

## ARTICLE IX

### GENERAL REGULATIONS

**SECTION 9.0 PURPOSE:** General regulations apply to all districts. Where requirements of a general regulation and a district regulation differ, the more restrictive requirement shall prevail.

**SECTION 9.1 REDUCTION IN BUILDING SITE AREA:** Notwithstanding other provisions of this ordinance, no lot, in any zone, may be reduced in area below the minimum lot area as specified herein for the zone within which said lot is located except where such reduction has been brought about by the expansion or acquiring of rights-of-way for a street, road, or highway. If, however, by some means (e.g., misinterpretation of law, erroneous lot descriptions, etc.) the lot area is reduced below the minimum required lot area as specified herein for the zone, all of the uses and structures contained in the remaining portion of the area shall be subject to compliance with all provisions of this ordinance. In the event that the uses and structures cannot comply in such circumstances, the property owner shall seek relief from the Board of Adjustment as provided for in Section 17.5 of this ordinance.

**SECTION 9.2 INTERFERENCE WITH TRAFFIC SIGNALS:** Notwithstanding other provisions of this ordinance, in any zone, no sign, structure, tree, planting or vegetation or any portion thereof shall protrude over or into any street, road or highway so as to create confusion around, or otherwise interfere with, traffic signals of any kind.

**SECTION 9.3 VISION CLEARANCE AT CORNERS, CURB CUTS, AND RAILROAD CROSSINGS:** Notwithstanding any part of this ordinance or any permit granted, or any variance granted by the Board of Adjustment, no type of structure, vehicle, tree, planting, vegetation, sign or fence or any type of obstacle or any portion thereof shall be placed or retained in such a manner which would create a traffic hazard or would obstruct the vision clearance at corners, curb cuts, or railroad crossings in any zone.

**SECTION 9.4 FRONTAGE ON CORNER LOTS AND DOUBLE FRONTAGE LOTS:** On lots having frontage on more than one street, in any zone, the minimum front yard shall be provided for each street, road, or highway in accordance with the provisions of this ordinance.

**SECTION 9.5 UTILITIES LOCATION:** Electrical transformer stations, gas regulator stations, sewage and water treatment plants, pumping stations, standpipes for public water supply and other similar utility uses may be located in any zone. The location of such facilities shall be in accordance with Kentucky State law and the following requirements shall be complied with:

- A. Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which the above element is a part.

- B. A building or structure, except an enclosure fence, shall be set back at least fifty (50) feet from any property line.
- C. Such facilities shall be enclosed by a protective fence as regulated by Article XI.
- D. Open spaces on the premises shall be suitably landscaped and maintained and a screening area according to Section 9.17 of this ordinance may be required in and along any yard.
- E. The stored vehicles and equipment on the premises, unless enclosed or screened, shall be prohibited.
- F. The surrounding area shall not be adversely affected by, and shall be protected from noise, odor, glare, dust, gas, smoke and vibration by such suitable means and conditions as the Planning Commission may specify.

**SECTION 9.6 RAILROAD RIGHTS-OF-WAY LOCATION:** Railroad rights-of-way, exclusive of such uses as marshaling yards, passenger and freight terminals, maintenance shops, fueling facilities and round houses, may be located in any zone of this ordinance providing said railroad rights-of-way meet the requirements of those sections of the Kentucky State Law which regulates such uses.

**SECTION 9.7 EXCAVATION, MOVEMENT OF SOIL, TREE REMOVAL, AND EROSION AND SEDIMENTATION CONTROL:**

- A. No governmental entity or other person or entity shall strip, excavate, fill, or otherwise move soil, trees, or other vegetation for sale, or any other purpose, except for minor changes such as the filling of small pockets in lots, removal of vegetation which is diseased or endangering the public safety, flower beds and other similar operations, in any zone set forth in this ordinance without first insuring that all requirements of the Subdivision Regulations of the city, if applicable, have been fulfilled and then obtaining a permit from the building inspector for such stripping, excavation, filling, or other means of soil movement including wholesale removal of trees and other vegetation.
- B. The building inspector may issue the required permit after determining that the resulting change in grade or removal of trees and other vegetation in the affected area will be in conformance with all applicable provisions of this ordinance. The provisions of this section shall not be construed to prohibit normal excavation or grading incidental to the construction or alteration of a building on the premises for which a building permit has been granted as required otherwise in this ordinance.
- C. Erosion and Sedimentation Control: Controls for excavation, movement of soil, tree removal and effective erosion and sediment controls shall be planned and applied according to the following principles:

1. The smallest practical area of land should be exposed at any one time during development.
  2. When land is exposed during development, the exposure should be kept to the shortest practical period of time.
  3. Temporary vegetation and/or mulching shall be used to protect critical areas exposed during development.
  4. Sediment basins (debris basins or silt traps) shall be installed and maintained to remove sediment from run-off water from land undergoing development.
  5. Provisions shall be made to accommodate the increased runoff caused by changed soil and surface conditions during and after development.
  6. Permanent final vegetation and structures shall be installed as soon as practical in the development.
  7. The development shall be fitted to the topography and soils so as to create the least erosion potential; and
  8. Wherever feasible, natural vegetation shall be retained and protected.
- D. Stormwater retention and/or detention shall be required whenever the amount of stormwater runoff from a site is increased by new development. The following criteria shall be used in planning and designing the required stormwater retention and/or detention areas:
1. Calculate the Pre-Development Site Runoff Rate based on the “Rational Method”,  $Q=CIA$  based on the existing site conditions and a 25 year storm frequency.
  2. Calculate the Post-Development Site Runoff Rate using the “Rational Method”,  $Q=CIA$  based on the proposed site conditions and a 50 year storm frequency.
  3. The Allowable Discharge Rate from the retention and/or detention area cannot exceed the Pre-Development Site Runoff Rate calculated for the site.
  4. The amount of detention volume required for a subdivision or development must not be less than the Post-Development Runoff Rate minus the Pre-Development Runoff Rate multiplied by the recruited detention time of 30 minutes.
  5. Fencing may be required around the detention and/or retention facilities when the location is not easily observed or in the opinion of the engineer is necessary.
- E. All excavations within the public right-of-ways should be back filled full depth with flash fill, or an equal product approved in writing by the City Engineer. This requirement shall be applicable to the repair of existing utilities, or for the construction of any new utilities under the existing or proposed paving and any utilities within three (3) feet of the paving limits. Paved area shall include but not be limited to streets, sidewalks, driveways, aprons, and curbs.

