

AN ORDINANCE AMENDING ARTICLES 8-17, 8-18 & 8-19 & ARTICLE 27 OF THE ZONING ORDINANCE TO IMPLEMENT “DESIGN EXCELLENCE”. (URBAN COUNTY PLANNING COMMISSION).

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered text amendments to Articles 8-17, 8-18 & 8-19 & Article 27 of the Zoning Ordinance to implement “Design Excellence”; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on March 27, 2014; and

WHEREAS, the Planning Commission did recommend APPROVAL of the text amendment by a vote of 10-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Articles 8-17, 8-18 & 8-19 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

8-17 DOWNTOWN BUSINESS (B-2) ZONE

8-17(a) Intent - This zone is intended to accommodate existing and future development in the Central Business District.

8-17(b) Principal Uses (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. The principal permitted uses in the B-1 (and P-1) zone.
2. Amusement enterprises, such as indoor billiard or pool halls; bowling alleys; dance halls; skating rinks.
3. Restaurants, cocktail lounges and nightclubs, with entertainment, dancing or the sale of alcoholic beverages.
4. Establishments for the display, rental, or sale of automobiles, motorcycles, trucks not exceeding one and one-half (1½) tons, and boats limited to runabout boats, provided that the outdoor display or storage of vehicles shall conform to the requirements of Article 16.
5. Establishments engaged in blueprinting, printing, publishing, and lithographing, interior decorating; upholstering; laundering; clothes cleaning and dyeing; dressmaking and tailoring.
6. Hotels and motels.
7. Passenger transportation terminals.
8. Any type of dwelling unit.
9. Wholesale establishments.
10. Minor automobile and truck repair.
11. Establishments primarily engaged in the sale of supplies and parts for vehicles and farm equipment.
12. Pawnshops.
13. Stadium and exhibition halls.
14. Cable television system signal distribution centers and studios.
15. Animal hospitals or clinics, provided all exterior walls are completely soundproofed and all animal pens are completely within the principal building and used only for the medical treatment of small animals.
16. Athletic club facilities.

17. Adult arcades, massage parlors, adult book- stores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers, provided that none shall be located within a 500-foot radius of any agricultural or residential zone, any elementary or secondary school, any park attended by persons under 18 years of age, or within a 1,000-foot radius of any other similarly regulated adult business.

8-17(c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. Storage, wholesaling, and warehousing.
2. Storage yards for delivery vehicles of a permitted use.
3. Sidewalk café, when accessory to any permitted restaurant.
4. Major automobile and truck repair, when accessory to an establishment primarily engaged in the sale of automobiles and trucks.
5. Satellite dish antennas, as further regulated in Article 15-8.
6. Micro-brewery, when accessory to a restaurant permitted herein, and shall be located at least 100 feet from a residential zone and shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.

8-17(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

1. Helistops, provided such facilities conform to the requirements of all appropriate federal, state and local regulations.
2. Drive-through facilities for sale of goods or products or provision of services otherwise permitted herein.
3. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
 - a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
 - b. That a reasonable degree of reclamation and proper drainage control is feasible; and
 - c. That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
4. Adult arcades, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers, except as permitted herein, provided none shall be located within a 500-foot radius of any elementary or secondary school, any park attended by persons under 18 years of age, or within a 1,000-foot radius of any other similarly regulated adult business.
5. Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
 - a. To check all operating equipment;
 - b. To check fire suppression system(s);
 - c. To check the condition of the fire alarm(s);
 - d. To check for indications of fuel leaks and spillage;
 - e. To remove trash from the site;
 - f. To monitor the general condition of the site.
6. Assisted living facilities and rehabilitation homes, when located closer than 500 feet from a residential zone.
7. Temporary structures designed for use or occupancy for 61 to 180 days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.
8. Circuses, provided all structures are located not less than 200 feet from any residential zone; and further provided that all structures for housing animals shall be 200 feet from any residential zone, residential use, school, hospital, nursing home or rest home. A circus may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.
9. Automobile and vehicle refueling stations, provided such use conforms to all requirements of Article 16.
10. Day shelters.

8-17(e) Prohibited Uses (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

1. The prohibited uses in the B-1 zone, items 1 through 7, except as permitted herein.
2. Outdoor kennels, or outdoor animal runs.
3. Establishments engaged in the display, rental, or repair of farm equipment, trucks exceeding one and one-half (1½) tons, and contractor's equipment.
4. The above- or below-ground storage of any flammable material in gaseous form, including

compressed natural gas.

Lot, Yard and Height Requirements (See Articles 3 and 15 for additional regulations.)

8-17(f) Minimum Lot Size - No limitation.

8-17(g) Minimum Lot Frontage - No limitation.

8-17(h) Minimum Front Yard - See Special Provisions.

8-17(i) Minimum Each Side Yard - See Special Provisions.

