

ORDINANCE NO. 130, SERIES 2012

AN ORDINANCE AMENDING SECTIONS 32.251, 32.260, AND 32.263 OF THE LOUISVILLE/JEFFERSON COUNTY METRO CODE OF ORDINANCES (AMENDED BY SUBSTITUTION).

SPONSORED BY: Councilman David Yates
Councilman Rick Blackwell
Councilman Robert Henderson
Councilman David James
Councilman Vicki Welch
Councilman James Peden
Councilman Kelly Downard
Councilman Jerry Miller
Councilman Jim King
Councilwoman Marianne Butler
Councilman Stuart Benson
Councilman Robin Engel
Councilman Glen Stuckel

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

SECTION I: Section 32.251 of the Louisville/Jefferson County Metro Code of Ordinances (Code) is amended as follows:

§ 32.251 DEFINITIONS.

COUNCIL. The Legislative Council of the Louisville/Jefferson County Metro Government, a consolidated local government pursuant to KRS Chapter 67C.

SECTION II: Section 32.260 of the Code is amended as follows:

§ 32.260 DESIGNATION OF DISTRICTS AND LOCAL LANDMARKS.

(C) The Commission may designate a structure or property as a local landmark if it receives a written request of the owner or owners of the structure or

property, or a petition requesting designation containing the verified signatures and addresses of no fewer than 200 residents of Louisville Metro and provided that at least 101 of those verified signatures and addresses contained in the petition are residents or property owners within one of the following boundaries: (1) a one-mile radius surrounding the structure or property proposed for local landmark designation, (2) the Council District in which the proposed landmark is located or (3) the cumulative area formed when the boundaries of (1) and (2) are combined. When verifying signatures for purposes of accepting a perfected petition to designate a structure or property as a local landmark, any resident or property owner whose address is located on property that touches one of the three boundaries as defined herein shall qualify and be counted toward the aforementioned 101 signature threshold.

(D) (1) Upon verification of a petition pursuant to the requirements of subsection (B), the Commission shall conduct a study and hold a public hearing to determine if the proposed district should be established. A description of the proposed district shall be published in the newspaper in accordance with KRS Chapter 424 no less than once and a copy of the proposed district description and the notice of the hearing shall be mailed, by first class mail, to all property owners within the proposed district.

(2) Upon verification of a petition pursuant to the requirements of Subsection (C), the Commission Chairperson shall instruct its staff to do a study of and issue a report on the proposal within 18 calendar days of the submission of the petition. Once completed, Staff shall make its report on the proposal available to the public by posting it on the appropriate Louisville Metro website

and by keeping a copy of same in its office so that is readily accessible to the public during staff's regular office hours. Within 14 calendar days of the completion and issuance of staff's report on the proposed designation, staff shall schedule, with agreement from the owner(s) of the structure and property, a pre-hearing conference before a subcommittee of no more than 5 Commissioners. If a pre-hearing conference is scheduled, staff may discuss with the interested parties, including representatives for the petitioners, any changes proposed to the structure or property, the petition for designation, its goals and objectives, the review process, and anything else pertinent to the proposed designation or the applicable process.

Staff shall schedule a public hearing to be held at a regular meeting of the Commission within 90 calendar days of the submission of the petition, unless continued by the Commission Chairperson for just cause, but not to exceed 120 calendar days. If requested by the petitioner or property owner and deemed appropriate and reasonable by the Chairperson, the hearing may be held at a time and place convenient to the public. Once a public hearing date, time and place has been established, the Commission Chairperson shall instruct staff to mail no later than 30 days before the hearing date, by first class mail (unless specified otherwise below), a notice containing the address and description of the proposed landmark as well as the date, time, and place of the public hearing to the following parties (for purposes of mailing notice to the parties identified below in subsections (a), (d), (e), (f) and (g) if, according to the records of the Property Valuation Administrator, the address of the property

owner is not the same as the address of the property entitled to notice, then a notice addressed to "resident" shall be mailed to the address of that property):

