ARTICLE 13

HISTORIC PRESERVATION

13-1 INTENT

13-1(a) PURPOSE - In order to promote the economic and general welfare of the people of Fayette County and of the general public, and to ensure the complementary, orderly and efficient growth and development of Fayette County, it is deemed essential by the Lexington-Fayette Urban County Council that the qualities relating to the history of the county, and a harmonious outward appearance of structures which preserve property values and attract tourists and residents alike, be preserved. It is the finding of the Lexington-Fayette Urban County Council that the individual nature and character of this county cannot be properly maintained or enhanced unless its distinctive historic districts, landmarks, sites, neighborhoods, areas, places, structures, improvements, geological and archaeological sites are preserved.

13-1(b) POLICIES - The Lexington-Fayette Urban County Council hereby declares, as a matter of public policy, that the preservation, protection, perpetuation and use of historic districts; landmarks; sites; neighborhoods; areas; places; structures; improvements; and geological and archaeological sites having a special, unique, or distinctive character or a special historic; aesthetic; architectural; archaeological; geological or cultural significance or value; and which serve as visible reminders of the history and heritage of this county, state or nation, are public necessities. The protection of these is required in the interest of the economic well being, prosperity, health, safety and general welfare of the people.

13-1(c) GOALS - The goal of this Article is to effect the purpose and policy, as set forth in the above findings, and specifically, but not exclusively, to:

(1) Give such designations and to enact such regulations as are needed to protect against destruction, degradation, or encroachment upon historic districts; landmarks; sites; neighborhoods; areas; places; structures; improvements; and geological and archaeological sites having a special, unique or distinctive character or a special historic, aesthetic, architectural, archaeological, geological or cultural significance or value and which serve as visible reminders of the history and heritage of this county, state or nation;

(2) Encourage the use of existing buildings through adaptive rehabilitation so as to enhance the diversity and interest of the county; however, such encouragement shall not imply a particular zoning designation;

(3) Encourage construction which will lead to continuation, conservation and improvement in a manner appropriate to the preservation of the county's history and heritage as is embodied and reflected in such historic districts, landmarks, sites, neighborhoods, places, structures, improvements, areas, and geological and archaeological sites;

(4) Promote and strengthen the economy of the county by maintaining tourist attractions which serve as stimuli to business and industry;

(5) Prevent the creation of environmental influences adverse to such purposes;

(6) Assure that continued new structures and alterations to existing structures within historic districts, sites, areas, neighborhoods, places, and geological and archaeological sites will be in keeping with the visual and aesthetic character to be preserved so as to stabilize and improve property values;

(7) Foster civic pride in the value of accomplishments of the past;

(8) Promote the educational, cultural, economic and general welfare of the people; and

(9) Meet requirements in order to qualify the Lexington-Fayette Urban County Government to be a Certified Local Government under the National Historic Preservation Act.

13-2 APPLICATION REGULATIONS - The historic classifications and regulations hereunder shall be established in addition to the zone classifications and regulations as shown on the zoning map atlas for the subject areas. These regulations are intended to preserve and protect historic or architecturally worthy historic districts, landmarks, sites, neighborhoods, areas, places, structures, improvements, geological and archaeological sites. The use, dimensions and other requirements for said zones, as provided in the Zoning Ordinance, shall apply. Where there are conflicts between the procedures and regulations within the Zoning Ordinance, the more restrictive shall apply.

13-3 DEFINITIONS - As used in this Article, the following terms shall mean:

13-3(a) BOARD - The Board of Architectural Review of the Lexington-Fayette Urban County Government.

13-3(b) CERTIFIED LOCAL GOVERNMENT - A government meeting the requirements of the National Historic Preservation Amendments Act of 1980 (P.L. 96-515) and the implementing regulations of the U.S. Department of the Interior and the Kentucky Heritage Council.

13-3(c) CERTIFICATE OF APPROPRIATENESS - A document which certifies the findings of the Board of Architectural Review or the Historic Preservation Officer that the work proposed by the applicant is appropriate in a zone protected by an H-1 overlay. The Certificate shall also delineate any conditions imposed by the Board or Historic Preservation Officer in approving the request. In order to grant a Certificate, the Board or the Historic Preservation Officer shall consider all circumstances related to the proposal, and may grant the Certificate if it finds that the proposed changes are consistent with the guidelines adopted by the Historic Preservation Commission.

13-3(d) COMMISSION - The Historic Preservation Commission of the Lexington-Fayette Urban County Government.