8-17(j) Minimum Rear Yard - No limitation.

8-17(k) Minimum Usable Open Space - No limitation.

8-17(l) Maximum Lot Coverage - No limitation.

8-17(m) Height of Building - See Special Provisions.

8-17(n) Off-Street Parking (See Article 16 for additional parking regulations.)

Dwelling Units - No requirements, except for buildings with 25 or more dwelling units; then one (1) space for every 2,000 square feet of residential floor area.

All Other Permitted Uses - Off-street parking not required.

Off-street loading shall be as required in Article 16.

8-17(o) Special Provisions:

1. Redevelopment of any site shall comply with the Downtown Streetscape Master Plan for Lexington, Kentucky.
2. No building permits shall be issued within a B-2 zone except in compliance with the provisions of Article 27. The Downtown Design Excellence Board shall be empowered to fully regulate building heights, setbacks, and other design features in compliance with the provisions of the adopted guidelines.
3. For any property zoned B-2 which is within an H-1 Overlay District, the rules and procedures outlined in Article 13 shall take precedent and the property shall not be subject to Section 8-17(o)(2).

8-18 DOWNTOWN FRAME BUSINESS (B-2A) ZONE

8-18(a) Intent - This zone is intended to accommodate existing and proposed development in the transitional "frame," which surrounds the downtown core area, by providing for comparable and compatible uses while anticipating the future expansion of the downtown core area.

8-18(b) Principal Uses (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. The principal permitted uses in the B-2 zone.

8-18(c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. The permitted accessory uses in the B-2 zone.

8-18(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

1. The permitted conditional uses in the B-2 zone.

8-18(e) Prohibited Uses (All uses other than those listed as principal, accessory, or conditional uses or substantially similar to principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are prohibited.)

1. The prohibited uses in the B-2 zone.

Lot, Yard, and Height Requirements (See Articles 3 and 15 for additional regulations.)

8-18(f) Minimum Lot Size - No limitation.

8-18(g) Minimum Lot Frontage - No limitation.

8-18(h) Minimum Front Yard - No limitation.

8-18(i) Minimum Each Side Yard - No limitation.

8-18(j) Minimum Rear Yard - No limitation.

8-18(k) Minimum Usable Open Space - No limitation.

8-18(l) Maximum Lot Coverage - No limitation.

8-18(m) Maximum Height of Building – Up to 12 stories under Section 8-18(o) Special Provisions below.

8-18(n) Off-Street Parking (See Article 16 for additional parking regulations.)

Ten percent (10%) of the least parking area required in any zone, other than the B-2 or B-2B zones which permit the principal or a similar use. Off-street loading and unloading areas shall be as required in Article 16.

8-18(o) Special Provisions:

1. Redevelopment of any site shall comply with the Downtown Streetscape Master Plan for Lexington, Kentucky.
2. No building permits shall be issued within a B-2A zone except in compliance with the provisions of Article 27. The Downtown Area Design Excellence Board shall be empowered to fully regulate building heights up to the 12-story limit, setbacks, and other design features in compliance with the provisions of the adopted guidelines.
3. For any property zoned B-2A which is within an H-1 Overlay District, the rules and procedures outlined in Article 13 shall take precedent and the property shall not be subject to Section 8-18(o)(2).

8-19 LEXINGTON CENTER BUSINESS (B-2B) ZONE

8-19(a) Intent - This zone is intended to ensure compatible land uses, the preservation of existing attractions compatible with the Lexington Center, and the encouragement of new uses necessary to the proper development of the downtown area. The permitted land uses in the zone should have some logical relation to the Lexington Center and to the downtown core, should promote tourism, should promote the economic health of the community, should provide for an aesthetically pleasing environment, and should prevent the creation of influences adverse to the prospering of the Lexington Center and the downtown area.

8-19(b) Principal Uses (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. Civic Center and convention facilities.
2. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions; savings and loan companies, holding and investment companies.
3. Offices and clinics.
4. Schools for academic instruction.
5. Libraries, museums, art galleries, and reading rooms.
6. Studios for work or teaching of fine arts, such as photography, music, drama, dance or theater.
7. Churches, Sunday schools, and parish houses.
8. Ticket and travel agencies.
9. Restaurants, cocktail lounges and nightclubs, including those serving alcoholic beverages and/or offering live entertainment, except as prohibited under Section 8-19(e).
10. Establishments for the retail sale of primarily new merchandise.
11. Beauty shops, barber shops, shoe repair, dressmaking or tailoring.
12. Retail sale of plant, nursery or greenhouse products, or agricultural produce.
13. Hotels or motels.
14. Any type of residential use.
15. Antique shops.
16. Establishments for the display, rental or sale of automobiles, motorcycles, trucks not exceeding one and one-half (1½) tons, and boats limited to runabout boats; provided that the outdoor display or storage of vehicles shall conform to the requirements of Article 16.
17. Amusement enterprises, such as circuses; carnivals; horse racing or automobile racing, provided such activity is operated on a temporary basis of a duration not exceeding two weeks.
18. Establishments engaged in blueprinting, printing, publishing, and lithography; interior decoration and upholstery; repair of household appliances.
19. Bookstores, except as prohibited under Section 8-19(e).
20. Indoor amusement enterprises, such as motion picture theaters, except as prohibited under Section 8-19(e); billiard or pool halls; bowling alleys; dance halls, skating rinks; and arcades.
21. Computer and data processing centers.