**SECTION 9.8 UNSIGHTLY OR UNSANITARY STORAGE:** No rubbish, salvage materials, junk or miscellaneous refuse shall be openly stored or kept in the open and no weeds shall be allowed to go uncut within any zones when the same may be construed to be a menace to public health and safety by the appropriate Health Department, or to have a depressing influence upon property values in the neighborhood, in the opinion of the Zoning Administrator.

Regular salvage and junk yards shall be adequately enclosed with a solid fence or wall as regulated by Article XI of this ordinance and an approved permanent planting screen may also be required as regulated in Section 9.17 of this ordinance.

**SECTION 9.9 JUNKYARD LOCATION:** No person shall operate or cause to operate any junkyard which is situated closer than two thousand (2,000) feet to the centerline of any county, state, federal or limited access highway or turnpike including bridges and bridge approaches unless a permit for such operations shall have been obtained from the Kentucky Department of Highways in accordance with KRS 177.905 to 177.950.

**SECTION 9.10 APPLICATION OF ZONING REGULATIONS:**

- A. Except as herein provided, no public or private structures except the service facilities or public utilities operating under the jurisdiction of the Public Service Commission or the Department of Motor Transportation or Federal Power Commission and common carriers by rail, shall be erected reconstructed, or structurally altered, nor shall any public or private structures or land, except the service facilities of public utilities operating under the jurisdiction of the Public Service Commission or the Department of Motor Transportation or Federal Power Commission and common carriers by rail, be used for any purpose other than that permitted in the zone which such structures or land is to be located or is located. All of the required lot area shall be in one (1) zone.
- B. Except as hereinafter provided, no public or private structures, except the service facilities of public utilities operating under the jurisdiction of the Public Service Commission or the Department of Motor Transportation or Federal Power Commission and common carriers by rail, shall be erected, reconstructed or structurally altered to exceed the height or bulk limit herein established for the zone in which such structures is to be located or is located.
- C. Except as hereinafter provided, no lot area shall hereafter be so reduced or diminished that the yards or other open spaces shall smaller than described by this ordinance and no building shall be occupied by more families than prescribed for such building, structure or premises for the zone in which it is located.
- D. Except as hereinafter provided, no part of any yard, or other open space, or off-street parking or loading and/or unloading space about or in connection with any building, structures or use permitted by this ordinance shall be considered to be part of a required yard, or other open space, or off-street parking or loading space for any other building, structure or use.
- E. Every public or private building or other structures hereafter erected shall be located on a lot as herein defined and in no case shall there be more than one (1) principal building and permitted accessory structures on one (1) lot, except as hereinafter provided, nor shall any building be erected on any lot which does not abut at least twenty-five (25) feet on a deeded and accepted public right-of-way. Flag lots shall only be used in those

locations where due to geometric, topographic and other physical features, it would be impractical to extend a publicly dedicated street to serve lots located in said areas, as determined by the planning commission. The minimum lot area and setback requirements for flag lots shall be 2.5 times the requirements for residential zones. In no case shall more than two flag lots be contiguous to each other at the publicly dedicated street.

- F. Accessory structures and uses (excluding off-street parking, loading and/or unloading areas, fences and signs) shall not be permitted within any required minimum front yard or side yard (on each side of the lot) in any zones. Accessory structures and uses (excluding off-street parking, loading and/or unloading, fences and signs) shall be permitted to extend into the minimum rear yard areas, as defined herein, in all zones, but must be set back from the rear lot line a minimum of ten (10) feet, and required minimum side yard clearances must be maintained. Location of off-street parking, loading and/or unloading areas, fences, and signs are governed by their respective sections, as provided herein.
- G. Permitted Obstructions in Minimum Required Yards or Courts: Except as herein provided, the following shall not be considered to be obstructions when located in the required minimum yards or courts specified:
1. In All Minimum Required Yards or Courts – Awnings and canopies; steps four (4) feet into the minimum required yards which are necessary for access to a lot from a street or alley; fire escapes; chimneys projecting eighteen (18) inches or less into the minimum required yards; arbors and trellises; flag poles; and bird baths; fences and walls, subject to the requirements in Article XI of this ordinance; off-street parking, as provided for in Article XII of this ordinance.
  2. In Minimum Front Yard Depths – One-story bay windows projecting three (3) feet or less into the minimum rear yard; overhanging eaves and gutters projecting three (3) feet or less into the minimum required side yard; driveways.
  3. In Minimum Rear Yard Depths – One story bay windows projecting three (3) feet or less into the minimum required yard; overhanging eaves and gutters projecting three (3) feet or less into the minimum required rear yard; air conditioning equipment.
  4. In Minimum side Yard Width – Air conditioning equipment, excluding compressor for central air conditioning unit, overhanging eaves and gutters projecting eighteen (18) inches or less into the minimum required side yard; driveways.
  5. Off-street parking as provided in Section 12.0, C, 1.