13-3(e) DEMOLITION - Any act in a zone protected by an H-1 overlay that destroys, in whole or in part, a landmark or a building or structure, or which results in the moving of any landmark, building or structure.

13-3(f) 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.

13-3(f)(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 re-design of new or existing site elements;

(9) Disturbing fields, archaeological and other land features by demolition or new construction on sites;

(10) Rehabilitating or replacing existing signs when changes are made in materials, style and configuration;

(11) Installing new signs.

13-3(g) HISTORIC DISTRICT AND LANDMARK - An area, neighborhood, place, building, structure, site or improvements meeting one or more of the following criteria and designated by the Urban County Council as a zone protected by an H-1 overlay:

(1) It has value as a part of the cultural or archaeological heritage of the county, state or nation;

(2) Its location is a site of a significant local, state or national event;

(3) It is identified with a person or persons or famous entity who significantly contributed to the development of the county, state or nation;

(4) It is identified as the work of a master builder, designer, or architect whose individual work has influenced the development of the county, state or nation;

(5) It has value as a building that is recognized for the quality of its architecture and that retains sufficient element showing its architectural significance;

(6) It has distinguishing characteristics of an architectural style valuable for the study of a period, method of construction, or use of indigenous materials;

(7) It has character as a geographically definable area possessing a significant concentration of buildings or structures united by past events or by its plan or physical development;

(8) It has character as an established and geographically definable residential neighborhood, agricultural area, or business district, united by culture, architectural style or physical plan and development; or

(9) It is the place or setting of some unique geological or archaeological location.

13-3(h) HISTORIC PRESERVATION OFFICE STAFF - The staff to the Historic Preservation Commission and to the Board of Architectural Review shall be the Historic Preservation Office of the Lexington-Fayette Urban County Government. Assistance shall be given by the staff to the Board of Architectural Review and the Historic Preservation Commission in the administration of this Article.

The Urban County Government shall employ a staff in compliance with Certified Local Government requirements. Historic Preservation Office staff shall have expertise in historic preservation.

13-3(i) 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.

13-3(i)(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 house numbers, mailboxes and porch light fixtures.

13-4 HISTORIC PRESERVATION COMMISSION

13-4(a) ESTABLISHMENT - Pursuant to KRS 67.083, 67A.060(1), 67A.070, 82.026 and 100.203(1)(e), the Historic Preservation Commission of the Lexington-Fayette Urban County Government is hereby created. The existing Lexington-Fayette Urban County Historic Commission, created by Ordinance No. 206-74, has been abolished, along with Sections 2-86 through 2-90 of Chapter II of the Code of Ordinances; and former Article 13 of the Zoning Ordinance has been replaced by this Article. However, the designations of property as within an Historic District (H-1) zone, all decisions made under prior ordinances, and all actions under prior ordinances shall continue in full force and effect until repealed, modified or amended.

13-4(b) MEMBERSHIP - The Historic Preservation Commission shall consist of fifteen (15) voting members, including the chairman. All members must be residents of Fayette County and have demonstrated an interest in historic preservation prior to his/her serving, be willing to accept the chairmanship of a sub-committee if such duty is deemed necessary by the chairman, and attend at least one informational/educational meeting per year, approved by the State Historic Preservation Office. At least two (2) of the fifteen (15) members shall be preservation-related professionals. These include the professions of architecture, history, archaeology, architectural history, historic preservation,

planning, or related disciplines, such as urban planning; American Studies; American Civilization; or Cultural Anthropology. When the Historic Preservation Commission reviews an issue, and that field is not represented on the Historic Preservation Commission, the Historic Preservation Commission shall seek expert advice before rendering its decision.

Twelve (12) of the fifteen (15) members shall be nominated by organizations as follows:

(1) A licensed architect nominated by the membership of the local chapter of the American Institute of Architects;

(2) A licensed real estate person nominated by the membership of the Lexington Board of Realtors;

(3) A person nominated by the Lexington-Fayette Urban County Tourist and Convention Commission;

(4) A person nominated by the Board of the Land and Nature Trust of the Bluegrass;

(5) A person nominated by the Board of the Blue Grass Trust for Historic Preservation;

(6) One person nominated by the staff of the Division of Planning of the Lexington-Fayette Urban County Government; and

(7) Six (6) persons nominated at the annual meeting of the general memberships of Neighborhood Associations containing a designated historic district. Each organization shall nominate three (3) candidates for each vacancy for which they are eligible to make nominations; provided, however, that not more than six (6) members shall be appointed to represent all the locally designated historic districts and that not more than one (1) of these six (6) members shall be from the same locally designated historic district. From the respective nominees, the Mayor shall appoint the members subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council. If any organization fails to make candidate and/or membership nominations within thirty (30) days after written request from the Mayor, the Mayor shall, with approval of a majority of the members of the Urban County Council, appoint any otherwise qualified person to represent such organization, and the person selected shall be appointed for the unexpired portion of the term.

