures:
  - (i) The contribution the building or structure makes to its present setting;
  - (ii) Whether there are definite plans for the site to be vacated;
  - (iii) Whether the building or structure can be moved without significant damage to its physical integrity; and
  - (iv) The compatibility of the building or structure to its proposed site and adjacent properties.
  - (v) These considerations shall be in addition to the points contained in [§32.076\(H\)\(1\)](#), above.
- (d) The Commission may approve a COA for the moving of a structure to a property outside of the historic district provided that:
  - (i) There is a determination that the structure is noncontributing in an adopted historic inventory; or
  - (ii) That while the structure is historic, that the reuse of the property where the structure was located will enhance the character and quality of the historic district as compared to the structure that is proposed to be moved.

**(3) Additional Requirements and Review Criteria for Demolition**

- (a) An application for the demolition of a building shall require a COA and follow the procedures and requirements of Section [§32.076\(G\)](#).

- (b) Any application for demolition shall include a plan for the reuse of the property that illustrates the mitigation of any adverse effects of the proposed removal upon the property, the streetscape, or the applicable historic district. Such plan shall demonstrate reuse through new construction, exterior rehabilitation, or restoration. Additionally, such plan shall demonstrate that the plan is consistent with this subchapter and any applicable guidelines; contributes to the historic character of the district, or, in the case of a landmark or landmark site, reflects the architectural character of the demolished structure; complies with the applicable design guidelines; and which contributes to the architectural or historic integrity of the applicable historic district; and
- (c) Where an application includes a plan for the reuse of the property through new construction, the application shall include a schedule for construction that will result in the completion of new construction within 24 months from the date the COA is issued. Completion dates that extend beyond 24 months may be granted at the discretion of the Commission.
- (d) **Demolition Approval Criteria:**

The Commission may approve a COA for demolition only if one of the following is satisfied:

  - (i) The applicant has given clear evidence that the structure has incurred extensive damage to its basic structural elements such as roof, wall, and foundation requiring substantial reconstruction, and the structure presents an immediate danger to the public health, safety, or welfare as declared by the Planning and Development Director (condemnation), or their designee, but that such damage was not done through neglect of the property by the owner or former owners; or
  - (ii) The demolition is proposed for a structure that is identified by the Commission as not contributing to the landmark site or the historic district; or
  - (iii) The applicant can demonstrate an undue economic hardship during the hearing with evidence describing the circumstances of hardship. The minimum evidence shall include for all property:
    - A. The nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control;
    - B. Financial resources of the owner and/or parties in interest;
    - C. Cost of repairs;
    - D. Assessed value of the land and improvements;
    - E. Real estate taxes for the previous two years;
    - F. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance;
    - G. Annual debt service, if any, for previous two years;
    - H. Any listing of the property for sale or rent; price asked, and offers received, if any;
    - I. Annual gross income from the property for the previous two years, for income-producing property;
    - J. Itemized operating and maintenance expenses for the previous 2 years, including proof that adequate and competent management procedures were followed, for income-producing property; and

K. Annual cash flow, if any, for the previous 2 years, for income-producing property.

**(e) Demolition Approval Considerations**

- (i) For decisions related to economic hardship, the Commission shall cause to be made a finding of undue or no undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the Commission shall cause to be issued an order for such property to be repaired within the time specified.
- (ii) In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, relaxation of the provisions of the historic preservation guidelines sufficient to mitigate the undue economic hardship. The Commission shall report such finding and plan to the HPO. The Commission shall cause to be issued an order for such property to be repaired within the time specified, and according to the provisions of the recommended plan.
- (iii) When an applicant wishes to demolish a landmark, a building or structure on a landmark site, or a building or structure in a historic district, the Commission shall see if an alternative to demolition can be found. The Commission may ask interested individuals and organizations for assistance in seeking an alternative to demolition and in obtaining estimates on rehabilitation costs for the threatened building. Neglect to a structure which causes deteriorations shall not be considered as a factor to permit demolition of the structure.
- (iv) On all other demolition applications, the Commission shall study the question of economic hardship for the applicant and shall determine whether the landmark or the property in the historic district can be put to reasonable beneficial use, without the approval of the demolition application.
- (v) In the case of an income-producing building, the Commission shall also determine whether the applicant can obtain a reasonable return from their existing building.
- (vi) The Commission may ask applicants for additional information to be used in making these determinations. These determinations shall be in addition to the points contained in other parts of this subchapter. If economic hardship or the lack of a reasonable return is not proved, the Commission shall deny the demolition application unless the Commission finds grounds to grant the demolition application under the points contained in this subchapter.

**(f) Demolition by Neglect Prohibited**

The Commission shall not issue a COA for demolition when the Commission determines:

- (i) That the condition of the structure is attributable to demolition by neglect defined as a situation in which property owners, or others having legal possession, custody, or control of a property, allowed the condition of the property to suffer such deterioration, potentially beyond the point of repair, as to threaten the structural integrity of the structure.
- (ii) Conditions of neglect include, but are not limited to, the following:
  - A. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
  - B. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.



- C. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
- D. Deterioration or crumbling of exterior plasters or mortars.
- E. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- F. Defective protection or lack of weather protection for exterior wall and roof covering, including lack of paint, or weathering due to lack of paint or other protective covering.
- G. Rotting, holes, and other forms of decay.
- H. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling;
- I. Heaving, subsidence, or cracking of sidewalks, steps, or pathways;
- J. Deterioration of fences, gates, and accessory structures;
- K. Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the Historic Landmark; and
- L. Deterioration that contributes to a hazardous or unsafe condition.