#### **SECTION 9.11 SPECIAL REQUIREMENTS GOVERNING HOME OCCUPATIONS:**

The following requirements shall apply to home occupations when permitted herein:

- A. No persons other than members of the family residing on the premises shall be engaged in such operation.

- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the gross floor area of any one floor of the dwelling unit (including the basement or cellar) shall be used in the conduct of the home occupation.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation that will indicate from the exterior that the building is being utilized in part for any purpose other than that of dwelling unit, except that a name plate as regulated by Article XIV of this ordinance, shall be permitted.
- D. No home occupation shall be conducted in any accessory building nor shall there be any exterior storage of any materials on the premises.
- E. There shall be no commodity sold upon the premises in connection with such home occupation.
- F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and not located in any required yard except as herein provided.
- G. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises, shall be used.

Home occupations shall include the use of the premises for such things as:

1. Professional offices where the service rendered is by other than direct contact with customers at that location (for example, where the bulk of the business is by telephone actual work is performed in home and customer is contacted in other than that location); and
2. Also would be inclusive of persons engaged in the preparation of a commodity (such as certain clothing items by a seamstress, certain candy items or bakery items, etc.) to be sold at locations other than on the premises.

Home occupations shall include the use of the premises by a physician, surgeon, dentist, lawyer, clergyman or other professional persons for consultation or emergency treatment, but not for the general practice of his profession.

**SECTION 9.12 NONCONFORMING LOTS, NONCONFORMING USES,  
NONCONFORMING STRUCTURES, REPAIRS AND MAINTENANCE, AND  
NONCONFORMING SIGNS:**

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A. NONCONFORMING LOTS OF RECORD:

1. Any lot of record which does not meet the minimum requirements of this ordinance shall be considered a nonconforming lot of record.
2. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold which does not meet lot width and area requirements established by this ordinance, not shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance.
3. Where a single nonconforming lot of record exists having a lot area less than required by the particular zone district wherein said lot is located, development may be permitted on the lot provided: the lot is located on a deeded and accepted right-of-way; the lot is of separate ownership from all adjacent and contiguous parcels exist as developed building lots or dedicated street right-of-ways precluding acquisition of additional area to achieve conformity; and development proposed on the lot is in conformance with all other requirements of this ordinance. Where a dimensional variance from any minimum yard, setback, etc., is necessary to develop on said lot, an application for dimensional variance shall be submitted for review and approval by the board of adjustments in accordance with Article XVIII of this ordinance.

B. NONCONFORMING USES:

1. CONTINUANCE: Except as herein provided, the lawful use of structure or land existing at the time of the adoption of this ordinance may be continued although such use does not conform to the provisions of this ordinance – it shall become a legal nonconforming use. However, no nonconforming use may be enlarged or extended beyond its area of use at the time it becomes a legal nonconforming use, unless and until the use is brought into conformance with all provisions of this ordinance.
2. CHANGE FROM ONE NONCONFORMING USE TO ANOTHER: As regulated by Article XVII, Section 17.6 D, of this ordinance.
3. TERMINATION: In all cases, the Board of Adjustments shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the Board may terminate the right to operate a nonconforming use based on any of the following the Board shall state its:
  - a. Nonoperative, nonused, or abandoned for a period of twelve (12) consecutive months providing that the Board of Adjustment may allow the

- continuation of such nonconforming use if it is determined that reasons for such nonuse were beyond the owners/operators control.
- b. Whenever the structure, in which the nonconforming use is operated, is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure in which the nonconforming use is operated and a determination is made by the Board of Adjustments that this structure should not be reconstructed.
  - c. Whenever the structure, in which the nonconforming use is operated becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such structure as of the date of the official order under the applicable ordinance and a determination is made by the Board of Adjustments that this structure should not be reconstructed.
  - d. Whenever said nonconforming use is determined to be detrimental or injurious to the public health, safety, or general welfare.
4. ZONE CHANGE: The foregoing provisions shall apply to uses which become legally nonconforming due to zone changes which take place thereafter.

C. NONCONFORMING STRUCTURES:

1. CONTINUANCE: Except as herein provided, any lawful nonconforming structure existing at the time of adoption of this ordinance, may be occupied, operated, and maintained in a state of good repair, but no nonconforming structure shall be enlarged or extended unless the enlargement or extension can be, and is, made in compliance with all of the provisions of this ordinance.
2. TERMINATION: In all cases the Board of Adjustments shall hold a public hearing in accordance with the applicable requirements of Section 17.2 of this ordinance. Following that hearing, the Board may terminate the right to operate a nonconforming structure based on any of the following conditions, and if the decision is to do so, the Board shall state its bases, in writing, for such determination:
  - a. Whenever the nonconforming structure is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure and a determination is made by the Board of Adjustments that the structure should not be reconstructed.
  - b. Whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such nonconforming structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such nonconforming structures as of the date of the official order under the

- applicable ordinance and a determination is made by the Board of Adjustments that the structure should not be reconstructed.
- c. Whenever said nonconforming structure is determined to be detrimental or injurious to the public health, safety, or general welfare.
3. ZONE CHANGE: The foregoing provisions shall apply to structures which become legally nonconforming due to zone changes which take place thereafter.

