

**ORDINANCE NO. \_\_\_\_\_, SERIES 2007**

**AN ORDINANCE RE-ENACTING AND AMENDING  
CHAPTER 162 OF THE LOUISVILLE METRO CODE  
OF ORDINANCES (LMCO) RELATING TO  
OVERLAY DISTRICTS (AS AMENDED).**

**Sponsored By:** Councilmen Downard and Blackwell

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL)  
AS FOLLOWS:**

SECTION I: LMCO Chapter 162 is hereby re-enacted and amended as follows:

**BARDSTOWN ROAD/BAXTER AVENUE CORRIDOR REVIEW OVERLAY  
DISTRICT**

**§ 162.20 DEFINITIONS.**

As used in this Chapter, unless the context otherwise requires:

(A) ALTERATION. A change to any part or to the whole of a structure that is not ordinary repairs;

(B) BUILDING. A structure;

(C) COMMITTEE. The Bardstown Road/Baxter Avenue Corridor Review Overlay District Committee;

(D) CONTRIBUTING HISTORICAL STRUCTURE. A structure located within a National Register Historic District and which has not been determined by the United States Secretary of Interior to be noncontributing or a structure which is listed on the National Register of Historic Places, or which is eligible for such designation.

(E) CORRIDOR. The portions of the public rights-of-way known as Bardstown Road and Baxter Avenue located within the District.

(F) DEMOLITION. The destruction in whole or in part of a structure;

(G) DEVELOPMENT ACTIVITY. Any alteration, new construction or demolition of a structure, a change in business identification signs, a change in the use of a property, or the construction of public parking or other publicly accessible area.

(H) DISTRICT. The Bardstown Road/Baxter Avenue Corridor Review Overlay District established by this Chapter.

(I) DIRECTOR. The Director of the Division of Planning and Design Services.

(J) FIRST TIER PROPERTY OWNER. An owner of any parcel of property adjoining the property that is the subject of the Permit application.

(K) **GUIDELINES.** The development review guidelines established by § 162.22 of this Chapter.

(L) **MAJOR STRUCTURAL CHANGE.** Structural alterations and structural repairs made within any 12 month period costing in excess of 50% of the physical value of the structure, as determined by comparison of the extent/value of the alterations involved and the replacement value of the structure at the time the plans for the alteration are approved, using the Building Officials Conference of America (BOCA) chart for construction cost.

(M) **NEW CONSTRUCTION.** The erection of the whole or any part of a structure.

(N) **ORDINARY REPAIRS.** Nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance or decoration, which shall include, but not be limited to, the replacement or installation of nonstructural components of the building, such as the roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect by rearrangement, exitways and means of egress.

(O) **PERMIT.** A Bardstown Road/Baxter Avenue Corridor Review Overlay District Permit issued pursuant to this Chapter.

(P) **STAFF.** The Urban Design Administrator in the Division of Planning and Design Services, and such other person or persons delegated responsibility by the Director to administer the provisions of this Chapter.

(Q) **STRUCTURE.** Any man-made object having an attachment to the ground or to something having an attachment to the ground.

#### **§ 162.21 CREATION AND BOUNDARIES.**

(A) Pursuant to KRS 82.660 through 82.670, the Bardstown Road/Baxter Avenue Corridor Review Overlay District is established.

(B) The boundaries of the District shall be as illustrated in Appendix E to this Chapter (as may be amended from time to time).

(C) The distinctive characteristics of the District are described in Appendix F to this Chapter.

(D) The Guidelines for the District are included as Appendix G to this Chapter (as may be amended from time to time).

#### **§ 162.22 PRINCIPLES AND GUIDELINES.**

(A) Upon the effective date of this Chapter, within the District, no person shall commence any Development Activity as defined in this Chapter without obtaining a Permit issued pursuant to the procedures set forth in this Chapter certifying compliance with the applicable overlay district development review guidelines established pursuant to this Chapter.

(B) The Guidelines, attached as Appendix G hereto, are enacted. The Guidelines may be updated or amended from time to time upon a recommendation of the Committee and with the approval of the Metro Council. The Guidelines are not intended to discourage development or to dictate architectural style or design, but to encourage such development that contributes

to the overall design quality of the District. These Guidelines and the distinctive characteristics for the District shall be the basis for evaluating applications for development proposals as applicable within the District as follows:

(1) All Principles which are part of the Guidelines for a particular District, must be addressed before a Permit may be issued.