- (a) The resident(s) and owner(s) of the structure or property;
- (b) All members of the Louisville Metro Council and the Mayor of Louisville Metro (notification sent via electronic mail is sufficient);
- (c) The mayor and city clerk of any second, third, fourth, fifth or sixth class city in which the proposed historic landmark is situated;
- (d) The resident (s) and owner(s) of every parcel of property adjoining at any point the property that is the subject of the petition;
- (e) The resident(s) and owner(s) of every parcel of property directly across the street from the property that is the subject of the petition;
- (f) The resident(s) and owner(s) of every parcel of property that adjoins the adjoining property or adjoins the property directly across the street from the property that is the subject of the petition;
- (g) The resident(s) and owner(s) of any other property within 500 feet of the property that is the subject of the petition, and
- (h) The Neighborhood Notification Program list compiled by Planning & Design Services for the Council district(s) in which the structure or property is situated (these notices may go by electronic mail).

No less than 14 days immediately prior to the date of the public hearing, the Commission shall conspicuously post a sign on the property whereon the landmark proposed for designation is located. The posted sign shall state "Proposed Landmark Designation" in letters 3 inches in height. The time, place,

and date of hearing shall be in letters at least 1 inch in height. The sign shall be constructed of durable material and shall state the telephone number of the appropriate staff person to contact for information related to the proposed designation. Additionally, the Commission shall publish the above notice in the newspaper in accordance with KRS Chapter 424 at least once no less than seven days prior to the date of the hearing.

(G) The designation of a local landmark shall be effective sixty (60) days from the date upon which the Commission took its final action upon such proposal unless the Council adopts, by a vote of the majority of the members in attendance, ~~of eighteen (18) Council Members~~, a resolution initiating a review of the Commission's final action upon the proposal within said sixty (60) days. If the Council timely initiates a review of the Commission's final action, it shall, by letter (or email if specified), notify all parties set forth in § 32.260.D.2 (a) – (h) of the date, time and place that the review will be conducted, and, if a public hearing will be held, the right of the public to comment at the public hearing on the proposal. If a public hearing is not held by the Council, or by one of its committees assigned to holding the review, the Council shall confine its review to the information that was presented to the Commission. The Council shall take its final action upon the review of any decision of the Commission within 180 days of the date upon which the Commission takes its final action upon such proposal. The Council shall make a decision based upon written findings of fact and following the criteria set forth in § 32.260 (E)(1). The Council's decision shall uphold, modify, or overturn the Commission's decision, and may place conditions

the Council deems appropriate. Upon review of the Commission's decision, if the Council fails to take final action within 180 days of the date upon which the Commission took its final action, the Commission's final action shall become final and effective as a matter of law.

(I) During the pendency of the petition before the Commission or the Council and during any possible appeal or review period, including the 60-day time period wherein Council must act to initiate a review of the Commission's decision, Louisville Metro shall not issue demolition permits or orders under Code Sections 150.006, 150.110, or 156.807 for a structure(s) or property being proposed for landmark designation.

SECTION III: Section 32.263 of the Code is amended as follows:

§ 32.263 APPEALS FROM THE COMMISSION AND COUNCIL.

(A) With regards to the Commission's decision on a proposal for designation of a local landmark, an appeal from the Commission shall be taken by any person or entity claiming to be injured or aggrieved by the final action of the Commission to the Jefferson Circuit Court within 90 days of the Commission's final action, which shall be defined as the date on which the Commission votes to approve or disapprove the matter giving rise to the appeal. If the Council initiates review of the Commission's decision on a proposal for designation of a local landmark, then no appeal shall be filed until the Council makes its decision on said proposal. Appeals from final actions of the

Commission, except for the designations of either local landmarks or districts, shall be taken by any person or entity claiming to be injured or aggrieved by the final action of the Commission to the Jefferson Circuit Court within 30 days of the Commission's final action. Regardless of the final action appealed from, the property owner, applicant and the Commission shall be named as parties to the appeal.

(B) An appeal from the Council shall be taken by any person or entity claiming to be injured or aggrieved by the final action of the Council to the Jefferson Circuit Court within 30 days of the Council's final action, which shall be defined as the date on which the Council votes to uphold, amend, or overturn the decision of the Commission on the proposed designation. Should the Council fail to take action on a proposal for designation of a local landmark within the 180-day period as provided in Section 32.260 (G), then the Council's failure to act shall constitute its final action on said proposal, and any appeal shall be taken within 30 days of that 180th day. The property owner, applicant, Commission and the Council shall be named as parties to the appeal.