Two (2) of the fifteen (15) members shall be selected as follows: one (1) member shall be appointed from persons in the banking profession and one (1) member shall be appointed from persons in the builder/developer field. The Mayor shall appoint these members subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council.

One (1) of the fifteen (15) members shall be the Chairman of the Board of Architectural Review who shall serve as an ex-officio, voting member of the Historic Preservation Commission.

Notwithstanding the provisions of Section (2)(A)(1)(b), all of the initial appointments to the twelve (12) memberships which represent organizations shall be by Mayoral appointment of any otherwise qualified member of such organization, subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council.

All members must meet the requirements for Certified Local Governments in Kentucky; and the Historic Preservation Commission 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 Historic Preservation Commission.

<u>13-4(c) OFFICERS</u> - The Historic Preservation Commission shall have officers. The Chairman, Vice-Chairman and Treasurer shall constitute the Executive Committee, with the Secretary acting as liaison to other government departments. Officers of the Executive Committee may serve consecutive terms. The Executive Committee shall have and exercise all of the authority of the Historic Preservation Commission, subject to the limitations imposed on the powers of the committees and of the directors of non-stock, nonprofit corporations by KRS 273.221, and except as otherwise expressly provided in this Article.

The Historic Preservation Commission shall annually elect one (1) of its members to be Chairman and one (1) of its members to be Vice-Chairman.

The Secretary of the Historic Preservation Commission shall be the Historic Preservation Officer, who shall also serve as a non-voting member of the Historic Preservation Commission.

<u>13-4(d) LENGTH OF TERM</u> - The terms of Historic Preservation Commission members, other than the Chairman of the Board of Architectural Review, shall be as follows:

(1) Members shall serve a term of four (4) years, except that the membership of those representing particular organizations or offices shall be deemed to have terminated upon their leaving their respective memberships or positions.

(2) Terms shall be staggered in such manner to allow the appointment or re-appointment 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.

(6) Any member may be removed from office by a majority of the Council of the Lexington-Fayette Urban County Government.

13-4(e) 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.

13-4(f) BYLAWS - The Historic Preservation Commission shall adopt bylaws for the transaction of its business and the transactions of the business of all of its sub-committees. Regular meetings shall be held, and special meetings may be held, as specified in the bylaws. 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. The Historic Preservation Commission shall prepare a written annual report, which shall be kept and made available for public inspection. A simple majority of the total membership of the Historic Preservation Commission shall constitute a quorum for the transaction of business. The Chairman votes only in the case of a tie. Each member shall be required to attend meetings regularly, as defined in the bylaws. Failure to do so may result in removal from the Historic Preservation Commission. The Historic Preservation Commission shall have the power to establish sub-committees, as it deems necessary, from both within and without its membership, and to receive assistance in its work from outside individuals, groups and organizations. The Historic Preservation Commission may give special recognition to outside individuals, groups and organizations.

13-4(g) JURISDICTION - The jurisdiction of the Historic Preservation Commission shall include all necessary and implied powers as shall be described herein with respect to the establishment, protection, regulation and promotion of National Register historic landmarks and historic districts. The Lexington-Fayette Urban County Government, on behalf of the Historic Preservation Commission, shall have the right to receive, hold and spend funds which legally may be received from any and every source, both in and out of the Commonwealth of Kentucky, for the purpose of carrying out the provisions of this Article. The Historic Preservation Commission shall provide guidance to the Lexington-Fayette Urban County Government in all matters concerning, and/or which might relate to, historic preservation; conservation and/or enhancement of structures, premises, areas, and artifacts of historic, cultural, architectural, archaeological or geological significance; as those matters relate to the establishment and maintenance of historic districts, areas, landmarks, sites and regulations to be enforced.

13-4(h) POWERS AND DUTIES - In addition to such other powers, duties and authorities as are set forth in this Article, the Historic Preservation Commission shall, in order to accomplish the purpose of this Article, perform duties that include, but are not limited to, the following:

(1) Present to the Lexington-Fayette Urban County Council and the Planning Commission annually a report containing: (i) a statement of goals and objectives for historic preservation for the county for the next ensuing 5-year period; (ii) any financial records pertaining to the Historic Preservation Commission's operation.