(2) The Urban Design Administrator or Committee, as authorized respectively under this Chapter, may determine that a Guideline should not be applied in evaluating a development application upon making findings of fact pursuant to this Chapter for each such Guideline that:

(a) The particular location characteristics of the site or existing structure, make the Guidelines inappropriate for purposes of reviewing the application; or

(b) The applicant has demonstrated that the application addresses distinctive characteristics of the District not reflected in the Guidelines which are applicable and which provide an additional or alternative basis for determining conformance with the District.

(3) Upon making a determination that a development application concerns a site which is located in sufficient proximity to one or more other Districts and that it shares some of the characteristics of such nearby District or Districts, the Urban Design Administrator or the Committee, as authorized respectively under this Chapter, may consider the applicable Guidelines. However, a development application shall not be required to satisfy all of the Guidelines in the other Districts in order to demonstrate compliance.

(4) If a development application involves a phased project, the Urban Design Administrator or the Committee, as authorized respectively under this Chapter may, as a condition of approval of a Permit for the first phase or phases, require landscaping, fencing, lighting and such other interim treatments as the Urban Design Administrator or the Committee may determine appropriate for the undeveloped portion of the phased project.

(C) The Guidelines are intended to promote compatibility of new development with existing land use and design features, to enhance the District's visual quality, to preserve the District's commercial character with a pedestrian friendly environment and to strengthen the economic vitality of the District by encouraging new investment and further business and commercial development, in appropriate locations within the District.

(D) The application of Guidelines is intended, in the public interest, to provide public review of the design elements of a proposed development within the District and of the community impact of a proposed demolition of a Contributing Historical Structure within the District. Accordingly, public participation shall be encouraged in the review process.

(E) A development proposal that does not conform to one or more specific Guidelines may be approved if it is determined that the proposal is in conformance with the intent of the Guidelines considered as a whole.

(F) It shall be a condition precedent to obtaining any permit for any Development Activity within the District that the person has obtained a Permit pursuant to this Chapter. Permits shall be issued only where it is determined, pursuant to the procedures established by this Chapter, that the proposed Development Activity is in compliance with the Guidelines.

(G) Demolition. No application to demolish any Contributing Historical Structure or Structure more than 65 years old shall be approved by the Urban Design Administrator unless the applicant demonstrates to the satisfaction of the Urban Design Administrator and the Louisville Metro Historic Preservation Officer:

(1) That the rehabilitation of the Structure or construction of a new Structure will have a greater positive impact upon the District's economic vitality and appearance than the preservation of the Structure proposed to be demolished and that the rehabilitation of the Structure or the construction of the new Structure would not be possible or economically feasible without the demolition of the Structure proposed to be demolished; or

(2) That the applicant cannot obtain a reasonable economic return from the property or Structure unless the Contributing Historical Structure or Structure more than 65 years old is demolished in accordance with the application.

### **§ 162.23 ADVISORY COMMITTEE CREATION.**

(A) There is created a Committee of 8 members, to be known as the Bardstown Road/Baxter Avenue Corridor Review Overlay District Committee. The duties of the Committee shall be as outlined in § 162.24.

(B) The Committee shall consist of a staff member or Commissioner of the Louisville Metro Planning Commission, a Commissioner of the Louisville/Jefferson County Historic Landmarks and Preservation Commission, and a member or representative of a neighborhood association, which bounds or includes the District. Two members shall be licensed architects, landscape architects or other design professionals, three members shall own, rent, operate or manage businesses located with the District, or shall be members of an associated of businesses which include businesses in the District. All members of the Committee shall be residents of the county and shall have knowledge of or experience in design review. The members shall be appointed by the Mayor, with the approval of the Metro Council.

(C) A member shall serve for a three year term or until his successor qualifies and shall be eligible for reappointment in accordance with § 32.321. Members shall serve at the pleasure of the Mayor. A vacancy shall be filled in the same manner as the original appointment.