22. Telephone exchanges, radio and television studios.
23. Cable television system signal distribution centers and studios.
24. Private clubs, except as prohibited under Section 8-19(e)(7, 8 and 9).
25. Kindergartens, nursery schools and child care centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than 25 square feet per child.
26. Pawnshops which: (1) were in operation prior to August 31, 1990 and in compliance with the provisions of KRS 226.010 et seq. and Code of Ordinances, Sections 13-52 and 13-53; or (2) had on file with the Lexington-Fayette Urban County Government, prior to August 31, 1990, an application for a business license or certificate of occupancy.

8-19(c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. Storage area for delivery vehicles of a permitted use.
2. Sidewalk café, when accessory to any permitted restaurant.
3. Health clubs, athletic clubs and spas, when operated solely for the use of occupants of residential uses, employees, tenants and owners of office uses, or registered guests of hotels and motels.
4. Major automobile and truck repair, when accessory to an establishment primarily engaged in the sale of automobiles and trucks.
5. Parking lots and parking structures, when accessory to principal permitted uses.
6. Satellite dish antennas, as further regulated by Article 15-8.
7. Micro-brewery, when accessory to a restaurant permitted herein; and shall be located at least 100 feet from a residential zone and shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.

8-19(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

1. Automobile service stations at which only minor automobile and truck repair is performed, and provided such use conforms to all requirements of Article 16.
2. Automobile rental facilities; parking lots and parking structures, when not accessory to a principal permitted use, provided such uses conform to all requirements of Article 16.
3. Secondhand shops.
4. Self-service laundry or laundry pick-up stations, including clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed-system process.
5. Helistops, provided such facilities conform to the requirements of all appropriate Federal, State and local regulations.
6. Drive-through facilities for sale of goods or products or provision of services otherwise permitted herein.
7. Health clubs, athletic clubs and spas, except as a permitted in 8-19(c)(3).
8. Recycling drop-off centers for aluminum; steel; plastic; glass; newspapers; cardboard and other paper products; oil and other household recyclable waste, provided that such an establishment shall be located at least 200 feet from any residential zone. Any appeal for a conditional use permit to operate a recycling drop-off center shall include as part of the application: Reasons for the location of the proposed use at a specific site, description of equipment to be used, physical arrangement, and operation of the proposed center. The Board of Adjustment shall consider the necessity of screening, if needed.
9. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
 - a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
 - b. That a reasonable degree of reclamation and proper drainage control is feasible; and
 - c. That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
10. Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
 - a. To check all operating equipment;
 - b. To check fire suppression system(s);
 - c. To check the condition of the fire alarm(s);
 - d. To check for indications of fuel leaks and spillage;
 - e. To remove trash from the site;
 - f. To monitor the general condition of the site.
11. Temporary structures designed for use or occupancy for 61 to 180 days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.

8-19(e) Prohibited Uses (All uses other than those listed as principal, accessory, or conditional uses shall be prohibited. The uses below are provided for illustration purposes and for the purpose of limiting permitted uses, and are not intended to be a total listing of all the uses that are

prohibited.)

1. Establishments primarily engaged in agricultural equipment sales and services.
2. Warehouse, as well as storage uses, except as accessory uses herein.
3. Shops of special trade and general contractors, such as plumbing; heating; carpentry; masonry; plastering; painting; metal work; electrical; sign painting; tile, mosaic and terrazzo work; electroplating; drilling; excavating; wrecking; construction, and paving. This is not intended to prohibit administrative offices of such.
4. Manufacturing, compounding, assembling, bottling, processing and packaging, and other industrial uses for sale or distribution other than as retail on the premises.
5. Truck terminals and freight yards.
6. Drive-in restaurants or drive-in theaters.
7. Establishments offering live entertainment in which a person is unclothed, or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola, the male or female genitalia, or the buttocks.
8. Establishments at which any employee is unclothed or in the attire, costume, or clothing described above, or is clothed in such a manner as to simulate the breast, genitalia, buttocks, or any portion thereof.
9. Establishments having as a substantial or significant portion of their stock in trade for sale, rent or display, pictures, books, periodicals, magazines, appliances and similar material which are distinguished or characterized by their emphasis on matter depicting, describing or relating to such sexual activities, as (a) depiction of human genitals in a state of sexual stimulation or arousal; (b) acts of human masturbation, sexual intercourse or sodomy, or (c) holding or other erotic touching of human genitals, pubic region, buttocks or breasts.
10. Animal kennels, hospitals, clinics, outdoor runways or pens.
11. The above- or below-ground storage of any flammable material in gaseous form including compressed natural gas.
12. Pawnshops, except as permitted herein.

