

ORDINANCE NO. 39-2009

AN ORDINANCE APPROVING AND ADOPTING A TEXT AMENDMENT TO CHAPTER 2, ARTICLE V, DIVISION 9, SECTIONS 2-351 THROUGH 2-359 OF THE OWENSBORO MUNICIPAL CODE WHICH IS TITLED HISTORIC PRESERVATION BOARD TO MAKE IT CONSISTENT WITH THE STANDARDS AND POLICIES INCORPORATED IN THE REVISED VERSION OF ARTICLE 21 WHEREBY THE HISTORIC PRESERVATION BOARD WILL NOW HEAR APPEALS TO THE DEVELOPMENT AND DESIGN STANDARDS FOR HISTORIC PRESERVATION AND DOWNTOWN OVERLY DISTRICTS, PROVIDE DESIGN DIRECTION TO THE ZONING ADMINISTRATOR, RULE ON REQUESTS FOR DESIGN EXCEPTIONS TO ARTICLE 21, AND REVIEW AND APPROVE THE DESIGN AND DEVELOPMENT OF ANY MAJOR CIVIC PROJECTS WITHIN DOWNTOWN OWENSBORO.

WHEREAS, the Greater Owensboro Economic Development Corporation commissioned a study to be prepared by Gateway Planning Group, Inc. to develop a place-making initiative in downtown Owensboro in order to stimulate economic development; and

WHEREAS, the Downtown Owensboro Illustrative Plan was presented to the community at various forums and embraced by the City of Owensboro and the Daviess County Fiscal Court; and

WHEREAS, the current version of Article 21 was adopted and made a part of the Comprehensive Plan in 2003, thus creating the first overlay district in downtown Owensboro, the Veterans' Boulevard Overlay District within the central business district; and

WHEREAS, the city has in place a Historic Preservation Board that is tasked with the mandatory review of all public and private projects involving permanent construction, demolition, alteration, repairs, maintenance or rehabilitation to properties in the downtown area which would change the exterior appearance of buildings or property sites visible from public rights-of-way; and

WHEREAS, the Board of Commissioners adopted a new version of Article 21 which sets out design standards and processes of review and enforcement which promote the implementation of the 2009 Downtown Owensboro Place-making Initiative Master Plan, and

WHEREAS, to be consistent with the intent and content of Article 21, the Historic Preservation Board will take on a slightly different roll and such process will no longer provide for mandatory review and voluntary compliance; rather the provisions of Article 21 as administered by the Zoning Administrator will govern the development and revitalization efforts.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

SECTION 1. That Chapter 2, Article V, Sections 2-351 through 2-359 of the Owensboro Municipal Code, entitled Historic Preservation Board shall be, and hereby is, amended as follows:

Sec. 2-351. Intent and declaration of public policy.

(a) The Owensboro Board of Commissioners finds that certain residences, neighborhoods, buildings or other structures with significant historic, architectural, or cultural value are often inadvertently lost, altered, or demolished with increasing frequency, notwithstanding the feasibility and desirability of preserving them in an

appropriate way. Accordingly, the Owensboro Board of Commissioners hereby declares as a matter of public policy that it is in the health, safety, welfare, interest, prosperity and economic well-being of the citizens of Owensboro to preserve, protect, perpetuate, and promote the use and value of residences, neighborhoods, landmarks, or other private properties that have distinctive character or significant historic, architectural, aesthetic, or cultural interest and value, and which serve as visible reminders of the history and heritage of the city. The board of commissioners further adopts and incorporates by reference herein as part of its "Declaration of Public Policy", the findings of fact and other recitals set forth in the preamble hereinabove.

(b) Furthermore, the board of commissioners for the city hereby declares as a matter of public policy that, while revitalization of the downtown area is a high priority, it must be accomplished in a manner that preserves and perpetuates the history and heritage of this community. It is the city's goal to enhance the attractiveness of the city's inner core to residents, tourists and visitors and serve as a support and stimulus to business and industry. It is further declared as a matter of public policy that government needs to forge a partnership with affected property owners to ensure the health, prosperity, safety and economic well-being of the community as a whole. Federal, state and local governments have passed laws to protect and preserve historic downtown properties through the development of incentives, including the National Historic Preservation Act of 1966, Chapter 154 of the Kentucky Revised Statutes (Development) and Ordinance No. 60-82 of the City of Owensboro. This division will serve to support the Zuchelli-Hunter Master Plan and the 2009 Downtown Owensboro Initiative Master Plan for the downtown previously adopted by the city, adopt the appropriate design standards, reinforce the positive urban design and historic features of the River Park Center Complex, and enhance downtown property values.

(c) In furtherance of the objectives cited in subsection (b) above, this division provides for the review of any appeals to the development and design standards for historic preservation and Downtown Overlay Districts established in Article 21 of the Owensboro Metropolitan Zoning Ordinance by the Historic Preservation Board or the Owensboro Metropolitan Board of Adjustment with recommendation of the Historic Preservation Board. The historic preservation board shall endeavor to support and reinforce all laws that protect and preserve historic properties and implement Article 21 of the City of Owensboro Zoning Ordinance, while striving to provide assistance and information to property owners in the downtown area concerning historic design concepts, tax incentives and other development strategies. Through this legislation, the city seeks to foster civic pride in the value of accomplishments of the past, while enhancing the visual, esthetic character that serves as a reminder of the history and heritage of this community.