### **SECTION 9.13 EXCEPTIONS AND MODIFICATIONS:**

#### **A. EXCEPTIONS TO HEIGHT LIMITS:**

1. The height limitations of this ordinance shall not apply to church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, observation towers, transmission towers, chimneys, smoke stacks, radio and TV towers, conveyors, flag poles, masts and aerials, penthouses, scenery lofts, standpipes, parapet walls, outdoor theatre screens, other similar structures and necessary mechanical appurtenances; provided their construction is in accordance with existing or hereafter ordinances of the city, and is accepted to the Federal Aviation Agency and the Federal Communications Commission.
2. In the districts where permitted as conditional uses, public or semi-public buildings or hospitals may be erected to a height not exceeding seventy-five (75) feet when the front, side and rear yards are increased an additional foot for each foot such buildings exceed the maximum height permitted in that district.

#### **B. EXCEPTIONS TO AREA AND YARD REGULATIONS:**

1. For the purpose of side yard regulations the following dwellings with common party walls shall be considered as one (1) building occupying one (1) lot: two-family and multi-family dwellings.
2. In the case of a court apartment or multifamily dwellings, side yards may be used as rear yards provided that:
  - a. The required side yard shall be increased by one (1) foot for each entrance or exit opening into or served by such yards.
  - b. The width of the court shall not be less than two and one-half (2 ½) times the width of the side yard as required in the district in which said court apartment or multi-family dwellings are located.
  - c. Where a roadway is provided in the court, the width allowed for such roadway shall be in addition to the required in the foregoing regulation.
  - d. All other requirements, including front, side and rear yards shall be complied with in accordance with the regulations of the district in which said court apartments or multi-family dwellings are located.

- e. Every part of a required minimum yard or court shall be open front, its lowest point to the sky obstructed, except for permitted obstructions in minimum required yards as specified in Section 9.10 (G) of this ordinance.
3. Where existing or proposed development within the multi-family (R-2 and R-3) and commercial (SC, NSC, GC, PO, MLU, and LSC) Zones are to be subdivided, the minimum area and yard requirements may be less than required by this ordinance provided that:
    - a. The maximum density of the zone is not exceeded and/or the minimum site for the total development must not be less than the required by the respective zone.
    - b. A community association or other responsible entity is established prior to the approval by the planning commission of any subdivided land. The association shall be obligated and empowered to own, operate and maintain all common areas (as specifically identified on the submitted site plan required by Item c of this section) including such items as open space, recreational facilities, access drives, parking areas, pedestrian walkways, etc. and the facilities constructed thereon.
    - c. A site plan as regulated by the applicable requirements of Section 9.19 of this ordinance, including the proposed area and yard requirements for the development, is submitted for review and approval by the planning commission.
    - d. In addition, the planning commission may waive the requirement that all lots about a minimum frontage along a dedicated right-of-way are assured an unencumbered and maintained access way by the association to a dedicated right-of-way in accordance with Subsection 9.13, B, paragraph 3, b, above this ordinance.
- C. OTHER EXCEPTIONS: Service stations or gasoline filling stations shall be so constructed that the centerlines of the pumps shall be at least twenty-five (25) feet from any street right-of-way line.
- D. FRONT YARD VARIANCE:
1. Where the average depth of existing front yards within three hundred (300) feet of the lot in question and within the same block front, is greater than the minimum front yard depth required by this ordinance, the required minimum front yard depth on such lot shall be modified to be the average depth of said existing front yards.
  2. In any residential zone, no front yard shall be required to exceed the average depth of existing front yards on the same side of the street within the same block, when fifty-one percent (51 percent) or more of lots within that block are improved with residential buildings; provided that in no case shall a front yard depth be less than twelve (12) feet.

**SECTION 9.14 CONDITIONAL USES:**

- A. DETERMINATION: The Board of Adjustment may authorize a conditional building and use to a located within any zone in which the particular conditional use is permitted by the regulations of this ordinance, if the evidence presented by the applicant is such as to establish beyond any reasonable doubt:
  - 1. That the proposed building and use at the particular location is necessary or desirable to provide a service of facility which will contribute to the general well being of the neighborhood of the community; and
  - 2. That such building and use will not, under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and
  - 3. That the proposed building and use will comply with any regulations and conditions specified in this ordinance for such building and use.
  
- B. CONDITIONAL USE PERMITS: In accordance with KRS 100.237 the Board of Adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community uses which are specifically named herein which may be suitable only in specific locations in the zone only if certain conditions are met:
  - 1. The Board of Adjustment may approve, modify, or deny any application for a conditional use permit. If it approves such permit it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the Board's minutes and on the conditional use pen-nit along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. In addition, the conditional use permit shall be recorded in the office of the Campbell County Clerk and one copy of said pen-nit attached to the deed for the property for which it is issued. The Board shall have power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.
  - 2. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code and other regulations of the city.
  - 3. In any case where a conditional use permit has not been exercised within twelve (12) consecutive calendar months from date of issuance, if no specific time limit has been set, such conditional use permit shall not revert to its original designation unless there has been a public hearing. Exercised as set forth in this section, shall mean that binding contracts for the construction of the main

building or other improvement has been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.

4. The zoning administrator shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the land owner is complying with all of the conditions which are listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the Zoning Administrator shall report the fact in writing to the chairman of the Board of Adjustment. The report shall state specifically the manner in which the landowner is not complying with the conditions on the condition use permit, and a copy of the report shall be furnished the landowner at the same time that it is furnished to the chairman of the Board of Adjustment. The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Zoning Administrator are true and that the landowner has taken no steps to comply with time between the date of the report and the date of the hearing, the Board of Adjustment may authorize the Zoning Administrator to revoke the conditional use permit and take necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.
5. Once the Board of Adjustment has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the Zoning Administrator, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file with the county clerk, as required in KRS 100.329. Thereafter said use, if it continues to meet the other requirements of this ordinance, will be treated as a permitted use.

**SECTION 9.15 BUILDING REGULATIONS:** All structures shall be designed, erected, or altered in accordance with the city's housing and building codes.