(2) Conduct a general study and survey of districts, landmarks, sites, neighborhoods, areas, places, structures, improvements, and geological and archaeological sites within Fayette County for the purpose of determining those of a distinctive character or special historic, aesthetic, architectural, archaeological, geological or cultural significance or value; and of compiling appropriate descriptions, facts and lists for historic district and landmark nominations.

(3) Prepare and submit to the Planning Commission, for its consideration, a preservation plan for the historic properties in Fayette County which shall, if adopted, be an element of the Comprehensive Plan.

Such plan shall include properties in zones protected by H-1 overlays, properties listed in, or eligible for listing in, the National Register of Historic Places, as well as other properties meeting the criteria set forth in 13-3(g).

(4) After a public hearing, adopt design guidelines and criteria by which all Certificate of Appropriateness applications shall be reviewed and decided.

(5) Participate in the Certified Local Government program by preparing and reviewing nominations for inclusion in the National Register of Historic Places proposed National Register districts and landmarks, sites, neighborhoods, areas, places,

structures, improvements, and geological and archaeological sites within Fayette County. The Mayor and the Historic Preservation Commission shall obtain comments from the public that shall be included in the recommendations. Within sixty (60) days of receipt of a nomination from a private individual or the initiation of a nomination by the Lexington-Fayette Urban County Government, the Lexington-Fayette Urban County Government shall inform the Kentucky Heritage Council and the owner of the property of the recommendations regarding the eligibility of the property. If both the Historic Preservation Commission and the Mayor recommend that a property not be nominated, the Kentucky Heritage Council will inform the owner, the State Review Board and the State Historic Preservation Officer, and the property will not be nominated unless an appeal is filed with the State Historic Preservation Officer. If either or both the Historic Preservation Commission and the Mayor agree that the property should be nominated, the nomination will be scheduled for review by the Kentucky Historic Preservation Review Board. The opinion or opinions of the Historic Preservation Commission and the Mayor will be presented to them for their consideration. The Kentucky Historic Preservation Review Board, after considering all opinions, shall make its recommendation to the State Historic Preservation Officer, who decides whether to forward the nomination to the United States Secretary of the Interior, who shall make the decision on listing the property on the National Register. The Historic Preservation Commission, the Mayor or the property owner may appeal the final decision by the State Historic Preservation Officer.

(6) Review for the Lexington-Fayette Urban County Government the advisability of the acceptance or rejection of historic sites, buildings, and landmarks proposed for donation to the Urban County Government. In conjunction with other Lexington-Fayette Urban County Government departments, examine on a yearly basis, Lexington-Fayette Urban County Government-owned historic properties; evaluate their maintenance, repairs, needs and uses; and help establish a maintenance schedule and develop policies about their care and use.

(7) Determine the appropriate designation, signage and/or markers for selected historic districts and landmarks and establish a procedure for implementation of the same.

(8) Aid in the coordination of public and private events, festivals, banquets, conventions, celebrations and tours which have to do with historic preservation; including, but not limited to, coordinating events with the Lexington-Fayette Urban County Tourist and Convention Commission.

(9) Encourage, update and undertake, where necessary, the publication of uniform and complementary maps, design guidelines, brochures and descriptive material about historic districts and landmarks.

(10) Advise owners of historic landmarks and properties in historic districts on all matters relating to the preservation, restoration and rehabilitation of their property. Keep the preservation guidelines and handbooks needed for such advice updated as to aid Board of Architectural Review decisions and property owners. Keep updated on local, state and federal tax incentives, loan options and grant programs so as to aid property owners.

(11) Cooperate with and enlist assistance from the National Park Service, the National Trust for Historic Preservation, the Kentucky Heritage Council, and other federal, state and local agencies active in the field of historic and cultural preservation.

(12) Educate the public, owners of historic landmarks and properties in historic districts, and residents in historic districts of the purposes of this Article and the benefits of preservation.

(13) Act as liaison to all local museums and historic house museums and aid in the promotion of those museums and the coordination of their activities.

(14) 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 historic districts and landmarks.

(15) Form sub-committees as necessary.

(16) Assist the Lexington-Fayette Urban County Government in fulfilling its historic preservation responsibilities pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended.

13-5 BOARD OF ARCHITECTURAL REVIEW

13-5(a) PURPOSE - The Board shall review and decide applications for Certificates of Appropriateness in compliance with design guidelines and criteria adopted by the Historic Preservation Commission.

The Board of Architectural Review shall make recommen-

dations to the Planning Commission and the Urban County Council concerning designation of structures, premises and areas as historic districts and landmarks.