Lot, Yard, and Height Requirements (See Articles 3 and 15 for additional regulations.)

8-19(f) Minimum Lot Size - No limitation.

8-19(g) Minimum Lot Frontage - No limitation.

8-19(h) Minimum Front Yard - See Special Provisions.

8-19(i) Minimum Each Side Yard - See Special Provisions.

8-19(j) Minimum Rear Yard - No limitation.

8-19(k) Minimum Usable Open Space - No limitation.

8-19(l) Maximum Lot Coverage - No limitation.

8-19(m) Height of Building - See Special Provisions.

8-19(n) Off-Street Parking (See Article 16 for additional parking regulations.)

Dwelling Units - No requirements, except for buildings with 25 or more dwelling units: then one (1) space for every 2,000 square feet of residential floor area.

Hotels or Motels - One (1) space per suite, with a minimum of five (5) spaces.

8-19(o) Special Provisions:

1. Redevelopment of any site shall comply with the Downtown Streetscape Master Plan for Lexington, Kentucky.
2. No building permits shall be issued within a B-2B zone except in compliance with the provisions of Article 27. The Downtown Area Design Excellence Board shall be empowered to fully regulate building heights, setbacks, and other features in compliance with the provisions of the adopted guidelines.
3. For any property zoned B-2B which is within an H-1 Overlay District, the rules and procedures outlined in Article 13 shall take precedent and the property shall not be subject to Section 8-19(o)(2).

Section 2- That Article 27 of the Lexington-Fayette Urban County Government Zoning Ordinance is hereby amended to read as follows:

DOWNTOWN AREA DESIGN EXCELLENCE BOARD

27-1 INTENT - The intent of the Downtown Area Design Excellence Board is to encourage

growth and redevelopment in the downtown area, while preserving and protecting the unique features and characteristics of the area in conformity with the Comprehensive Plan and the design standards and guidelines for the Downtown Area adopted by the Lexington-Fayette Urban County Council.

27-2 APPLICATION OF REGULATIONS - The classifications and regulations hereunder shall be established in addition to the zone classifications and regulations for the B-2, B-2A, and B-2B zones as provided under Article 8 herein.

27-3 DEFINITIONS - As used in this Article, the following terms shall mean:

AUTHORIZATION PERMIT - A document which certifies the findings of the Board or the Design Excellence Officer that the work proposed by the applicant is appropriate. The Authorization shall also delineate any conditions imposed by the Board or Officer in approving the request. In order to grant an Authorization, the Board or Officer shall consider all circumstances related to the proposal, and may grant the Authorization if it finds that the proposed changes are consistent with the adopted Downtown Area Design Excellence Standards and Guidelines.

BOARD - The Downtown Area Design Excellence Board of the Lexington-Fayette Urban County Government.

DEMOLITION - Any act that destroys, in whole or in part, a building or structure; or which results in the moving of any building or structure.

DESIGN EXCELLENCE OFFICER - The employee of the Lexington-Fayette Urban County Government assigned to carry out the duties and functions of the officer as defined herein. This individual shall have a professional degree in architecture, design, or a similar field so as to be qualified to carry out such duties. The term "officer" when used in this Article refers to the Design Excellence Officer.

EXTERIOR CHANGE - Rehabilitation or replacement which is not ordinary maintenance and repair. New construction of any building element, addition, building or structure is an exterior change. Demolition of any building element, addition, building or structure is an exterior change.

(1) EXTERIOR CHANGE includes, but is not limited to:

(a) MAJOR REHABILITATION, REPLACEMENT AND INSTALLATION OF BUILDING ELEMENTS.

- (1) Rehabilitating large amounts of existing building elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Rehabilitating/replacing existing building elements when changes are made in materials, style or configuration;
- (3) Installing new building elements;
- (4) Replacing missing building elements and/or materials;
- (5) Painting a structure or material not previously painted;
- (6) Removing paint from a material previously painted.

(b) MAJOR REHABILITATION, REPLACEMENT AND INSTALLATION OF SITE ELEMENTS

- (1) Rehabilitating large amounts of existing site elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;

- (2) Rehabilitating or replacing existing site elements when changes are made in materials, style or configuration;
- (3) Installing new site elements;
- (4) Replacing missing site elements or materials;
- (5) Painting a site element not previously painted;
- (6) Removing paint from a site element which has been painted;
- (7) Removing trees with trunks more than 10" in diameter;
- (8) Major landscaping projects, including installation, relocation or redesign of new or existing site elements;
- (9) Disturbing fields, archaeological and other land features by demolition or new construction on sites.