A. ALL ZONES:

1. **PUBLIC WATER AND SANITARY SEWERS:** No building may be constructed in any zone except the R-RE Zone unless such building is connected to a public water and centralized sanitary sewer system of adequate capacity and design, and approved by the proper authorities. In the case of the R-RE Zone, private sewage

disposal systems may be permitted, provided they are approved in accordance with the requirements of the Northern Kentucky District Health Department.

Where existing buildings are presently unserved by a public sewer system and are located within a reasonable distance, as determined by the Planning Commission and/or the Northern Kentucky District Health Department, of an existing or newly extended sewer line, said building shall be required to connect with the private sewer system shall be prohibited.

#### **SECTION 9.16 MOVE AND SET:**

- A. **REQUIREMENTS:** No building, structure, or improvement shall be moved or set from or upon land located in any area or transported upon any public street in the county, until and unless both: (1) a building permit to move and set; and (2) a transport permit, have been obtained, and said building, structure, or improvement complies with the provisions of this section.
- B. **COMPLIANCE:** All buildings, structures, and improvements shall comply with the county's housing and building code, and all other applicable codes and regulations.
- C. **PROCEDURE – PERMITS:** The applicant shall submit to the building inspector, the following:
1. An application for a building permit requesting an inspection of the building, structure, or improvement to be moved or set.
  2. A plot plan, footing and foundation plan, and construction plans for any new construction.
  3. A statement from the applicable city(s) insuring that all past and current taxes have been paid.
  4. Upon receipt of the foregoing items, the building inspector shall inspect said building, structure, or improvements, and the proposed location where same will be set within the city and determine if the proposed development will comply with all applicable codes and regulations.
  5. The move and set shall be referred to the Zoning Administrator for approval or denial of compliance with this ordinance.
  6. Upon approval of the Zoning Administrator and the Building Inspector, a building permit to move and set shall be issued. The City Engineer shall then be notified of same and shall issue a transport permit. The city engineer or his agent will designate the route to be traveled. The transport permit is only good for the date specified on permits. The transport permit will not be issued if ninety (90) consecutive calendar days or more have lapsed from the date of inspection by the Building inspector. The transport permit provided for in this section shall not be in lieu of any other permits which may be required by the city.
  7. No transport or building permit to move and set shall be issued until the applicant has first obtained the necessary permits from the telephone company, public

utilities companies, railroad companies, and the Kentucky Department of Transportation, and the county road supervisor, whichever are applicable.

D. FEES:

1. There will be a building investigation fee as established by the city to cover the costs of investigation and inspection for determining the structural soundness of buildings, structures, or improvements to be moved, the fee is payable in advance and must accompany the application provided for herein. The inspection shall determine what will be necessary to bring buildings, structures, or improvements into compliance with all applicable codes and regulations should the building not comply. This fee is not returnable. If buildings, structures, or improvements are found to be in compliance with the city's applicable codes and regulations, a building permit to move and set will be issued and the fee will be based on the cost of the new foundations and all work necessary to place the building or structure in its completed condition in the new location. This fee in addition to the building investigation fee.
2. No person, corporation, or company shall transport, move, or set any building, structure, or improvement in the city until and unless such person, corporation, or company shall post with the building inspector a good and sufficient indemnity bond in the amount of five thousand dollars (\$5,000.00) in favor of the city. Such bond shall be made by a surety corporation authorized to do business in the state of Kentucky.

**SECTION 9.17 SCREENING AREA:** Screening areas shall be provided for the purpose of minimizing the friction between incompatible land uses and improving the aesthetic and functional quality of any development.

A. **SCREENING AREA REQUIREMENTS:** All screening areas shall be approved by the Zoning Administrator (or Planning Commission, where required by this ordinance), according to a submitted development plan as regulated by the applicable requirements of Section 9.19 of this ordinance. Screening areas shall be designed, provided, and maintained according to the following:

1. Where vegetative and/or topographic conditions that provide a natural screening and buffer exist prior to development of properties in question, every effort shall be made to retain such conditions. In such cases additional screening may not be required, provided that provision is made for maintenance of such condition to the satisfaction of the city.
2. Wherever screening is required in this ordinance, all trees shall be evergreen.
3. All trees shall be a minimum of six (6) feet in height when planted, unless otherwise required according to the submitted development plan.
4. All hedges shall be a minimum of three (3) feet in height when planted unless otherwise required according to the submitted development plan.

5. All trees, shrubs, and other planting materials shall be living plants (not artificial) and shall be suitable to the Northern Kentucky area and the specific conditions of the site in question, such as but not limited to, soil conditions, slopes, reduction of noise pollution, maintenance necessary, and the type of screening needed. The city may require review of the proposed screening plan from the U.S. Soil Conservation Service, the Campbell County Agricultural Extension Service.
  6. Screening areas are to be provided within the required minimum yard setbacks as required in each district's regulations. In the case where property is located adjacent to another governmental jurisdiction, screening requirements shall be the same as if the zone in the adjacent city (or a zone containing the most similar types of permitted uses as provided herein) were located within the city.
  7. In the case where a zoning map change occurs resulting in adjacency to a different zoning district than was previously the case, and where development has already occurred on property in the unchanged district, required additional setbacks and screening requirements (as required in each district's regulations) shall be provided for the property in the district where the zone change occurred.
- B. **PROVISIONS AND MAINTENANCE:** Required screening areas shall be provided as a condition of development by the owner and/or developer. All required screening (including the planting of trees and other vegetation) shall be maintained by the property owner.
- C. **INCLUSION OF SITE PLAN AND/OR SUBDIVISION IMPROVEMENT DRAWINGS:** Areas to be set aside as screening areas shall be identified on the required site plans, as regulated in Section 9.19, and where applicable, on the improvement drawings as regulated by the Subdivision Regulations. Sufficient bond, adequate to cover the required improvements as determined by the city may be required to be posted. It shall be unlawful to occupy any premises unless the required screening has been installed in accordance with the requirements as provided herein.