### **§ 162.24 COMMITTEE DUTIES.**

(A) The duties and responsibilities of the Committee shall be as follows:

(1) Meet with applicants for nonexpedited development projects to review their applications;

(2) Prepare, pursuant to the procedures set forth in this Chapter, final findings of fact and conclusions on nonexpedited development applications to issue a Permit, issue the Permit with conditions, or deny the Permit.

(3) Review decisions of the Urban Design Administrator on expedited development applications upon the request of the applicant pursuant to this Chapter.

(4) Review Development Activity referred to the Committee by the Board of Zoning Adjustment pursuant to § 162.29 of this Chapter.

(5) Recommend to the Metro Council, as provided for in this Chapter, amendments to the Guidelines based on experience in reviewing applications and the need to preserve the distinctive characteristics of the District.

(B) The Committee shall establish a schedule of regular meetings and may hold special meetings upon the call of the Chair.

(C) One member of the Committee shall be elected by a majority of the Committee as the Chair and he shall preside at all meetings of the Committee. The Committee may elect a Vice-Chair to preside at meetings when the Chair is absent. The Chair shall serve for a one year term and shall be eligible for re-election.

(D) A quorum of the Committee shall be a majority of the members of the Committee. The concurring vote of a majority of the members present shall be necessary to take action on Permit application.

(E) No member of the Committee may participate in the hearing or disposition of any matter in which that member has any conflict of interest, as defined by Chapter 21 of this Code of Ordinances.

(F) The Committee shall adopt policies and procedures for the conduct of its meetings, the processing of applications and for any other purposes considered necessary for its proper functioning.

#### **§ 162.25 ADMINISTRATION AND IMPLEMENTATION.**

The responsibility for administering and implementing this Chapter is delegated to the Division of Planning and Design Services, Department of Codes and Regulations, or its successor, whose Urban Design Administrator, staff and Director shall have the following duties and responsibilities pursuant to this Chapter.

(A) Urban Design Administrator. The duties of the Urban Design Administrator shall be to:

(1) Classify all Development Activity in accordance with § 162.26 of this Chapter as (a) exempt, (b) expedited, or (c) nonexpedited.

(2) Coordinate review of permit applications with the Department of Public Works and Assets, the Department of Codes and

Regulations, and other Departments, Divisions, agencies, Commissions or boards.

(3) Lead staff review of expedited development applications.

(4) Prepare, pursuant to the procedures set forth in this Chapter, written findings of fact and conclusions to support his decision or recommendation on expedited and non-expedited development applications to issue a Permit, issue a ~~the~~ Permit with conditions, or deny a Permit.

(5) Serve as staff to the Committee in its consideration of applications classified as nonexpedited and those expedited applications appealed to the Committee pursuant to this Chapter.

(B) Director. The duties of the Director shall be to review the decisions of the Urban Design Administrator and the Committee as provided for in this Chapter. The Director, whenever the Urban Design Administrator is unable to perform his duties and responsibilities under this Chapter, may assign the duties and responsibilities of the Urban Design Administrator to another employee or contractor of the Division of Planning and Design Services or its successor.

**§ 162.26 EXEMPT ACTIVITIES AND CLASSIFICATION OF ACTIVITIES.**

(A) The following development activities shall be exempt from review under the Guidelines and the provisions of this Chapter.

(1) Ordinary repairs;

(2) Removal of existing signage without replacement;

(3) Temporary signage, installed for a period of less than two months, during which time an application for permanent signage is pending under this Chapter. Emergency repairs ordered by a Metro Government Building Code enforcement official in order to protect health and safety;

(4) Emergency repairs ordered by a Metro Government Building Code enforcement official in order to protect health and safety;

(5) Alterations or major structural change only to the interior of a Structure;

(6) Development Activity which falls within the jurisdiction of the Louisville/Jefferson County Landmarks Commission;

(7) Demolition of accessory Structures;

(8) Temporary structures;

(9) Maintenance of existing signage advertising an on-site business, including but not limited to rewording or replacing sign panels;

(10) Exterior alteration, addition or repair of a structure used as a single-family residence which does not increase the number of dwelling units in the structure or does not increase the total square footage of floor space in the structure by more than 20%;

(B) All Development Activity within the District established by this Chapter, except for exempt activities described in subsection (A) of this section shall be classified pursuant to the procedures set forth in § 162.27 of this Chapter

as either requiring expedited or nonexpedited review under the Guidelines, as follows:

- (1) The following development activities shall be subject to expedited review:
  - (a) Landscaping;
  - (b) Sidewalk/street paving; lighting; streetscape furnishings; banners;
  - (c) New awnings, business and other signs and replacement of structural elements of existing signs;
  - (d) Exterior alterations which are not major structural changes.
  - (e) An addition to a Structure used for commercial purposes which is not visible from the corridor and which does not increase the total square footage of floor space in the Structure by more than 10%;
- (2) All other development activities shall be subject to nonexpedited review.