ORDINARY MAINTENANCE AND REPAIR - The correction of minor deterioration to site and building elements and structures when changes are made with the same materials with the same size, shape, configuration, style, texture and material color.

(1) ORDINARY MAINTENANCE AND REPAIR includes the following activities:

(a) ROUTINE MAINTENANCE AND REPAIR OF BUILDING ELEMENTS

- (1) Repairing small amounts of existing building materials and elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Painting a structure or material that is already painted;
- (3) Caulking and weather stripping windows and doors.

(b) ROUTINE MAINTENANCE, REPAIR AND INSTALLATION OF SITE ELEMENTS

- (1) Repairing site elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Pruning trees and shrubbery and removal of trees less than 10" in diameter;
- (3) Planting vegetable and flower gardens, except as part of a major landscaping plan;
- (4) Planting shrubs and trees, except as part of a major landscaping plan;
- (5) Installing temporary signs (real estate, political, etc.);
- (6) Installing building numbers and mailboxes.

27-4 DOWNTOWN AREA DESIGN EXCELLENCE BOARD

27-4(a) ESTABLISHMENT - The Downtown Area Design Excellence Board is established to review and decide applications in compliance with the provisions of this Article.

27-4(b) MEMBERSHIP – The Downtown Area Design Excellence Board shall consist of seven (7) voting members, including the Chair, appointed by the Mayor and approved by Council. The Board shall:

- (1) Include only members who are residents of Fayette County;

- (2) Have at least three (3) members that are design-related professionals: one (1) shall be an architect, one (1) shall be a landscape architect, and the other design professional could include the professions of architecture, historic preservation, urban design or related disciplines such as urban planning or landscape architecture.
- (3) One (1) member that is a resident within a B-2, B-2A or B-2B zoning category;
- (4) One (1) member that is a business owner within a B-2, B-2A or B-2B zoning category;
- (5) One (1) member that is a real estate agent or broker or developer within a B-2, B-2A, OR B-2B zoning category; and
- (6) One (1) citizen-at-large.

When the Downtown Area Design Excellence Board reviews an issue, and that field is not represented on the Downtown Area Design Excellence Board, the Downtown Area Design Excellence Board may seek expert advice before rendering its decision.

27-4(c) ETHICS - The Downtown Area Design Excellence Board shall prepare and keep on file, available for public inspection, the members' qualifications. Article 16, the Code of Ethics of the Lexington-Fayette Urban County Government Charter, shall apply to members of the Downtown Area Design Excellence Board.

27-4(d) OFFICERS - The Downtown Area Design Excellence Board shall annually elect one (1) of its members to be Chair and one (1) of its members to be Vice-Chair. The Secretary of the Downtown Area Design Excellence Board shall be the Design Excellence Officer, who shall also serve as a non-voting member of the Downtown Area Design Excellence Board.

27-4(e) LENGTH OF TERM - The terms of Downtown Area Design Excellence Board members shall be as follows:

- (1) Members shall serve a term of four (4) years.
- (2) Terms shall be staggered in such manner to allow the appointment or reappointment of at least one-half of the membership every two (2) years.
- (3) Term of membership shall extend from July 1 of one year through and until June 30 of the designated year.
- (4) Vacancies, when they occur during a term of office, shall be filled for the unexpired term in the manner prescribed for original appointment.
- (5) Members may serve consecutive terms but must go through the reappointment process to do so. The maximum length of membership shall be two terms, or eight years, whichever is longer.
- (6) Any member may be removed from office by a majority of the Council of the Lexington-Fayette Urban County Government.

27-4(f) COMPENSATION - The members shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties, subject to sufficient funds being appropriated by the Lexington-Fayette Urban County Council for this purpose.

27-4(g) BYLAWS - The Downtown Area Design Excellence Board shall adopt bylaws for the transaction of its business and the transactions of the business of all of its sub-committees.

- (1) MEETINGS - At least one (1) meeting shall be held each month, and special meetings called, as provided in KRS 61.825. Minutes of all meetings and records of all proceedings, including the number of votes for and against each question and the record of the vote of each member, shall be kept and made available for public inspection.

- (2) ANNUAL REPORT - The Downtown Area Design Excellence Board shall prepare a written annual report, which shall be kept and made available for public inspection.
- (3) QUORUM - A simple majority of the total membership of the Downtown Area Design Excellence Board shall constitute a quorum for the transaction of business.
- (4) ATTENDANCE - Each member shall be required to attend meetings regularly as defined in the bylaws. Failure to do so may result in removal from the Downtown Area Design Excellence Board.

27-4(h) JURISDICTION - The jurisdiction of the Downtown Area Design Excellence Board shall include all necessary and implied powers as shall be described herein with respect to the regulation of the B-2, B-2A or B-2B Zones.