#### **SECTION 9.18 OUTDOOR SWIMMING POOLS:**

- A. **PRIVATE SWIMMING POOLS:** All private swimming pools seventeen (17) inches or more in depth shall be regulated according to the following requirements:
1. Swimming pools shall be permitted to be located only to the rear of the principal permitted dwelling or dwellings.
  2. Except as herein provided, no swimming pool, including the apparatus and equipment pertaining to the operation of the swimming pool shall be permitted within any required yards of the lot nor within the limits of any public utility right-of-way easement.
  3. Swimming pools which are constructed in-ground, shall be required to have a fence or wall, including a self-closing or self-locking door or gate around the pool or the property on which the pool is located, of at least four (4) feet in height, but not exceeding seven (7) feet (only classes 1, 2, 4, or 5 are permitted as regulated

in Article XI of this ordinance) and of such construction that a small child may not reach the pool from the street or any adjacent property without scaling a fence or wall, or opening a gate or door.

4. Swimming pools which are located above ground shall be required to have a fence or wall, including a self-closing or self-locking door or gate, around the pool or property on which the pool is located, at least four (4) feet in height, but not exceeding seven (7) feet (only class 1, 3, 4, and 5 are permitted as regulated by Article XI of this ordinance) and of such construction that a small child may not reach the pool from the street or any adjacent property without scaling a wall or fence or opening a gate or door. Said wall may be the wall of the above ground pool providing, however, that said wall is at least four (4) feet about the surrounding ground level. In addition, any access to above ground pools by means of a ladder or stairway, shall be provided with a self-closing or self-locking door or gate, or some other device that would prevent a small child from gaining access to the pool by means of a ladder or stairway.
5. Glare from flood lights used to illuminate the swimming pool area for night bathing shall be directed away from adjacent properties.
6. All swimming pools including the apparatus and equipment pertaining to the operation of the swimming pool, shall be constructed and erected in accordance with applicable codes, ordinances, and regulations of the city. Any water used in the operation of the pool, other than from a public source, shall be approved by the appropriate Health Department.
7. All swimming pools existing at the time of adoption of this ordinance which are unprotected by a surrounding fence or wall, including gates or doors, as regulated by subsection A. 3 and A. 4 of this section of the ordinance, shall be required to comply with the provisions of this section within sixty (60) days after the adoption of this ordinance.

**B. PUBLIC, SEMI-PUBLIC, AND COMMERCIAL SWIMMING POOLS:** All public, semi-public, and commercial swimming pools shall be regulated according to the following requirements:

1. Except as herein provided, no swimming pool including the apparatus and equipment pertaining to the operation of the swimming pool shall be permitted within any required yards of the lot or within the limits of any public utility right-of-way easement.
2. The swimming pool or the property on which the pool is located shall be surrounded by a fence or wall (only classes 1, 3, 4, or 5 are permitted as regulated by Article XI of this ordinance) at least five (5) feet in height, but not exceeding the height as herein required, and of such construction that a small child may not reach the pool from the street or from adjacent property without opening a door or gate or scaling a wall or fence.
3. Glare from flood lights used to illuminate the swimming pool area for night bathing shall be directed away from adjacent properties.

4. All swimming pools including the apparatus and equipment pertaining to the operation of the swimming pool shall be constructed and erected in accordance with applicable codes, ordinances and regulations of the city. Any water used in the operation of the swimming pool, other than from a public source, shall be approved by the appropriate Health Department.
5. No mechanical device for the reproduction or amplification of sounds used in connection with swimming pools shall create a nuisance to adjacent properties though the emission of noises, voices, or music which is loud enough to cause complaints from said adjacent residential property owners.

**SECTION 9.19 DEVELOPMENT PLAN REQUIREMENTS:** No building shall be erected or structurally altered nor shall any grading take place on any lot or parcel in zones where a development plan is required, except in accordance with the regulations of this section and an approved development plan as hereinafter required. Before a permit is issued for construction, one copy of the development plan of the area at a scale no smaller than one (1) inch to one hundred (100) feet shall be filed with the Planning Commission and one (1) copy each with the Building Inspector and the Zoning Administrator setting forth, identifying and locating the following:

- A. Total area in development project including legal description.
- B. Present zoning or property in question and adjacent properties.
- C. All public and private rights-of-way and easement line located on or adjacent to the property which are proposed to be continued, created, relocated or abandoned.
- D. Existing and proposed topography with a maximum of two (2) foot contour intervals. Where existing ground is on a slope of less than two (2) percent, either one (1) foot contours or spot elevations where necessary, but not more than fifty (50) feet apart in both directions.
- E. The proposed finish grade of the development area shown by contours with intervals not larger than two (2) feet, supplemented where necessary by spot elevations.
- F. The location of every existing and proposed building in the described parcel or parcels, the use or uses to be contained therein, the number of buildings including dimensions and height, the gross floor area and number of floors.
- G. Location and dimension of all curb cuts, driving lanes, off-street parking and loading and/or unloading areas including number of spaces, angles of stalls, grades, and illuminated facilities.
- H. All walks, malls, and other open spaces.
- I. Location of all walls, fences and screen planting.