(iii) In order to help determine neglect of a property, the Commission may obtain and review documentation of any warnings or citations of property maintenance violations filed on the property.

**(g) Access to Structure by the Planning and Development Director**

The property owners, or others having legal possession of the property, shall provide the Planning and Development Director, or their designee, access to the property in order to assist in the determination of the condition of the structure as part of any application for a COA related to demolition.

**(I) Time Limit**

- (1) The applicant shall submit a completed application for a zoning permit within one year of the date the COA was approved or the approval shall expire. The date of approval shall be the date the HPO issues the COA.
- (2) Upon expiration of a COA, a new application, including all applicable fees, shall be required.
- (3) Upon written request, one extension of one year may be granted by the HPO if the applicant can show good cause for a delay.
- (4) The Commission may authorize alternative time limits for zoning permit issuance based on the scale of the proposed development.

**(J) Amendments of a COA after Approval**

- (1) Unless otherwise stated in this subchapter, any request for an amendment or modification to the approved plans or conditions shall be done in accordance with the procedures and standards established for its original approval.
- (2) The HPO shall have the authority to review and make a decision on any amendment of a COA approval if they find that the amendment is minor or technical in nature and will not have a substantive impact on the approved work.

**(K) Effect of a COA Approval**

The issuance of a COA shall not relieve the property owner from complying with the requirements of other state and local laws and regulations.

**(L) Stop-Work Orders**

In the event any work has been performed without the required COA, at the request of the HPO, the Planning and Development Department shall issue a stop-work order. In the event any work has been performed which is not in accordance with the certificate, the Planning and Development Department shall issue a stop-work order and may cite violators to District Court. All work shall cease on the designated property. No additional work shall be undertaken as long as the stop-work order shall continue in effect. The City may apply in Circuit Court for an injunction to require restoration and/or to enforce its stop-work order and the cost of such proceeding shall be borne by the property owner if the City is successful in its application for an injunction.

**§32.077 MAINTENANCE REQUIRED**

- (A)** The exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant feature), or any type of outdoor advertising sign either designated as a landmark, landmark site, or on a structure in a historic district shall be preserved by the owner or such other person who may have legal possession, custody, and control thereof against decay and deterioration and kept free from structural defects.
- (B)** The owner, or other person having such legal possession, custody, and control, shall, upon written request by the City repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration, including but not limited to any of the defects listed in [§32.076\(H\)\(3\)\(f\)\(ii\)](#).
- (C)** The HPO may request the Planning and Development Department require the correction of deterioration or making of repairs to any landmark, landmark site, or structure located within a historic district under the following procedures so that such structure shall be preserved and protected in accordance with the purpose of this code.

  - (1)** Whenever such a request is filed with the Planning and Development Department charging that a structure is undergoing demolition by neglect, the Planning and Development Department shall, if its preliminary investigation discloses a basis for such charges, within seven days, issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a complaint stating the charges in that respect and containing a notice that the defects be fixed not less than 30 nor more than 45 days after the serving of such complaint; that the owner and/or parties in interest shall be given a right to answer the complaint and request a hearing before the Commission. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the owner and/or other parties in interest wish to make a claim of undue economic hardship.
  - (2)** If after such notice and hearing, the Commission determines that the structure is undergoing demolition by neglect because it is deteriorating, or if its condition is contributing to deterioration, according to the standards, the Commission shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated. The City or the owner shall appeal such decision to Circuit Court within 30 days or said decision shall be final.

#### **§32.078 EMERGENCY CONSIDERATION**

- (A) In the case of unusual circumstances, whereby the normal process for obtaining a COA as set forth in this subchapter creates undue hardship for the health, safety, and welfare of the applicant or the general public, the HPO or the Commission may, at their discretion, waive the normal process and give immediate approval for a COA.
- (B) An owner shall immediately notify the HPO of emergency conditions dangerous to life, health, or property affecting a landmark, a landmark site, a property in a historic district, or a property in a design overlay district, and the owner shall promptly provide evidence of the dangerous conditions, which has been prepared by a person with professional qualifications in evaluating buildings and structures. The HPO may order the remedying of these conditions without the approval of the Commission.
- (C) In any case where the HPO determines that there are emergency conditions dangerous to life, health, or property affecting a landmark, a landmark site, a property in a historic district, or a property in a design overlay district, they may order the remedying of these conditions without the approval of the Commission.
- (D) The HPO shall promptly notify the Chairperson of the Commission of the action being taken.
- (E) The HPO or the Commission shall state their reasons, in writing, for the immediate approval.

#### **§32.079 ENFORCEMENT**

- (A) The HPO may bring a criminal complaint in the District Court against any person who violates any provisions of this subchapter of the Code of Ordinances or regulations and guidelines hereunder.
- (B) The City shall have a civil cause of action in Circuit Court for all appropriate relief including injunctions against any person who violates any provisions of this subchapter of the Code of Ordinances or regulations and guidelines adopted hereunder. This remedy may be in addition to the criminal complaint remedy under division (A) above.

#### **§32.080 APPEALS**

Any aggrieved party to a decision of the Commission may appeal the decision within 30 days of the date of the Commission's decision to the Campbell Circuit Court, located in Newport, Campbell County, Kentucky, as provided by law.

#### **§32.081 PENALTY**

Any person, firm, organization, or corporation who violates any of the provisions of this chapter or fails to obtain a requisite certificate of appropriateness may be cited to District Court by the Planning and Development Director and shall, upon conviction, be guilty of a Class B misdemeanor in accordance with the Kentucky Revised Statutes.