13-5(b) MEMBERSHIP - The Board of Architectural Review shall consist of five members appointed by the Mayor, subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council. The Board of Architectural Review shall:

(1) Include only members who have demonstrated an interest in historic preservation prior to their serving;

(2) Have at least two (2) members with training or experience in a preservation-related profession: architecture, history, archaeology, architectural history, historic preservation, planning or related fields;

(3) Have at least two (2) members who own property within Fayette County, and at least one (1) who owns property in a zone protected by an H-1 overlay; and

(4) Be subject to Article 16, Code of Ethics, of the Lexington-Fayette Urban County Government Charter.

13-5(c) OFFICERS - The Board of Architectural Review shall annually elect one (1) of its members to be Chairman, which position shall be an ex-officio, voting member of the Historic Preservation Commission, and one (1) of its members to be Vice-Chairman.

The duties of the Secretary of the Board of Architectural Review shall be the responsibility of the Historic Preservation Officer.

13-5(d) LENGTH OF TERM - The terms of Board of Architectural Review 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 re-appointment 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 re-appointment process to do so.

(6) Any member may be removed from office by a majority of the Council of the Lexington-Fayette Urban County Government.

13-5(e) 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.

13-5(f) PROCEEDINGS - The Board of Architectural Review shall adopt bylaws for the transaction of its business. At least one meeting shall be held each month, and special meetings called, as provided in KRS 61.825. The meetings shall be in a public place, shall be held with public notice in accordance with Sections 13-6(b)(3) and 13-7(b)(2)(c) herein, and shall be open to the public with an agenda distributed in advance giving the items to be discussed. The decisions shall be made at a public meeting, with applicants notified of meetings and advised of decisions. Minutes of 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. A simple majority of the total membership of the Board shall constitute a quorum for the transaction of business. Each member shall be required to attend meetings, as defined by the bylaws; and failure to do so may result in termination of membership. To meet Certified Local Government requirements, a written annual report, including activities; cases; decisions and qualifications of members; must be annually prepared and kept on file, available for public inspection.

13-5(g) JURISDICTION - The jurisdiction of the Board of Architectural Review shall include all necessary and implied powers, as shall be described herein with respect to the regulation of all designated historic districts and landmarks so as to accomplish the purpose of this Article.

13-5(h) POWERS AND DUTIES - In addition to any other powers, duties and authorities, the Board of Architectural Review shall have the power and duties as are herein set forth to:

(1) Present an annual report, which includes the activities, cases, decisions and qualifications of members, to the Historic Preservation Commission for review and approval.

(2) Act in an advisory role to other officials and departments of the Lexington-Fayette Urban County Government regarding the protection of local cultural resources.

(3) Act as a liaison to the Lexington-Fayette Urban

County Government, individuals and organizations concerned with historic preservation.

(4) Work toward the continuing education of citizens within the Certified Local Government's jurisdiction regarding historic preservation issues and concerns.

(5) Attend at least one informational/educational meeting per year, approved by the State Historic Preservation Office.

(6) Review design guidelines and make recommendations to the Historic Preservation Commission for changes to design guidelines.

13-6 DESIGNATION OF ZONES PROTECTED BY H-1 OVERLAYS

13-6(a) PURPOSE - To further the goals and purposes of this Article and the preservation, protection, perpetuation and use of historic districts and landmarks, the Urban County Council shall have the authority to designate historic districts or landmarks as zones protected by an H-1 overlay.

The Board of Architectural Review shall have the power and authority to make recommendations for the establishment of zones protected by an H-1 overlay.

13-6(b) PROCEDURE - The procedure for application and designation are as follows herein:

13-6(b)(1) APPLICATION - An application for the establishment of a historic district or landmark may be filed only by the Lexington-Fayette Urban County Council, the Planning Commission, the owner of the subject property or by a person with written authorization of the owner. The Board of Architectural Review, the Historic Preservation Commission, or an individual Lexington-Fayette Urban County citizen may request that the Lexington-Fayette Urban County Council or the Planning Commission initiate a Zone Map Amendment.

Said application shall be filed with the Planning Commission and transmitted to the Board of Architectural Review for its review and recommendation.

13-6(b)(2) STUDY - Upon the filing of an application for the establishment of a historic district for an area or an individual property as a landmark, the Board of Architectural Review shall study and review the application.

The Preservation staff shall prepare studies, reports and/or other information for consideration by the Board of Architectural Review.