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- J. Location, size, height and orientation of all signs.
- K. Types of surfacing proposed on the various off-street parking and driveways including cross sections and drainage plans.
- L. Location of all existing and proposed streets, highways, and alleys.
- M. All existing and proposed water, storm and sanitary sewer lines, Indicating pipe sizes, types and grades.
- N. A drainage plan of the area showing the size and the location of each existing and proposed structure. The approximate volume of water generated by development of the subject area and the proposed method of disposing of said water. Provisions shall be included for adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading and construction.
- O. Identification of the soil type on the subject property including soil problems and proposed method of handling and said soil problems.
- P. A schedule of development including the staging and phasing of:
1. Residential areas, in order of priority, by type of dwelling unit;
  2. Streets, utilities, and other public facility improvements, in order of priority;
  3. Dedication of land to public use or set aside for common ownership with a preliminary statement indicating how maintenance of the latter will be handled; and
  4. The construction of nonresidential buildings, in order of priority.
- Q. Such other information with regard to the development area as may be required by the Planning Commission to determine conformance with this ordinance. Where development is proposed on a parcel of land that is part of a larger tract of land which is under one ownership, the developer shall be required to submit a development plan for the entire property under said ownership, unless specifically waived by the Planning Commission. The development plan will tie into adjacent properties not under said ownership. All such development plans shall be reviewed by the Planning Commission and the factual determination approving or rejecting such plans shall be made in accordance with requirements of this or other applicable sections of this ordinance, and the adopted Comprehensive Plan for the city. All development plans, approved shall be binding upon the applicants, their successors and assigns and shall limit the development to all conditions and limitations established in such plans. Amendments to plans may be made in accordance with the procedure required by this ordinance subject to the same limitations and requirements as those under such plans were originally approved. After

final approval the subject area may be developed in stages, providing all of the procedures required by the Planning Commission have been complied with.

- R. All development projects requiring a development plan under Section 9.19 shall provide a separate landscape plan for the site in question. Such plans shall be prepared by a landscape professional, either a landscape architect, or a landscape company. All landscape plans, including walls, fences, screen planting shall be made in accordance with all requirements of this ordinance, and in accordance (where applicable) with the US 27 Highway Corridor Street Plan. The landscape professional responsible for the preparation of the landscape plan for the site in Question shall be required to certify to the City Zoning Administrator that all landscape elements and features have been made in accordance with the approved plan. The landscape professional shall be required to recertify 12 months following the original certification that all landscape elements and features are being maintained and/or replaced as needed. The applicants, their successors, and assigns shall be responsible for the maintenance and upkeep of all elements of the approved landscape plan throughout the lifetime of the project. The City Clerk shall have the owner of the development and landscape professional sign an acknowledgment they have received a copy of Section 9.19 R of the Highland Heights Zoning Ordinance. However, failure to do so shall not affect the enforceability of this section.

**SECTION 9.20 REGULATIONS CONCERNING AIR RIGHTS:** Any proposed use of air rights, as defined herein, shall be in the form of a development plan (as regulated in Section 9.19 of this ordinance) submitted to the Planning Commission for its review.

**SECTION 9.21 REGULATIONS PERTAINING TO PARKING OR STORING OF TRAILERS, MOBILE HOMES, CAMPERS, INOPERABLE VEHICLES, AND OTHER SUCH TYPE EQUIPMENT:**

- A. No motor vehicle which is inoperable shall be stored in any lot in any zone or parcel of ground unless it is in a completely enclosed building. Parking shall be limited to the number of vehicles regularly used by members of a resident family or their guests. All vehicles whether operable or inoperable shall be duly registered and licensed vehicles of the State of which the owner is a resident.
- B. It shall be unlawful for any person or persons to live in any boat, automobile, or truck, within the limits of the city. It shall be unlawful for any person or persons to keep or park any recreational vehicles, truck, camper, or boat in the front yard of any premises in a residential district from more than forty eight (48) hours per week.

All off street parking is to be on a hard approved surface as defined in the subdivision regulations for the City of Highland Heights, Kentucky.

- C. Except as herein provided, it shall be unlawful to park a trailer, camper, boat, truck one ton and over capacity with a single rear axle, or other such equipment within any place or location in the city, except only within the side and rear yard of any lot herein defined. It

shall be unlawful to park or keep any automobile truck with more than a single rear axle in a residential district, except in a completely enclosed building.

**SECTION 9.22 REGULATIONS CONCERNING DESIGN AND CONSTRUCTION OF IMPROVEMENTS:** Where deemed necessary by the Planning Commission, proposed development, requiring the construction of streets (including curb and gutters), sidewalks, sewers (sanitary and storm), water lines or other improvements, which does not constitute a subdivision, as herein defined, shall be required to be designed and constructed in accordance with the applicable articles and sections of the Highland Heights Subdivision Regulations.

**SECTION 9.23 HILLSIDE DEVELOPMENT CONTROLS:**

- A. This section is designed to ensure, when development is proposed in those areas of the community which have physical characteristics limiting development will occur in a manner harmonious with adjacent lands so as to minimize problems of drainage, erosion, earth movement, and other natural hazards.
- B. Areas of land on which development is physically restricted due to excessive hillside slopes shall be limited according to the following requirements, notwithstanding any other section of this or any other ordinance adopted by the city:
1. All land areas located within the city and identified on the comprehensive plan as "Physically Restrictive Development Areas" and any other areas which have slopes of 20 percent or greater shall require approval before development may occur. In those areas which are identified in the comprehensive plan as "Physically Restrictive Development Areas" and containing slopes less than 20 percent, the requirements contained herein may be waived; if, after review of the proposed site plan by the engineer, it is deemed that said development will not result in hillside slippage or soil erosion.
  2. No excavation, removal or placement of any soil, foundation placement, or construction of buildings or structures of any nature within the area identified in (1) above, may occur until plans and specifications for such work have been submitted in the form of a development plan as regulated by Section 9.19 of this ordinance. In addition to development plan requirements, the following shall also be submitted:
    - a. Plan(s) which show existing topography and the proposed physical changes necessary for construction, indicating grading (cutting and filling) compaction, erosion ponds, areas to be defoliated, and any other pertinent information which will change the natural physical features of the site or general area.
    - b. Subsurface investigation of the area under consideration, including test borings, laboratory tests, engineering tests, and a geological analysis should be made by a qualified registered civil engineer and a geologist indicating that the building and physical changes proposed in the area will

be completed in a manner which will minimize hillside slippage or soil erosion.