(Ord. No. 17-2000, § 1, 4-4-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Sec. 2-352. Definitions.

Alteration: Any construction, replacement, demolition, or other change to the exterior of a residence, building, or other structure that is visible to the public. An alteration shall not include painting and ordinary maintenance and repairs, but may include fences, walls and signs.

Board: The Owensboro Historic Preservation Board.

Certificate of Appropriateness (COA): is the official document issued by the Zoning Administrator after recommendation by the Downtown Design Administrator authorizing proposed work to buildings within all the Downtown Overlay District. For all other areas or historic districts (other than the Downtown Overlay District), the COA shall be a document approving or disapproving a proposal to make an alteration in the appearance of a landmark or property located within a designated historic district, which document must first be obtained from the historic preservation board before any alteration may be undertaken.

Demolition: Means the complete or substantial destruction or removal of any residence, building, structure or site located within a historic district or within the Downtown Overlay District boundary.

Design Exception: shall be any request made to the Historic Preservation Board to amend any standard other than a dimensional standard (height, width, length of structure and size of yards and open space required) within Article 21 of the Owensboro Metropolitan Zoning Ordinance.

Designated property: A landmark, residence, building, structure or site within a historic district. Designated property shall include all lots within a historic district and the entire lot containing a landmark.

Downtown Design Administrator: shall serve as the person appointed by the City Manager to coordinate the review process for applications for compliance with Article 21 of the Owensboro Metropolitan Zoning Ordinance and to make recommendations to the Zoning Administrator on COA approvals.

Downtown Design Coordination Committee (DDCC): is a committee composed of key city, county, OMPC, and other public entity staff to provide a coordinated and centralized technical review process to ensure compliance with all applicable regulations for development within the Downtown Overlay District boundary.

Downtown Overlay District: is the overlay district designation that applies area specific development and design standards for Downtown Owensboro in addition to zoning in order to implement the Downtown Owensboro Master Plan. It is composed of several

“Character Districts” to implement the design goals of the Downtown Owensboro Master Plan.

Downtown Overlay District boundary: is the area of Downtown Owensboro that has been included in the 2009 Downtown Owensboro Master Plan and a map showing the boundary is incorporated as Appendix A of this ordinance.

Historic district: An area of architectural, historical or cultural significance which meets one (1) or more of the criteria set forth in this division and which has been designated and caused to be identified on a historic designation map, by the City of Owensboro, Kentucky.

Major Civic Venue: Shall be any large public gathering place including major sports arena, stadium, convention facilities, etc. Typically such facilities occupy more than one downtown block and may incorporate more than one use on the site.

New construction: An addition to an existing landmark, residence, building, structure, or the construction of a new residence, building, or structure.

Ordinary maintenance and repairs: Any work, the purpose of which is to correct deterioration or to prevent deterioration of a designated historic property or landmark. The work shall restore the property to its appearance prior to deterioration or shall result in the protection of its present appearance. The work shall involve the use of the same building materials or available materials that are as close as possible to the original. Work that changes the external appearance of a property, other than color, shall be considered an alteration for the purposes of this division.

Preservation: The act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

Reconstruction: The act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

Rehabilitation: The act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property significant to its historical, architectural, and cultural values.

Restoration: The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Routine alteration: Any replacement of existing material, both original and nonoriginal, on a designated historic property or landmark with the same material, as well as with the same scale and proportion. This may include, but is not limited to, roofing materials and siding.

(Ord. No. 17-2000, § 2, 4-4-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Sec. 2-353. Establishment of historic preservation board; terms of office; officers.

(a) *Establishment:* There is hereby established the "Owensboro Historic Preservation Board". The board shall consist of five (5) core members appointed by the mayor with the approval of the legislative body. In addition, the board shall oversee the election of one (1) auxiliary member whenever a historic district is approved by the Owensboro Board of Commissioners for a certain area. The auxiliary members must be elected by a majority vote of the property owners within the designated historic district. Auxiliary members must either reside or own property within the area designated. Any auxiliary member who moves from the historic district or sells their last parcel of property in same, shall be replaced within thirty (30) days after he or she resigns, the property is sold, or the member moves, whichever shall first occur. A replacement member to serve the remainder of the unexpired term shall be elected by a majority vote of the property owners within the designated historic district. Failure of the area designated as a specific historic district to fill the unexpired or expired term of an auxiliary member will result in the board filling the vacancy. As a prerequisite to service on the board, core members shall have demonstrated interest in historic preservation, and at least two (2) members shall have training or experience in a preservation-related profession, architecture, history, archaeology, architectural history, planning or related fields. The mayor shall appoint at least one (1) member who owns property within the Downtown Overlay District boundary. If there is no more than one (1) professional available to serve as a member of the board, the mayor shall appoint another person interested in historic preservation. Under circumstances where the board is deprived of any membership with preservation-related knowledge or experience, the board may, in its discretion, seek information and advice from other qualified and knowledgeable professionals in the community, in the course of carrying out the functions and duties assigned to it by this division.