13-6(b)(3) NOTICE OF BOARD OF ARCHITECTURAL REVIEW HEARING - The Board of Architectural Review shall give notice of the time, place and reason for holding a public hearing thereon by one publication in the newspaper of highest circulation in Fayette County, Kentucky. This notice shall be published not earlier than twenty-one (21) days and not later than seven (7) days before the public hearing.

Notice of the hearing shall be given at least fourteen (14) days prior to the hearing by first-class mail to all owners of property within the area of a proposed historic district or within the area proposed as a landmark.

13-6(b)(4) BOARD OF ARCHITECTURAL REVIEW PUBLIC HEARING - After notice of the public hearing as provided herein, and within ninety (90) days after the filing date, the Board of Architectural Review shall hold a public hearing on the proposed application and recommend to the Planning Commission that the application be approved or disapproved and shall forward its recommendation in writing, citing appropriate guidelines and criteria upon which the decision is based to the Planning Commission.

13-6(b)(5) PLANNING COMMISSION PUBLIC HEARING - The Planning Commission shall consider the recommendation of the Board of Architectural Review at a public hearing with notice required by Article 6 herein.

Before considering the establishment of a historic district or landmark, the Planning Commission shall review and consider studies, reports and/or other information prepared by the Historic Preservation Office staff. The Division of Planning staff may assist with such studies and information.

After voting on whether the application for the establishment of a historic district or landmark should be approved or disapproved, the Planning Commission shall forward its recommendation, with its reasons in writing, to the Lexington-Fayette Urban County Council and the Kentucky Heritage Council.

13-6(b)(6) ACTION BY LEXINGTON-FAYETTE URBAN COUNTY COUNCIL - The Lexington-Fayette Urban County Council shall, as in the case of any map amendment request, act upon the application for the establishment of a historic district or landmark after it has received the written recommendation thereon from the Planning Commission. It shall take a majority of the entire Lexington-Fayette Urban County Council to override the recommendation of the Planning Commission.

13-7 CERTIFICATES OF APPROPRIATENESS - A Certificate of Appropriateness shall be required before a person may undertake any exterior changes on a property or structure within a zone protected by an H-1 overlay. Ordinary maintenance may be undertaken without a Certificate of Appropriateness, 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. The Historic Preservation Commission shall, by administrative regulation, define the meaning of the terminology "exterior changes" and "ordinary maintenance".

13-7(a) WHERE REQUIRED - A Certificate of Appropriateness shall be required prior to the initiation of any new construction on, any exterior change to, or the demolition of all, or any part of, any building, structure or sign on any premises in a zone protected by an H-1 overlay.

In no case shall a Certificate of Appropriateness be required to change the paint color of a previously painted surface.

13-7(b) PROCEDURES FOR ISSUANCE OF A CERTIFICATE OF APPROPRIATENESS FOR EXTERIOR CHANGES AND NEW CONSTRUCTION - Certificates of Appropriateness may be issued by the Board of Architectural Review or by the Historic Preservation Office in accordance with provisions contained herein.

The Board may delegate actions to the Historic Preservation Officer, who may review applications without public hearing and action of the Board.

13-7(b)(1) CERTIFICATES OF APPROPRIATENESS ISSUED BY THE BOARD OF ARCHITECTURAL REVIEW - All applications for Certificates of Appropriateness shall be reviewed by the Board at a public hearing, except those applications for work which have been specifically delegated to the Historic Preservation Officer under 13-7(b)(2). In addition, the Board shall review all applications for Certificates referred by the Historic Preservation Officer or those requested for public hearing by the applicant.

13-7(b)(1)(a) FILING - The Board of Architectural Review, where it deems necessary in order to review a particular application, may require the submission of any or all of the following items: architectural plans, plot plans, landscaping plans, plans for off-street parking, plans for proposed signs, elevations of all portions of proposed additions to structures, photographs, elevations, or perspective drawings showing the proposed structure and existing structures that are within one hundred (100) feet or are substantially related to it visually or by reason of function, traffic generation or other characteristics.

Should the Board of Architectural Review find that the material submitted is not adequate for the proper review of the proposal, the Board of Architectural Review 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 of Architectural Review until the specific information is submitted.

13-7(b)(1)(b) 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. Such notice shall be given to the applicant; and where the subject property adjoins land in an Agricultural Rural (A-R) zone, Agricultural Natural Areas (A-N) zone, or Agricultural Buffer (A-B) zone, notice shall be given to the next two (2) properties or one (1) mile, whichever is greater, in the direction of the Agricultural Rural (A-R) zone, Agricultural Natural Areas (A-N) zone, or Agricultural Buffer (A-B) zone. Where the subject property adjoins an Agricultural Urban (A-U) zone, notice shall be given to all properties within two hundred (200) feet and to the owners of the next two properties, but not to exceed any property owner beyond twenty-four hundred (2,400) feet from the property in the direction of the A-U land. For all other properties, notice shall be given to all owners of property within two hundred (200) feet of the subject property. It shall be the obligation of the preservation staff 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.