**§ 162.27 PERMIT REQUIREMENTS AND APPEAL.**

(A) No permit or certificate of occupancy shall be issued by any Metro Government agency for any Development Activity within the District unless a Permit for such Development Activity has been obtained pursuant to this Chapter.

(B) An application for Development Activity within the District shall be submitted to the Division of Planning and Design Services or its successor on a form provided by the Division. The application shall include at least the following information, unless waived pursuant to subsection (C) of this section:

(1) A site plan, drawn to an appropriate scale, photographs or other presentation media showing the proposed Development Activity in the context of property lines, adjacent structures, trees, streets, sidewalks, and the like.

(2) Plans, elevations and other drawings, drawn to appropriate scale, as may be necessary to fully explain all proposed Structures or alterations to existing Structures.

(3) Details of urban design elements, off-street parking, landscaping, fencing or walls, signage, streetscape and other aspects as may be necessary to fully present the proposed Development Activity.

(C) Applicants may seek review of a development proposal prior to making formal application pursuant to subsection (B) of this section. The preliminary review shall be conducted by the Urban Design Administrator to determine if the minimal requirements for acceptance of the application have been met. The Urban Design Administrator may agree to waive certain requirements set out in subsection (B) of this section if he determines that such requirements are not necessary for review of the application pursuant to this Chapter. An applicant whose proposal has been determined to require

nonexpedited approval may seek a preliminary review of his proposal by the Committee.

(D) After determining that an application is complete, the Urban Design Administrator shall classify the development proposal as either exempt or not exempt, requiring either expedited or nonexpedited approval. The Urban Design Administrator may classify an application as requiring nonexpedited review even if the proposed Development Activity meets the definition for expedited review if it determines that the application would be more appropriately considered by the Committee.

(E) A permit application classified as requiring expedited approval shall be reviewed by the Urban Design Administrator, who shall prepare a written decision supported by findings of fact which shall approve the Permit, approve the Permit with conditions, or deny the Permit. An applicant, within ten business days of the date of the decision of the Urban Design Administrator on a proposal requiring expedited review, may request appeal of the application to the Committee. The application shall be reviewed as provided in paragraph (F) of this section for applications classified as requiring nonexpedited approval. The Committee shall provide notice of the appeal in accordance with the notice procedures outlined for a non-expedited review, and shall consider the application at its next regularly scheduled meeting for which notice can be provided.

(F) An application classified as requiring nonexpedited approval shall be reviewed by the Committee. The Permit application shall be reviewed by the Urban Design Administrator in accordance with the Guidelines and forwarded to the Committee with the Urban Design Administrator's written recommendation to either approve the Permit, approve the Permit with conditions, or to deny the Permit.

(G) Where an application requiring non-expedited review will also require a Category 3 review or a variance as defined by the Land Development Code, the Committee shall provide a forum for the public hearing component of that review in accordance with the following procedures.

(1) Notice for the Category 3 review or variance shall be sent in accordance with the requirements of the Land Development Code and any applicable state statutes.

(2) The Planning Commission, in the case of a Category 3 review, or the Board of Zoning Adjustment, in the case of a variance, shall designate a hearing officer in accordance with that body's Policies and Procedures who shall attend the Committee meeting at which the review will take place.

(3) A staff report outlining the issues involved in the Category 3 review or variance shall be presented by appropriate staff member in the Division of Planning and Design Services in addition to the staff report presented by the Urban Design Administrator.

(4) Final action on the Category 3 review or variance shall be taken at the next regularly scheduled meeting of the body with the authority to take such action on the proposal.