(b) *Terms and Conditions of Office:* One (1) core member of the board shall serve for a term of one (1) year, two (2) core members of the board shall serve for a term of two (2) years, and two (2) core members of the board shall serve for a term of three (3) years. Thereafter, the term of all core and auxiliary members shall be for a term of three (3) years, and both classes of members may be reappointed for additional terms. Each core and auxiliary member shall serve until the appointment and qualification of his or her successor. Vacancies on the board shall be filled within thirty (30) days and when the vacancy occurs during a term of office, the person selected shall be appointed for the unexpired portion of the term.

(c) *Conditions/Election of Officers:* Members of the board shall serve without compensation and the board shall annually elect from among its membership, one (1) member who shall serve as chairman, one (1) member who shall serve as vice chairman, and one (1) member who shall serve as secretary. The vice chairman shall perform all duties and functions of the chairman in the latter's absence or incapacity. The board shall keep official minutes and other appropriate records of its meetings and all proceedings and matters brought before it, and shall make same available for public inspection to the extent required by law. Core and auxiliary members of the board shall be familiar with and abide by the city-county code of ethics and the city's attendance policies, as amended from time to time. Specifically, neither core nor auxiliary board members shall participate in any discussion or vote on any matter coming before the board involving property in which they have a direct ownership, financial, or business interest. Auxiliary members elected by specific historic districts shall vote only on matters that pertain to the historic district they represent. Core members of the board shall have the right to vote on all issues and matters brought before the board.

(d) *Conduct of Meetings:* The board shall adopt and make public, rules for the transaction of its business and shall hold regular meetings and specially called meetings, as deemed necessary and appropriate. Written agendas shall be prepared for all regular and specially called meetings and shall be made available for public inspection. All meetings shall comply with the Kentucky Open Meetings Statute, KRS 61.805 et seq. A simple majority of the membership of the board shall be required to conduct the business of the board.

(e) *Annual Report:* The board shall report at least annually to the Owensboro Board of Commissioners on the activities and accomplishments of the board.

(Ord. No. 17-2000, § 3, 4-4-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Sec. 2-354. Powers and duties of the board.

(a) In addition to the general powers and authorities conferred elsewhere in this division, the board is hereby empowered, authorized, and delegated responsibility for the following:

- (1) To conduct a survey of historic residences, buildings, properties, or landmarks and prepare a plan for their preservation in accordance with the guidelines of the Kentucky Heritage Council;
- (2) To recommend to the board of commissioners the designation of and/or changes to historic districts and individual landmarks;
- (3) To recommend to the board of commissioners the adoption or amendment of written guidelines or standards to govern exterior changes to designated property or landmarks and for undertaking new construction on designated properties;

- (4) Regulation of alterations visible to the public that are proposed for designated property; regulate demolitions, relocations, and new construction;
- (5) Work with and advise the federal, state, and county governments, and other departments of city government on matters of mutual interest and concern;
- (6) Advise and assist property owners and other persons in groups, including neighborhood or business organizations interested in historic preservation;
- (7) To conduct educational programs, including the preparation of publications;
- (8) To adopt, promulgate, or implement policies, rules, and bylaws reasonable and necessary to govern the functions of the board and carry out the purpose and intent of this division; and
- (9) To support the implementation of the downtown design review process through the Zoning Administrator and the Downtown Design Administrator (DDA) as established in Article 21 of the Owensboro Metropolitan Zoning Ordinance. In addition, the Board shall make the downtown overlay and historic preservation standards available to all property owners in the downtown area; make design recommendations that support and reinforce all downtown studies and master plans; and educate, inform and assist all property owners undertaking projects within the downtown overlay area in the development of historic and cultural design concepts. In addition, the board may provide assistance and information to all property owners in the downtown area concerning available tax moratoriums, incentives and other government programs and benefits that serve to stabilize and enhance property values therein; and
- (10) To hear appeals from the requirements of Article 21 relative to design standards and to render a final decision on requested design exception after public hearing; and
- (11) To make recommendation to the Owensboro Metropolitan Board of Adjustments on dimensional variance requests.

(b) The board may initiate and encourage plans for the preservation and rehabilitation of individual historic homes or buildings. The board may give recognition to property owners and tenants who maintain or rehabilitate their historic buildings with care and thus contribute to the preservation of the architecture, culture and history of Owensboro, Kentucky.

(Ord. No. 17-2000, § 4, 4-4-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Sec. 2-355. Nominations to the National Register of Historic Places; designation of local historic preservation districts; downtown design review.

(a) *Nominations to the National Register of Historic Places:*

(1) *Initiation of Nominations:* The Owensboro Board of Commissioners shall initiate all nominations of properties within the city for inclusion on the National Register of Historic Places. The board of commissioners and the historic preservation board shall both submit a recommendation on each proposed nomination to the National Register. Within sixty (60) days of receipt of a nomination from a private individual or the initiation of a nomination by the city, both the board of commissioners and the historic preservation board shall conduct a public hearing and obtain comments from the general public on the proposed nomination which shall be documented and included in their respective recommendations, and shall inform the owner of the property nominated of the two (2) recommendations regarding the eligibility of the property. Regardless of whether they agree, the recommendations of both the board of commissioners and the historic preservation board shall be forwarded by the city to the Kentucky Heritage Council. If the board of commissioners and the historic preservation board both recommend that a property not be nominated, the Kentucky Heritage Council shall inform the property owner, the Kentucky Historic Preservation Review Board and the state historic preservation officer, and the property shall not be nominated unless an appeal is filed with the state historic preservation officer.