13-7(b)(1)(c) BOARD OF ARCHITECTURAL REVIEW PUBLIC HEARING - After notice, the Board shall consider the request for a Certificate of Appropriateness at a public hearing. At the hearing, the Board shall receive the report of the staff, orally and/or in writing, and shall allow the applicant, protestors and other interested citizens to testify and rebut evidence presented by others, provided the Chairman shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence.

In its review of material submitted, the Board of Architectural Review 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 historic district or the landmark.

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

In reviewing proposals, the Board of Architectural

Review shall refer to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and comply with the design guidelines and criteria adopted by the Historic Preservation Commission.

The Board of Architectural Review 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.

13-7(b)(1)(d) CERTIFICATE OF APPROPRIATENESS ISSUANCE - The Historic Preservation Officer shall promptly issue the Certificate of Appropriateness in accordance with the action of the Board of Architectural Review. Copies of the Certificate and the application materials shall be forwarded to the Divisions of Planning and Building Inspection and/or the Division of Code Enforcement, as appropriate.

13-7(b)(2) CERTIFICATES ISSUED BY THE HISTORIC PRESERVATION OFFICER - A Certificate issued by the Historic Preservation Officer is intended to expedite approval of routine applications for exterior changes without full hearing and action by the Board.

The Board may review and delegate items to the responsibility of the Historic Preservation Officer for review and issuance of Certificates of Appropriateness. The delegation of these items shall be reviewed by the Board at a public hearing and recorded in the minutes of the Board.

13-7(b)(2)(a) PROCEDURES FOR ISSUANCE OF A CERTIFICATE BY THE HISTORIC PRESERVATION OFFICER

(1) FILING - The applicant shall file sufficient information as to accurately depict the location, design and scope of the work to be done. The staff 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.

(2) REVIEW - The staff shall review the application for compliance with the adopted guidelines and consult with other Divisions, as appropriate, to ensure proper review. Upon determination that all requirements of the guidelines have been met and that the application complies with the requirements of the Board, the Historic Preservation Officer shall approve the application and issue the COA. If any question arises as to compliance, or if the Historic Preservation Officer or applicant feels that the application raises issues deserving review by the full Board, the request shall be referred to the Board for action.

(3) CERTIFICATE OF APPROPRIATENESS ISSUANCE - Upon approval by the Historic Preservation Officer, the staff shall issue the Certificate of Appropriateness and notify the applicant. In addition, the staff shall forward a copy of the Certificate and application materials to the Divisions of Planning and Building Inspection and/or the Division of Code Enforcement, as appropriate.

13-7(c) CERTIFICATES OF APPROPRIATENESS FOR DEMOLITION - The Division of Building Inspection shall issue no permit which would result in the demolition of all or any part of a structure within a zone protected by an H-1 overlay, unless and until a Certificate of Appropriateness has been approved by the Board of Architectural Review.

13-7(c)(1) PROCEDURES - The procedure for review of a Certificate of Appropriateness for demolition shall be as set forth in Article 13-7(b)(1) above. The Board shall hear evidence concerning the application at its public hearing and may approve a Certificate 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, landmark or district; and the approval of the application would not adversely affect those parts of a building site, landmark or the historic 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 in a zone protected by an H-1 overlay.

(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.

If the owner wishes to make a claim that the denial of the permit would amount to a taking of the property without just compensation, the owner shall submit to the Board of Architectural Review, not less than twenty (20) days prior to the public hearing, the following information:

13-7(c)(1)(c)(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.

13-7(c)(1)(c)(2) - For income-producing property:

(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.

13-7(c)(1)(c)(3) - The Board of Architectural Review may require that the property owner furnish such additional information as the Board of Architectural Review 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 of Architectural Review find that the material submitted is not adequate for the proper review of the proposal, the Board of Architectural Review shall promptly notify the applicant and state specifically the information that the Board requires.

13-7(c)(2) - Notwithstanding any other provision of this Article, the Board of Architectural Review, 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 landmark or the property 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. If economic hardship or the lack of a reasonable return is not proved, the Board of Architectural Review shall deny the demolition application, giving the facts and reasons for its decision.