27-4(i) POWERS AND DUTIES - In addition to such other powers, duties and authorities as are set forth in this Article, the Downtown Area Design Excellence Board shall, in order to accomplish the purpose of this Article, perform duties that include, but are not limited to, the following:

- (1) Review and decide applications for Authorization Permits as provided herein below.
- (2) Periodically review the adopted design standards and guidelines and make recommendations to the Urban County Council for changes to design standards and guidelines.
- (3) Cooperate with and advise the Lexington- Fayette Urban County Council and other government agencies, departments, commissions and offices with regard to such matters as may be appropriate with respect to the Downtown Area.
- (4) Form sub-committees as necessary from both within and without its membership, and to receive assistance in its work from outside individuals, groups and organizations. The Downtown Area Design Excellence Board may give special recognition to outside individuals, groups and organizations.

27-5 AUTHORIZATION PERMITS

27-5(a) WHERE REQUIRED – An Authorization Permit shall be required prior to the initiation of any new construction on; any exterior change to; the demolition of all, or any part of, any building, structure or sign; the construction of any drive-thru or drop-off; on any premises in a B-2, B-2A or B-2B zone. Ordinary maintenance and repair as defined under Article 27-3 may be undertaken without an Authorization Permit, provided that the work involves repairs to existing features of a building or the replacement of elements of a building with identical pieces, and provided that the work does not change the exterior appearance of the building. In no case shall an Authorization Permit be required to change the paint color of a previously painted surface.

27-5(b) STAFF REVIEW OF SMALL SCALE REHABILITATION, ADDITIONS, NEW CONSTRUCTION AND DEMOLITION PROJECTS

The application for an Authorization Permit shall be reviewed by the Design Excellence Officer for the following issues unless the Officer refers the matter to the Board or the applicant requests Board review.

- (1) Rehabilitations - the minimum square footage of the existing building is less than 10,000 square feet and the building has not been designated outstanding or significant by the Downtown Building Inventory; and the modification of the exterior is less than 50% of the existing building.
- (2) Additions - the minimum square footage of the existing building is less than 10,000 square feet and the building has not been designated outstanding or significant by the Downtown Building Inventory; and the addition is less than 25% of the square footage of the existing building.

- (3) New Construction - the development site size is less than .75 acres, the building footprint is less than 30,000 square feet, or the building height is less than 96 feet or eight stories (whichever is greater).
- (4) Demolitions - the building has not been designated outstanding or significant by the Downtown Building Inventory and the demolition is less than 25% of the existing principle structure or is an accessory structure,

The Board may also review and delegate additional items to the responsibility of the Design Excellence Officer for review and issuance of Authorization Permits. The delegation of these items shall be reviewed by the Board at a public hearing and recorded in the minutes of the Board.

The procedure to obtain an Authorization Permit is specified herein below.

- (a) FILING – Depending on the scope of work of the project, the Design Excellence Officer shall require the submission of any or all of the following: application and proposal summary, site analysis, site plan, floor plans(s), elevations, sections, and renderings. The Officer shall review the information and promptly notify the applicant if the material is not adequate for review and advise the applicant what specific information will be required.
- (b) REVIEW - The Officer shall review the application for compliance with the adopted standards and guidelines and consult with other Divisions, as appropriate, to ensure proper review. Upon determination that all requirements of the standards and guidelines have been met and that the application complies with the requirements of the Board, the Design Excellence Officer shall approve the application and issue the Authorization Permit. If any question arises as to compliance, or if the Design Excellence Officer or applicant feels that the application raises issues deserving review by the full Board, the application shall be referred to the Board for action.
- (c) AUTHORIZATION PERMIT ISSUANCE - Upon approval by the Design Excellence Officer, the Officer shall issue the Authorization Permit and notify the applicant. In addition, the Officer shall forward a copy of the Authorization and application materials to the Division of Building Inspection.

27-5(c) BOARD REVIEW OF LARGE SCALE REHABILITATIONS, ADDITIONS, NEW CONSTRUCTION, DRIVE-THRUS, DROP-OFFS, AND DEMOLITIONS -

The application for Authorization Permit shall be reviewed by the Board at a public hearing if:

- (1) Rehabilitations - the minimum square footage of the existing building is 10,000 square feet or greater or the building has been designated outstanding or significant by the Downtown Building Inventory; and the modification of the exterior is 50% or greater of the existing building; or
- (2) Additions - the minimum square footage of the existing building is 10,000 square feet or greater or the building has been designated outstanding or significant by the Downtown Building Inventory; and the addition is 25% or greater of the square footage of the existing building; or
- (3) New Construction - the development site size is .75 acres or greater, the building footprint is 30,000 square feet or greater, or the building height is 96 feet or eight stories or more (whichever is greater); or
- (4) Demolition - the building has been designated outstanding or significant by the Downtown Building Inventory or the demolition is 25% or more of the existing principle structure;
- (5) The plan contains a drive-thru or drop-off; or
- (6) The matter has been referred to the Board by the Design Excellence Officer or the

applicant has requested Board review.