(2) *Review of Nomination:* If either or both the board of commissioners and the historic preservation board agree that a property should be nominated for inclusion on the National Register of Historic Places, the nomination shall receive a preliminary review by the Kentucky Historic Preservation Review Board, who shall make a recommendation to the state historic preservation officer, who shall then decide whether or not to forward the nomination to the United States Secretary of the Interior, in whom there is vested final authority to certify the inclusion of the property on the National Register of Historic Places. The board of commissioners, the historic preservation board, or the owner of the property nominated for inclusion on the National Register of Historic Places may appeal the final decision by the state historic preservation officer.

(b) *Designation of Local Historic Preservation Districts:*

(1) *Recommendations and Designations:* Consideration of the designation of a landmark or historic district may originate with the filing of an application for designation with the board by two-thirds (2/3) of the owners of each parcel of property within the proposed district. Multiple owners of a parcel of property shall be considered as one (1) property owner for the purposes of filing the application. The board shall verify the names and addresses of the owners of the affected property and the owners of all adjoining properties as listed on the tax rolls of the city. The board may appoint a committee representing a potential historic district or landmark to work with the property owners in the area during the formative

stages of application development. The committee shall be responsible for determining the feasibility and support of a historic district in the area and shall prepare a map or plat that illustrates the boundaries of the proposed district and its proximity to surrounding areas. The committee is responsible for holding public area meetings and distributing information concerning historic designation. The committee shall also be responsible for drafting and presenting to the property owners of the affected area a set of regulations or standards to be applied to the historic district. The committee shall include at least one (1) member of the board.

(2) *Preservation, Restoration, Rehabilitation and Reconstruction*

Guidelines/Standards: Prior to its first public hearing on a proposed designation, the board shall develop and adopt preservation, restoration, and/or reconstruction guidelines that will apply to the proposed historic preservation district or landmark and which will assist owners in the preservation and rehabilitation of their property. The guidelines shall include the Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings and may include other appropriate guidelines. The guidelines, along with the proposed designation, shall be submitted to the board of commissioners for its approval. The guidelines and the decision of the board shall not limit new construction to any one (1) architectural style, but shall seek to preserve the character and integrity of the historic districts and landmarks. The board may expand or amend the guidelines provided it holds a public hearing on the changes after formal notification to the affected property owners in the manner prescribed herein, and submits the proposed changes to the board of commissioners for its approval.

(3) *Public Hearing and Notice:* To initiate the process for designations, the board shall gather pertinent information about the property or properties proposed for historic designation and shall schedule a public hearing on same. Notice of the hearing shall be advertised in the local newspaper not less than seven (7) nor more than twenty-one (21) consecutive days immediately prior to the hearing. At least five (5) days prior to the public hearing, written notice shall be given by first-class mail to the owners of property under consideration and the owners of all adjoining property. The clerk or other designated officer of the board shall certify that the notices were mailed. Written notice shall be considered sufficient if it is mailed to the person listed on the tax rolls of the City of Owensboro, Kentucky. The written notice required herein shall advise all interested property owners and other parties of the availability of general and specific information regarding the proposed historic district designation and guidelines, and where and when said information is available for public inspection. During the hearing, a member of the board or its designee, shall present a summary of the proposed historic district designation and the preservation, restoration, rehabilitation or reconstruction guidelines applicable thereto. Thereafter, all properties and other interested parties shall be given an opportunity to ask questions, tender other relevant information, and/or comment

on all matters pending before the board. The board shall cause an official transcript to be kept of all testimony, comments and discussions occurring during the public hearing.

(4) *Designation Criteria to be Considered by Board:* A historic preservation district or landmark shall qualify for designation when it involves a residence, building, structure or a site that is at least fifty (50) years old, and meets one (1) or more of the following criteria which shall be specifically addressed in the board's report and recommendations to the Owensboro Board of Commissioners:

- a. It is characterized as an established and geographically definable residential neighborhood, united by culture, architectural styles, or physical plan and development;
- b. Its character as a geographically definable area possessing a significant concentration of homes, buildings, or structures united by past events or by its plan or physical development;
- c. It has value as a reminder of the cultural or archaeological heritage of the city, state, or nation;
- d. Its location as the site of a significant local, state or national event;
- e. Its identification with a person or persons who significantly contributed to the development of the city, state, or nation;
- f. Its identification as the work of a master builder, designer, or architect whose individual work has influenced the development of the city, state or nation;
- g. Its value as a building that is recognized for the quality of its architecture and that retains sufficient elements showing its architectural significance; or
- h. Its distinguishing characteristics are of an architectural style valuable for the study of a period, method of construction, or use of indigenous materials.