SECTION IV: This Ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Kathleen J. Herron
Metro Council Clerk

Jim King
Jim King
President of the Council

VETO overridden

Greg Fischer
Mayor

Approved: 8/2/12
Date

*Veto overridden
on 8/9/12 by Metro
Council.
Kathleen Herron: MCC*

**LOUISVILLE METRO COUNCIL
READ AND PASSED
July 26, 2012**

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: 



OFFICE OF THE MAYOR
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

August 2, 2012

Dear President King, Metro Council members and citizens:

For nearly 40 years, the process to designate an historic building a local landmark has served Louisville and its citizens well. Our landmarks process preserves buildings that help tell a unique story that belongs only to Louisville. The landmark process has been a catalyst for community and neighborhood revitalization and a core component of our economic growth as old buildings and their architectural details from the past are transformed into restaurants, housing, art galleries and new and expanding businesses that create jobs. The look and feel of these buildings is a central element to the authenticity of our city.

Preservation has played a critical role in the exciting transformation of our city. Our Main and Market Street buildings give Louisville a heralded presence like none other in the country. A few years ago, the city stood to lose an entire block along East Market Street if not for an effort to landmark those properties. That decision resulted in millions of dollars in investment and a new, thriving district now known as “NuLu” - home of exciting local restaurants, shops and galleries that are receiving accolades both locally and nationally from citizens and visitors.

From Museum Row on West Main to the African-American Heritage Center in Western Louisville, from the Farnsley-Moreman House in Pleasure Ridge Park to the Little Loom House in Iroquois, and from Locust Grove on Blakenbaker to Blackacre Farm near Jeffersontown, our city celebrates and honors its past, as we look to build a great future for the next generation. Other cities have razed most of their heritage – and it painfully shows. We are fortunate to have so much connection to our history through our built environment. Our sense of place contributes directly to our quality of life.

The landmarks process is not perfect. A recent example is the Bauer site on Brownsboro Road (formerly Azalea restaurant), which was planned to be a new pharmacy and other retail shops until some citizens advocated for, and the Landmarks Commission approved, designating the property an historic landmark. Our city — and the property owner — now have a boarded decaying structure rather than a vibrant new center delivering services and creating jobs.

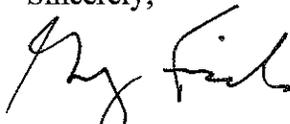
While we may have a few examples in different parts of our community where the landmarks process can be questioned, we cannot underestimate its tremendous positive cumulative impact on our city. Landmarking is a standards-based process and is rarely used – averaging twice a year for the last 40 years. Landmarking should continue to be a special and unique event reserved for those structures that clearly meet the standards, preserve our past, and meet the needs of our community going forward. Our landmarking process has served us well for more than a generation – and preserved our sense of place for generations to come. After much deliberation and dialogue with a broad cross section of our community, I have decided to veto the ordinance passed by the Metro Council. The positive impacts of our current, nationally-recognized landmarks law far outweigh the need to change this four-decade precedent for our city. Additionally, the citizens of Louisville have clearly told me that they fear the landmarks process potentially could be politicized through Metro Council involvement. I cannot support a law that allows a simple majority of the Metro Council to overturn the standards-based review of the Landmarks Commission. The ordinance as presented also contains several constitutional and legal issues relative to the separation of powers and due process.

I share the concern of many on the Metro Council that the Commission sometimes oversteps its boundaries in its effort to preserve at the cost of the greater good. During the past few months, valuable changes to the landmarks process were proposed and adopted by council that would make it more transparent and robust, including more input from impacted neighbors, greater notice to property owners, and a longer more deliberate process. I request the Commission to adopt and pursue those measures.

Vetoes should be rare, and this is only my second one as Mayor. I take this action because I believe that Louisville has tremendous “soul” - manifested by our people and our place, created by the natural beauty that has been endowed to us and by the many generations who have come before. Landmarking is a process that advances our authenticity.

My administration appreciates the many hours of work and debate dedicated to this discussion the last few months. Our city is better for the robust conversation.

Sincerely,



Greg Fischer
Mayor

Read into the record
August 9, 2012
Nathy Herron, Council Clerk