The procedure to obtain an Authorization Permit is specified herein below.

- (a) PRE-FILING CONFERENCE - Prior to formal filing, the applicant shall meet with the Design Excellence Officer to discuss preliminary design concepts, applicable procedures, submittal documents, and similar matters.
- (b) FILING MATERIALS - Depending on the scope of work of the project, the Board shall require the submission of any or all of the following: application and proposal summary, site analysis, site plan, floor plans(s), elevations, sections, and renderings

Should the Board find that the material submitted is not adequate for the proper review of the proposal, the Board shall promptly notify the applicant and state the specific information that will be required. In such cases, the applicant shall not be deemed to have made a bona fide application to the Board until the specific information is submitted.

- (c) NOTICE - Notice of the time, place and reason for holding a public hearing shall be given by first class letter at least fourteen (14) days in advance of the public hearing to owners of all properties located within two hundred (200) feet of the subject property. It shall be the obligation of the Design Review Officer to prepare, certify and mail all notice as required herein.

Further, the Board shall give notice of the time, place and reason for holding a public hearing by publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing.

- (d) BOARD PUBLIC HEARING - After notice, the Board shall consider the request for an Authorization Permit at a public hearing. Prior to the hearing, the Board shall receive the written report of the Officer. At the hearing, the Board shall allow the applicant, protestors and other interested citizens to testify and rebut evidence presented by others, provided the Chair shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence.

In its review of material submitted, the Board shall examine the architectural design and the exterior surface treatment of the proposed construction on the site in question and its relationship to other structures within the area, the relationship of the proposed construction to the design of the building, and other pertinent factors affecting the appearance and efficient functioning of the structure.

The Board shall not consider any interior arrangement. The Board shall make no requirements except for the purpose of preventing development incongruous in scale, design or materials to the district.

In reviewing proposals, the Board shall utilize the adopted design standards and guidelines. These standards and guidelines shall form the basis of any action by the Board.

The Board shall vote to approve all or part of the application or disapprove all or part of the application within sixty (60) days after the completed application is filed. The Board shall be required to make written findings regarding what Standards and Guidelines were followed and which were not, with reasons for any variance.

- (e) AUTHORIZATION PERMIT ISSUANCE - The Design Excellence Officer shall promptly issue the Authorization Permit in accordance with the action of the Board. Copies of the Authorization and the application materials shall be forwarded to the Divisions of Planning and Building Inspection and/or the Division of Code Enforcement, as appropriate.

27-5(d) MULTI-PHASE BOARD REVIEW – Multi-phase Board review shall be required for

large scale new construction, as defined in Section 27-5(c)3. The applicant shall first obtain Board approval for site, building mass, parking, and scale and subsequent approvals for all other design standards and guidelines. The standards and guidelines approved in the initial review will not be reviewed in subsequent proceedings unless a material change has been made. The applicant may have as many Board reviews as needed to complete the project. The applicant may also receive both approvals in one (1) Board review.

27-5(e) AUTHORIZATION PERMITS FOR DEMOLITION - The Division of Building Inspection shall issue no permit which would result in the demolition of any or all of a structure within a B-2, B-2A or B-2B zone unless and until an Authorization Permit has been issued by the Design Excellence Officer or approved by the Board at a public hearing, and a building permit has been approved for an allowed use.

27-5(e)(1) PROCEDURES – The Design Excellence Officer or the Board may approve an Authorization Permit for demolition only if one of the following conditions is determined to exist:

- (a) The application is for demolition of an addition, for a portion of a building or for an accessory structure which is not significant to the principal structure, site, streetscape, or district; and the approval of the application would not adversely affect those parts of a building, site, or district which are significant.
- (b) The application is for the demolition or moving of a building, or portion of a building, which does not contribute to the character of, and will not adversely affect the character of the property, the streetscape and the downtown district.
- (c) No reasonable economic return can be realized from the property, and the denial of the application would result in the taking of the property without just compensation. In order to make this claim, the applicant shall submit to the Board, not less than twenty (20) days prior to the public hearing, the following information:

1. For all property:

- (a) The amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;
- (b) The assessed value of the land and improvements thereon, according to the two (2) most recent assessments recorded in the office of the Property Valuation Administrator;
- (c) The two most recent real estate tax bills;
- (d) Annual debt service for the previous two (2) years recorded by the lending agency;
- (e) All appraisals obtained within the previous two (2) years by the owner in connection with his purchases, financing or ownership of the property;
- (f) Listings of the property for sale or rent, price asked and offers received, if any;
- (g) Any consideration by the owner as to profitable adaptive uses for the property.