(5) *Report and Recommendation to the Board of Commissioners:* Within sixty (60) days after the completion of the public hearing required herein, the board shall submit a written report to the board of commissioners which summarizes the testimony, information, and materials presented to and considered by the board, and which includes its findings of fact and recommendations regarding the residence, building, structure or district's qualification for historic designation and the preservation, restoration, rehabilitation and reconstruction guidelines that

apply. The report and recommendation shall contain all pertinent information about the residence, building, or structure which has been identified for inclusion in the proposed designation, as well as a detailed map which identifies the boundaries of the proposed landmark or historic district. A copy of the report and map shall also be sent to the planning commission. Within sixty (60) days of the receipt of the report and prior to the adoption of any ordinance by the board of commissioners establishing a historic preservation district, the planning commission shall evaluate the proposed designation in light of existing and future plans for development and growth within the city, and submit it, in writing, to the board of commissioners.

(6) *Action by the Board of Commissioners:* The board of commissioners shall, in its sole legislative discretion, approve, modify or disapprove the board's recommendation within sixty (60) days after receipt thereof, even though a recommended historic preservation district or landmark qualifies for designation and meets the criteria set forth in section 2-355(4) of this division. For good cause, this time period may be extended by the board of commissioners. Historic preservation districts or landmark designations recommended by the board and approved by the board of commissioners, shall be established by ordinance.

(7) *Relationship to Zoning:* The property or landmarks in a designated historic preservation district shall be subject to any and all zoning, use, and development regulations applicable thereto. In the event of a conflict between this division and the underlying use and development zoning regulations, the stricter standards shall govern. Upon establishment of a historic preservation district, development within the area shall conform to all applicable zoning and historic district regulations.

(8) *Notification of Designation as Landmark or Historic Preservation District:* The board shall notify each owner of the decision relating to his or her property and shall cause to be lodged of record in the appropriate index in the office of the Daviess County Clerk a recordable instrument providing actual and constructive notice that the property more particularly described therein has been designated by ordinance as a historic preservation district or landmark; and that any exterior alterations visible to the public, new construction, demolition, or relocation affecting said landmark or property within the historic preservation district is burdened and restricted by, owned subject to, and shall comply with, the preservation, restoration or reconstruction guidelines applicable thereto, which shall be incorporated by reference in the recorded instrument. A recordable memorandum that summarizes and references the city ordinance establishing the historic preservation district or landmark, map, and preservation, restoration and reconstruction guidelines applicable to the landmark or properties within said district, may be lodged of record in lieu of the original documents. The preservation, restoration and reconstruction guidelines, once lodged of record, shall constitute a lawfully binding covenant that runs with the land affected thereby and shall inure to the benefit of and be binding upon all successors in

interest thereto. A certified copy of the ordinance approved by the board of commissioners, including the historic preservation district or landmark map shall be forwarded to the Owensboro-Daviess County Metropolitan Planning Commission. The planning commission shall include approved historic preservation districts or landmarks in the comprehensive plan, and any subsequent amendments thereto and such new comprehensive plan as may thereafter be adopted.

(9) *Amendment or Rescission of a Designation of Landmark or Historic Preservation District:* Amendments to, or rescission of, any historic preservation designation or applicable guidelines shall be conducted in the same manner required for the original designation and/or guidelines.

(c) *Downtown Design Review:*

(1) *Downtown Overlay Districts:* The city has adopted the downtown design standards originally developed by Downtown Owensboro, Inc., and building form standards for Downtown within the Owensboro Metropolitan Zoning Ordinance as Article 21, Downtown Overlay Districts. This section comprehensively addresses development, design, and historic preservation standards for Downtown Owensboro based on specific character districts identified in the Downtown Owensboro Master Plan adopted by the Owensboro Board of Commissioners in February 2009.

(2) *Downtown Overlay Design Review Standards:* Article 21 of the Owensboro Metropolitan Zoning Ordinance establishes the standards for the review of any and all public or private projects that involve permanent building construction, demolition, alteration, repairs, restoration, maintenance or rehabilitation that in any way visibly alters the exterior appearance of any structure, sign or property site observable from public rights-of-way and that occur within any area of the Downtown Overlay District boundary that is not "designated property" as defined in this division. The boundary for the Downtown Overlay District shall be established in Article 21 and is generally defined in Section 2-352 of this ordinance. The Historic Preservation Board shall provide the following services in support of the implementation of Article 21:

- a. Have the option to make a recommendation to the Board of Adjustment on any appeals to a decision of the Zoning Administrator on any downtown project and such recommendation, if issued, shall be issued within 21 days of notice of the appeal;
- b. Provide design direction and support to the Zoning Administrator and Downtown Design Administrator in reviewing any downtown projects;
- c. Make a decision on any requests for Design Exceptions to standards in Article 21 of the Owensboro Metropolitan Zoning Ordinance.
- d. Make a recommendation to the Board of Adjustment on any request for dimensional variances within the Downtown Overlay District boundary.

- e. Review and approve the design and development of any major civic venues within Downtown Owensboro.

(3) *Downtown Design Administrator:* The role of the Downtown Design Administrator shall be as established in Article 21 of the Owensboro Metropolitan Zoning Ordinance.

(4) *Downtown Design Review Process:* Article 21, Downtown Overlay Districts, of the Owensboro Metropolitan Zoning Ordinance shall establish the process for development and design review and approval within Downtown Owensboro.

(Ord. No. 17-2000, § 5, 4-4-2000; Ord. No. 63-2000, § 1, 11-30-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Editor's note: Ord. No. 63-2000, § 1, adopted Nov. 30, 2000, was designated as § 2-355 1(1), (b), 1(a)--(i). To preserve the numbering style of the Code, and at the editor's discretion, these provisions have been included as § 2-344(a)(1), (2) (b)(1)--(9).