13-7(d) EFFECT OF CERTIFICATE OF APPROPRIATENESS - Upon approval of the Certificate of Appropriateness, the Historic Preservation Office shall forward a copy of the Certificate to the applicant and to the Divisions of Planning and Building Inspection, which shall issue permits, when required, in accord with the Certificate of Appropriateness, provided it meets all other requirements of law.

The Division of Planning and/or the Division of Building Inspection, as appropriate, shall enforce all provisions of the Certificate, including any conditions thereof, and shall inspect the property at regular intervals to insure strict compliance. The Inspector who inspects the site shall be governed by the design guidelines adopted by the Historic Preservation Commission and shall receive technical assistance from the preservation staff in this inspection.

The property owner shall obtain permits, when required, and commence work on all work authorized by the Certificate of Appropriateness within one (1) year from the issuance of the Certificate.

13-7(e) FAILURE OF BOARD OF ARCHITECTURAL REVIEW TO ACT - Upon failure of the Board of Architectural Review to take final action upon any application within sixty (60) days after the completed application has been filed; and unless a mutual written agreement between the Board of Architectural Review and the applicant has been made for an extension of time, the application shall be deemed to be approved; and a Certificate of Appropriateness shall be issued to the applicant, and a copy of said Certificate transmitted to the Divisions of Planning and Building Inspection or the Division of Code Enforcement, as appropriate.

13-8 APPEALS - Any person or entity claiming to be injured or aggrieved by any decision of the Board of Architectural Review to approve or deny any request for a Certificate of

Appropriateness may appeal such decision to the Planning Commission within thirty (30) days of the Board's action. Such appeal shall be in writing and shall fully state the grounds upon which the appeal is sought. Upon receipt of the appeal, the Secretary to the Planning Commission shall notify the Historic Preservation Officer, who shall promptly transmit the entire record of the Board, including tapes and transcripts, if any. In addition, within five (5) days of the filing of the appeal, the Secretary to the Planning Commission shall, by certified mail, notify the applicant of the appeal, if the applicant is not the appellant. The Commission shall then hold a de novo hearing on the appeal and render a decision within ninety (90) days of the date of filing the appeal.

13-8(a) PROCEDURE FOR THE DE NOVO PUBLIC HEARING

13-8(a)(1) NOTICE - All parties to the appeal, including the Board of Architectural Review, shall be notified of the time, place and reason for the public hearing by first-class letter at least fourteen (14) days in advance. In addition, notice of the appeal shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days, nor later than seven (7) days before the public hearing.

13-8(a)(2) ACTION BY THE PLANNING COMMISSION - After notice, as required above, the Commission shall conduct a public hearing and vote to approve or deny the appeal. At the hearing, the Planning Commission shall allow its staff, Historic Preservation Office staff, the Board members, the appellant, protestors, and other interested citizens to testify and rebut the evidence presented, provided that the Chairman shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence. In its deliberations, the Planning Commission shall give due consideration to the decision of the Board and the findings and conclusions reflected in the Board's record and shall apply the design guidelines adopted by the Historic Preservation Commission.

13-8(b) APPEAL TO THE FAYETTE CIRCUIT COURT - Any person or entity claiming to be injured or aggrieved by any order of the Planning Commission to affirm, modify or set aside the Certificate of Appropriateness and/or final decision of the Board of Architectural Review may appeal from the Planning Commission'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 Planning Commission which have not been appealed within thirty (30) days shall become final; however, there shall be no stay of any action on the subject property until such time as an appeal has been filed with the Fayette Circuit Court.

13-8(c) CONSIDERATION BY THE BOARD OF PREVIOUSLY DENIED APPEALS - In the event the appeal of an applicant is denied by the Planning Commission, 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 a Certificate of Appropriateness and/or final decision until the expiration of one (1) year from the date of the order of the Planning Commission.

However, before the expiration of one (1) year, the Board of Architectural Review may allow the filing of an application for a Certificate of Appropriateness and/or final decision if the Board of Architectural Review finds that there are new facts or conditions not considered previously, or that there has been a change in the guidelines adopted by the Historic Preservation Commission, which has substantially altered the character of the request. In such cases, after the evidence is presented by the applicant, the Board of Architectural Review 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.

13-9 COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS - In order to prevent purposeful neglect of structures within zones protected by H-1 overlays, all properties shall comply with the BOCA, adopted Basic Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Division of Housing Maintenance shall quarterly compile and forward to the Board of Architectural Review and the Historic Preservation Commission a list of those properties in zones with H-1 overlays which have been found to be in violation of the BOCA Basic Property Maintenance Code.