2. For income-producing property:

In addition to the information required in Section 27-5(e)(1)(c)(1), the applicant must also provide information of:

- (a) Annual gross income from the property for the previous two (2) years;
- (b) Itemized operating and maintenance expenses for the previous two (2) years;
- (c) Annual cash flow for the previous two (2) years.

3. The Board may require that the applicant furnish such additional information as the Board believes is relevant to its determination of taking without just compensation and may provide, in appropriate instances, that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information that cannot be obtained, and shall describe the reasons why such information cannot be obtained.

Should the Board find that the material submitted is not adequate for the proper review of the proposal, the Board shall promptly notify the applicant and state specifically the information that the Board requires.

Deterioration of historic buildings attributable to the owner's failure to provide proper maintenance over an extended period of time will not be considered a mitigating circumstance in evaluations of economic hardship. Such "hardship" will be considered "self-imposed," restoration costs to remediate such neglect will not be considered.

27-5(e)(2) ACTION - Notwithstanding any other provision of this Article, the Board, after hearing evidence at its public hearing, may vote to postpone action to approve or deny an appeal for a reasonable period of time not to exceed one (1) year from the filing date of application in order to conduct studies, surveys and/or gather information concerning the following:

- (a) Alternatives which may be or may become available, including restoration, rehabilitation, adaptive reuse, or other alternatives to demolition; and
- (b) Study the question of economic hardship for the applicant, including whether the structure can be put to reasonable beneficial use without the approval of the demolition; and whether the applicant can obtain a reasonable return from his/her existing building and offering the property at fair-market value to party willing to renovate the building. If economic hardship or the lack of a reasonable return is not proved, the Board shall deny the demolition application, giving the facts and reasons for its decision.

27-5(e)(3) EFFECT OF AUTHORIZATION PERMIT - Upon receipt of the Authorization Permit from the Design Review Officer, a 7-day waiting period shall begin in which no demolition activity may be undertaken by the applicant or its agents, and no demolition permits may be issued. Upon completion of the waiting period, the Division of Building Inspection shall issue a demolition or wrecking permit, in accord with the Authorization Permit, provided that a building permit has been issued and the application meets all other requirements of law. In the instance an applicant is required to and has obtained a building permit for new construction on the site, no mandatory waiting period shall apply, and the Division of Building Inspection shall issue a building permit upon receipt of the Authorization Permit from the Design Excellence Officer, provided the application meets all other requirements of law.

27-5(f) AUTHORIZATION PERMIT VALID FOR ONE YEAR FROM DATE OF ISSUANCE - The property owner shall obtain permits, when required, and commence work on all work authorized by the Authorization Permit within one (1) year from the issuance of the Authorization.

27-6 FAILURE OF BOARD OR DESIGN EXCELLENCE OFFICER TO ACT - Upon failure of the Board or the Design Excellence Officer to take final action upon any application within sixty (60) days after the completed application has been filed; and unless a documented mutual agreement between the Board and the applicant has been made for an extension of time, the application shall be deemed to be approved and an Authorization Permit shall be issued to the applicant, and a copy of said Authorization transmitted to the Divisions of Planning and of Building Inspection.

27-7 APPEALS –

27-7(a) APPEAL TO THE FAYETTE CIRCUIT COURT - Any person or entity claiming to

be injured or aggrieved by any order of the Downtown Area Design Excellence Board to affirm, modify or set aside the Authorization Permit and/or final decision of the Board may appeal from the Board's action to the Fayette Circuit Court within thirty (30) days of that order in the manner as established in KRS 100.347. All orders of the Board which have not been appealed within thirty (30) days shall become final.

27-7(b) CONSIDERATION BY THE BOARD OF PREVIOUSLY DENIED APPEALS - In the event the appeal of an applicant is denied by the Board, the building, or any portion thereof, which was the subject of the applicant's application, shall not be included in a subsequent application to the Board for an Authorization Permit and/or final decision until the expiration of one (1) year from the date of the order of the Board.

However, before the expiration of one (1) year, the Board may allow the filing of an application for an Authorization Permit and/or final decision if the Board finds that there are new facts or conditions not considered previously, or that there has been a change in the adopted guidelines which has substantially altered the character of the request. In such cases, after the evidence is presented by the applicant, the Board shall vote to approve or deny such a request for a new hearing. The Board's reconsideration of the application shall take into consideration the new evidence presented. The Board's decision need not be restricted to the new evidence. If the new evidence is withdrawn at any time during the reconsideration by the applicant, the Board shall have no authority to reconsider the application.

27-8 ENFORCEMENT – The Design Excellence Officer shall be responsible for reviewing construction authorized under the provisions of this Article to determine compliance. Matters involving violations shall be administered under the authority ascribed to the Director of the Division of Planning as Zoning Administrator under Article 5 of the Zoning Ordinance.

Section 3-That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

Clerk of Urban County Council

Published:

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