Sec. 2-356. Requirement for certification of appropriateness.

1. Within the Downtown Overlay District Boundary:

Requirements for a certificate of appropriateness and review criteria for the same for all building projects within the Downtown Overlay District Boundary shall be established in Article 21 of the Owensboro Metropolitan Zoning Ordinance.

2. Within Historic Districts that are located outside the Downtown Overlay District Boundary:

A certificate of appropriateness shall be required before the following actions may be undertaken which affect a landmark or a property in a historic district that is located outside the Downtown Overlay District Boundary:

- (1) Alteration of the exterior part of a residence, building, or structure that is visible to the public;
- (2) New construction;
- (3) Demolition; or
- (4) Relocation.

A certificate of appropriateness is required whether or not the proposed work requires a building permit. If a certificate of appropriateness is required, it shall be issued prior to the issuance of any necessary building permit and prior to consideration of any necessary development plan, conditional use permit, or variance by the Metropolitan Planning Commission or Metropolitan Board of Adjustment.

(a) *Application to the Board:* Applications for a certificate of appropriateness that propose or would necessarily involve exterior alterations visible to the public, new construction, demolition, or relocation affecting a landmark or a property in a historic district shall be referred to the board. The applicant shall supply the board with the information it requests in order to reach a decision on the application for a certificate of appropriateness. The applicant shall provide, where applicable, drawings of the proposed work, photographs of the existing residence, building or site and adjacent properties, and information about the building materials to be used.

(b) *Action by the Historic Preservation Board; Notice:* The historic preservation board shall convene and hold a public hearing on each certificate of appropriateness at its next regularly scheduled or specially called meeting provided the completed application is received at least seven (7) days prior to that meeting. The public hearing shall be conducted in the same manner as provided for proposed designations of historic preservation districts. A decision shall be rendered at that meeting, unless the board deems the application incomplete or requests additional information, at which time the board shall have until its next regularly scheduled or specially called meeting in which to render a decision. The historic preservation board may extend the time for a decision an additional thirty (30) days if the application is for demolition, new construction or relocation.

The board shall approve, disapprove or modify each application based on the criteria contained in this section. The board may suggest modifications to an application and, if applicant agrees, may then approve a certificate of appropriateness providing for revisions in the plan submitted. If the board fails to render a decision on an application within the specified time period, the application shall be deemed approved. Applicants shall be given written notice of the public hearing relating to their application at least five (5) days in advance of the hearing and shall be informed of the board's decision. Notice of the public hearing shall be given in the manner prescribed by law for public agencies under the Open Meetings Act, and in addition thereto, notice of the hearing shall be conspicuously posted on the affected property for five (5) consecutive days immediately prior to the hearing.

(c) *Criteria for Applications:* In rendering a decision on an application, the board shall apply its general guidelines and the adopted design review guidelines for that landmark or historic district. The board shall also consider: (1) the effect of the proposed work on the landmark or the property in the historic district upon which such work is to be done, and (2) the relationship between such work and other adjacent or nearby residences, buildings, and property. In evaluating the effect and the relationship, the board shall

consider historical and architectural significance, architectural style, design, texture, and materials. The certificate issued by the board shall not exempt applicant from compliance with the requirements of state and local laws, codes and regulations.

(d) *Consultation with Applicants:* Applicants may consult with the board prior to submission of plans. The board shall strive to reconcile the current needs of applicants with the spirit and intent of this division.

(e) *Routine Alterations; Ordinary Maintenance and Repairs:*

(1) *Routine Alterations:* The board, or its designee, shall prepare and provide a list of routine alterations for which the board, or its designee, shall issue a certificate of appropriateness without the necessity of a public hearing. At each meeting, the board shall be informed of all approved routine alterations.

(2) *Ordinary Maintenance and Repairs:* Ordinary maintenance and repairs may be undertaken without a certificate of appropriateness provided this work on a landmark or a property in a historic district does not change its exterior appearance that is visible to the public. However, ordinary maintenance and repairs may require a building permit.

(3) *Reversal of Current Building Appearance:* No provisions in this division shall be interpreted to require a property owner or tenant to undertake an alteration or to restore a building to its original appearance.

(f) *Regulation of Paint Colors Prohibited:* The regulation of paint colors under this division is expressly prohibited. The board may prepare and distribute suggestions on paint colors deemed historically appropriate for different types and styles of residences, buildings, and landmarks.

(g) *Criteria for Certificates of Appropriateness:*

(1) *Additive Changes:* Certificates of appropriateness pertaining to the moving of buildings into or within a historic district or landmark site, alterations, new construction, or changing walls or fences, shall be granted upon application therefore, if the board makes a factual determination that either:

a. The proposed addition or improvements will not ordinarily be visible from any public roadway within the zone or adjacent to the landmark site;
or

b. The following standards for determining historical integrity have been met:

1. The proposed action is in harmony with the wording and intent of this division; and

2. The proposed action will be complimentary to all conforming residences, buildings, or structures within the zones; and

3. The proposed action is in substantial conformity with applicable guidelines for exterior features promulgated by the Secretary of Interior of the United States and the publication "Standards of Rehabilitation," as amended from time to time, and as set forth in any subsequent edition of this publication.