(H) Notice. The applicant shall be sent, by first class mail, written notice of the date, time and location of the meeting of the Committee at which his application shall be considered. Notice of the application and of the date, time and location of the meeting of the Committee shall also be sent by first class mail to all First Tier Property Owners of record and to any business associations or neighborhood associations which have requesting in writing to receive such notices. The notice shall be sent no later than ten days prior to the date of the meeting. Notice procedures for applications involving a Category 3 or variance component pursuant to paragraph (G) of this section shall be in accordance with the notice requirements for such reviews set forth in the Land Development Code and any applicable state statutes.

(I) At the meeting scheduled to review the application, the Committee shall first hear a description of the proposed Development Activity and receive preliminary comments and a recommendation from the Urban Design Administrator which shall indicate which of the Guidelines apply to the proposed Development Activity. Following the Urban Design Administrator's presentation, the applicant shall present such information as he chooses for the Committee's consideration. The Committee shall receive testimony or written comments from other parties.

(J) The Committee shall, by majority vote of the members present, make a decision, supported by written findings of fact, which shall approve the Permit, approve the Permit with conditions, deny the Permit, or defer consideration of the application until the next meeting of the Committee. Consideration of an application shall not be deferred more than one time. If the Committee defers consideration of an application it shall state the reasons for such deferral. Findings of fact made by the Committee shall be based on the information presented in each application and at each Committee meeting and shall support the Committee's written conclusion.

(K) The Director shall review all decisions of the Urban Design Administrator and the Committee, and may, within three business days, refer any application back to the Urban Design Administrator or Committee, as appropriate, if he determines the decision is not adequately supported by findings of fact. The Committee shall consider and render a final decision upon a remanded application at its next regularly scheduled meeting.

(L) The Committee and the Urban Design Administrator shall, in their decision-making capacities, make written findings of fact based upon the information presented in each application and at each Committee meeting which support the written conclusion that the proposed Development Activity is or is not in compliance with the Guidelines.

(M) If, after an applicant has obtained a Permit, the development proposal is amended, he shall submit the amended development proposal to the Urban Design Administrator, who shall make a determination that the amendment has no significant impact or that the development proposal as amended requires additional review. Review of an amended proposal shall follow the same procedure as provided herein for an original application. Upon a determination by the Urban Design Administrator that the amended proposal

requires review, the previously issued Permit shall be suspended pending the review of the amended development proposal.

(N) Any applicant who is denied a Permit shall have a right of appeal to the Circuit Court in accordance with applicable state statutes.

**§ 162.28 PERMIT AGREEMENT.**

No certificate of occupancy shall be issued for any project undertaken pursuant to a Permit unless the work has complied with the conditions established by the Permit. The filing of an application to obtain a Permit pursuant to this Chapter shall constitute an agreement by the applicant that he will undertake the Development Activity in conformity with the plans approved by the Permit and that he will abide by any conditions imposed by a conditional approval of the Permit. All conditions imposed by a Permit shall be binding on the applicant, his successors, heirs or assigns, unless otherwise amended or released by the Committee or Urban Design Administrator.

All work performed pursuant to a Permit shall conform to the Permit and all conditions imposed thereby. It shall be the duty of the Division of Inspections, Permits and Licenses or the Department of Public Works and Assets, or their successors, as appropriate, to inspect from time to time any work performed pursuant to the Permit to assure compliance. In the event work is performed not in accordance with the Permit, the Director of the Department of Codes and Regulations, or the Director of the Department of Public Works, or their designated representatives or successors, shall issue a stop work order and all work shall cease. No person, firm, or corporation shall undertake any work on the project as long as the stop work order shall continue in effect.

**§ 162.29 APPLICATION TO PROPERTIES CONTIGUOUS TO DISTRICT.**

Pursuant to the Land Development Code, the Board of Zoning Adjustment may attach conditions in addition to those listed in connection with a particular use when granting Conditional Use Permits, if it finds that such conditions are necessary for the protection of surrounding persons, property or neighborhood values. This Metro Council finds that the application of the Guidelines to properties located outside the District but contiguous thereto is necessary to protect the properties and neighborhoods within the District. The Board of Zoning Adjustment is directed to apply the Guidelines to development activities undertaken upon properties contiguous to the District when Conditional Use Permits are required for such development activities. The Board of Zoning Adjustment is authorized to request the Committee to review such requests for Conditional Use Permits and to consider the recommendations of the Committee when establishing the conditions of such Conditional Use Permits.