(2) *Changes by Removal:* Certificates of appropriateness pertaining to moving buildings from a historic district or landmark site, or demolition of residences, buildings, or structures, shall be granted upon application therefore if the board makes a factual determination that either:

a. The denial of the proposed action would deprive the landowner of the usefulness of his land or a fair and reasonable return on his investment therein; or

b. Those portions of the residence, landmark, building or structure sought to be removed do not presently, and cannot, within reasonable restoration efforts, meet the standards of determining historical integrity set forth in this section.

(h) *Length of Validity of Certificate of Appropriateness:* A certificate of appropriateness shall remain valid for one (1) year after it is issued, but may under appropriate circumstances, be extended by the board for additional one (1) year periods. Approved alterations, moving, or demolitions must commence within one (1) year after the issuance of the certificate of appropriateness. If a building permit is required for work stipulated in a certificate of appropriateness, it shall be applied for within one (1) year after the issuance of the certificate. The certificate of appropriateness shall remain in effect until the building permit expires.

(i) *Appeal of the Board's Decision:* Any applicant aggrieved by the final decision and action of the board on an application for certificate of appropriateness have a right of appeal to Daviess Circuit Court, provided that a notice of appeal is filed with the board within thirty (30) days after entry of its final decision.

(Ord. No. 17-2000, § 6, 4-4-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Sec. 2-357. Failure to obtain or comply with certificate of appropriateness; stop work order; remedies.

(a) The construction, alteration, demolition of any residence, building, structure, landmark or appurtenance thereto, which is commenced or continued contrary to the

provisions of this division is hereby declared to be a public nuisance, unlawful and a violation of this division.

(1) In the event any alterations, moving or demolition is being performed without the required certificate of appropriateness, the board, or its designee, or the building inspector, in cases where a building permit would be required, shall issue a "stop work order." All work shall cease on the designated residence, property, structure, or landmark. No additional work shall be undertaken as long as such stop work order shall continue in effect. The board may meet with the owner or the tenant to resolve the problem. The city attorney is hereby authorized to take any and all action necessary to enforce the provisions of this division, including the filing of a petition in circuit court for a temporary restraining order or a mandatory, temporary and/or permanent injunction, or for any and all other appropriate legal or equitable relief.

(2) All work performed pursuant to a certificate of appropriateness shall conform to the provisions of such certificate. The work shall be inspected from time to time to assure such compliance. In the event work is being performed which is not in accordance with such certificate, the board, or its designee, or in cases where a building permit has been issued or is required, the city building inspector shall issue a "stop work order." all work shall cease on the designated residence, building, structure or property and no additional work shall be undertaken as long as such stop work order shall continue in effect. The city attorney is authorized to take any and all action necessary to enforce the provisions of this division, including the filing of a petition in circuit court for a temporary restraining order or a mandatory, temporary and/or permanent injunction, or for any and all other appropriate legal or equitable relief.

(b) In addition to the above, legal action may also be instituted by any property owner or owners, adversely affected by the violation of any provision of this division.

(Ord. No. 17-2000, § 7, 4-4-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Sec. 2-358. Criminal and civil penalties.

(a) *Criminal Penalties:* Any person found to be in violation of any provision of this division shall be subject to a fine as follows, for each offense:

(1) Not less than two hundred fifty dollars (\$250.00), or more than five hundred dollars (\$500.00) for demolition; and

(2) Not to exceed five hundred dollars (\$500.00) for all other offenses.

(b) *Civil Penalties:* As an alternative to, or in conjunction with the penalties set forth hereinabove, any person found to be in violation of this division may also be assessed a civil penalty not to exceed one thousand dollars (\$1,000.00), payable to the City of

Owensboro, Kentucky, within twenty (20) days of the issuance of the citation. Civil penalties not paid within the time prescribed herein may be recovered by the city in a civil action in the same manner provided for the collection of a civil debt.

(c) Each day of the existence of any violation of this division shall constitute a separate offense.

(Ord. No. 17-2000, § 8, 4-4-2000; Ord. No. 27-2004, § 2, 10-5-2004)

Sec. 2-359. Historic district designations list.

(a) *J. Z. Moore Historic Preservation District.* Board of commissioners hereby publicly endorses and formally approves the establishment of the J. Z. Moore Historic Preservation District, which district shall include all real properties and improvements thereon, at the following addresses:

- 115-119 East 12th Street (north side)
- 115-116 East Parrish Avenue (both sides)
- 107 West 14th Street 115 East 14th Street (north side)
- 1200-1330 Saint Ann Street (both sides)
- 1129-1331 Allen Street (both sides)
- 1202-1230 Daviess Street (both sides)
- 1302-1330 Daviess Street (west side)

(b) *Old Owensboro Historic Business District.* Board of commissioners hereby publicly endorses and formally approves the establishment of the Old Owensboro Historic Business District, which district shall include all real properties and improvements thereon within the block bounded by the Ohio River on the north, East Second Street on the south, J. R. Miller Boulevard on the east, and Daviess Street on the west.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

INTRODUCED AND PUBLICLY READ ON FIRST READING, this 20th day of October, 2009.

PUBLICLY READ AND FINALLY APPROVED ON SECOND READING, this 3rd
day of November, 2009.

Ron Payne, Mayor

ATTEST:

Beverly Lovan, City Clerk

APPROVED AS TO FORM AND CONTENT

By: _____
Edward Ray, Jr.
City Attorney

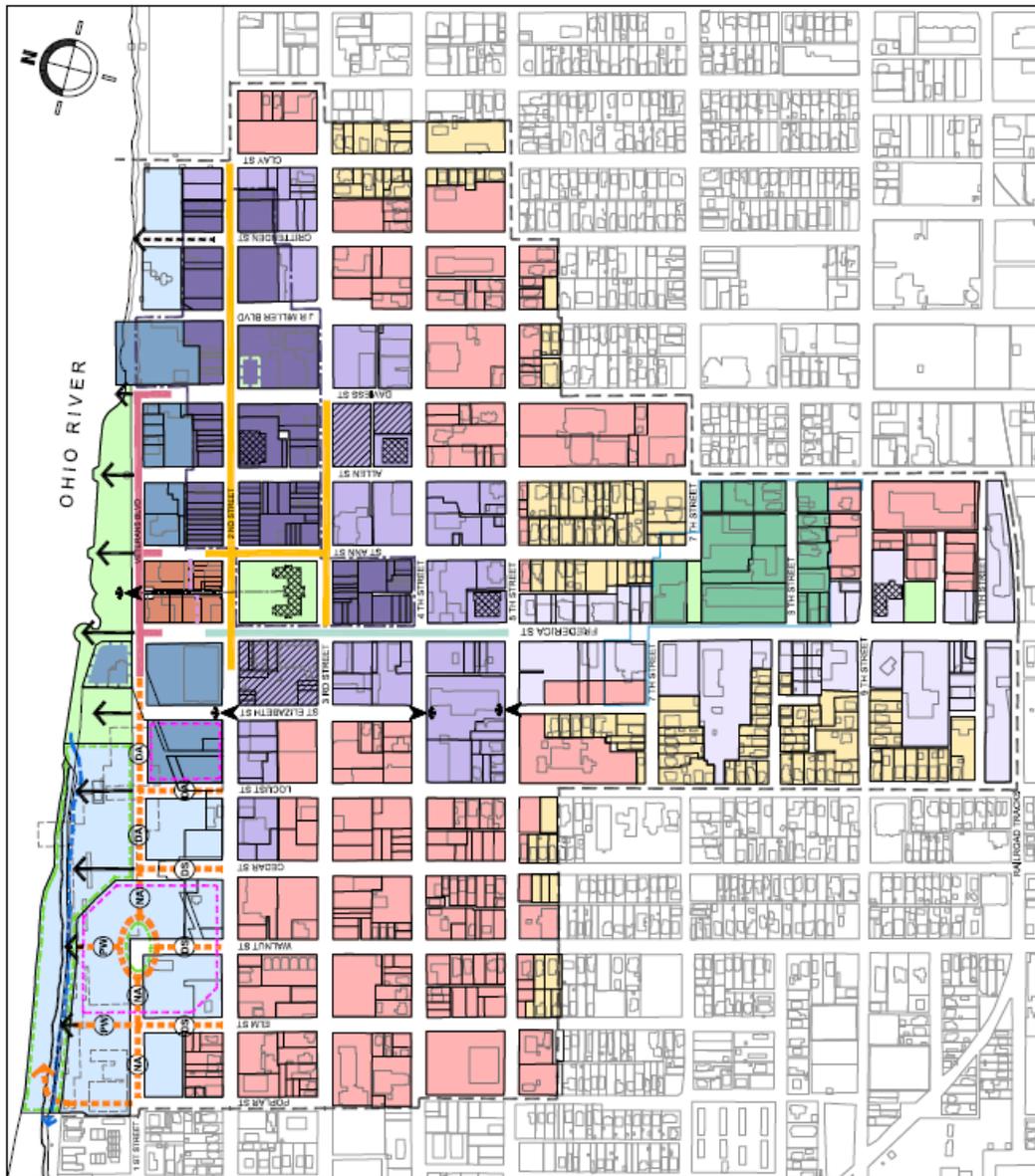
APPENDIX A Downtown Overlay District Boundary and Regulating Plan

CHARACTER DISTRICTS	
	Historic Core
	Riverfront Plaza
	Downtown Core
	Downtown Campus
	Frederika Boulevard
	Riverfront Core
	Neighborhood
	Riverfront Edge

TYPE 'A' STREET DESIGNATIONS	
	Pedestrian Priority Street
	Downtown Core Street
	Downtown Boulevard
Notes: Streets with an designation are State R streets.	

SPECIAL REQUIREMENTS	
	Designated CMc Building
	Recommended CMc Building Site
	Recommended pedestrian connection
	Recommended pedestrian/bike path
	Recommended street
	CMc/Open Space
	Designated public access & view to river
	Rec. public access and view to river
	Recommended Terrestrial Wetland

REFERENCE	
	National Register Historic District
	Borough Unboundly - approx. boundary
	Downtown Overlay District Boundary



Downtown Overlay
District Regulating Plan

Not to scale
Aug 26, 2009