3. The development plan and other information required in Section 9.23, B, 2 of this section of the ordinance shall be reviewed by the city engineer who will recommend to the Planning Commission, or its duly authorized representative, what effect the proposed development will have on hillside slippage and soil erosion.

After consideration of the recommendations, the Planning Commission, or its duly authorized representative, may grant a permit for use of the site in accordance with the submitted plans.

4. If, after review of the plans required by this section of the ordinance, the Planning Commission, or its duly authorized representative, determines that said proposed plans will not minimize hillside slippage, the Planning Commission shall deny a permit for the development of said land, and the site shall be limited to those open type uses, excluding structures, as permitted or conditionally permitted in the Conservation Zone.

#### **SECTION 9.24 PHASED ZONING REGULATIONS:**

- A. Phased zoning is an overlay type regulation to be used in cases where the timing and/or phasing of the zoning of an area is especially critical to the implementation of the adopted comprehensive plan. The intent of the phased zoning regulations is to encourage development or redevelopment of a specified area for the use and/or density designated on the comprehensive plan when the necessary conditions for such development are realized (e.g., demolition of existing deteriorated areas). Implicit in such a phased zoning approach is the premise that until such conditions are realized, the type of development identified by the comprehensive plan is premature; such development would be prevented by temporarily zoning the area to generally conform with the predominant existing land use, with a clear stipulation of an intended future rezoning, which would be in compliance with the adopted comprehensive plan.
- B. The phased zoning regulations may be overlaid over any zoning classification by means of a conventional zone change process. The use of the phased zoning regulations would indicate that the regulations of the overlaid zone are currently being enforced based upon the general existing land use, but on attainment of all the requirements of the zone which corresponds to the adopted comprehensive plan for type of use and/or density and other requirements of this ordinance, the area could be rezoned in direct compliance with the plan.
- C. Phased zones are indicated on the official zoning map by adding to the overlaid zone, the letter "P" as a suffix enclosed in parenthesis. For example, in order to properly phase its redevelopment, an area zone "R-1E", reflecting the existing single-family development,

which is identified as future multi-family residential development on the locally adopted comprehensive plan could be temporarily zoned “R-1E (P)”, indicating that present development on the site would be in conformance with the regulations of the overlaid R-1E Zone, but that when efforts are possible to redevelop the entire area (or a significant portion of the area) in a coordinated and comprehensive fashion, the area could be rezoned through a conventional zone change procedure. At the time of the zone change, the temporary R-1E (P) Zone is removed and the area is developed according to the regulations of the new zone, which is in conformance with the adopted comprehensive plan.

- D. The minimum size of any area to be rezoned as regulated by this section of the ordinance is five (5) acres, provided that all other provisions of this ordinance and the city’s subdivision regulations are adhered to. Development of a smaller tract adjacent to an existing zone being requested may be permitted if the proposed development conforms to and extends the original development and provided further that the zone is in conformance with the comprehensive plan.

**SECTION 9.25 CORRIDOR REHABILITATION OVERLAY ZONING:** Replaced entirely by Section 10.21.

**SECTION 9.26 DISH TYPE SATELLITE RECEIVING STATION REGULATION:**

- A. Ground Mounted Stations: An earth station shall be considered accessory structure with the following additional requirements:
1. The height of the earth station, should the dish antenna be turned perpendicular to the ground, shall not exceed 15 feet from the ground to the highest point on the dish antenna.
  2. The “dish” antenna shall not exceed 10 feet in diameter.
  3. Wiring between an earth station and receiver shall be placed beneath the surface of the ground.
  4. The distance of any guy anchorage, edge of the dish or other associated equipment shall be at least 10 feet from side or rear lot lines.
- B. Roof Mounted Stations: Roof mounted stations may be mounted directly upon the roof of a primary structure and shall not be mounted upon appurtenances such as chimneys, towers, trees, poles, or spires. A roof mounted station shall not exceed more than 3 feet above on roof upon which it is mounted, and shall not exceed 3 feet in diameter.

**SECTION 9.27 SIDEWALKS:**

- A. All proposed residential, commercial, industrial and office subdivisions of developments within the City limits shall have sidewalks on each side of all proposed or existing public streets.

**SECTION 9.28 UNDERGROUND UTILITIES:**

- A. All proposed residential, commercial, industrial and office subdivisions or developments within the corporate limits of the City shall have their utilities underground where same is deemed feasible by the local utility company and the City Engineer.

**SECTION 9.29 CELLULAR TOWERS AND OTHER UTILITIES**

- A. **PURPOSE:** The purposes of these regulations are: to provide for the safest and most efficient integration of cellular antenna towers for cellular telecommunications services or personal communications services within the community; to provide for such facilities in coordination with the recommendations of the comprehensive plan; and to allow for such facilities with the intention of furthering the public health, safety and general welfare.
- B. **PRE-APPLICATION CONFERENCE:** Applicants are encouraged to notify the planning commission's duly authorized representative: to discuss proposals; allow for early coordination; and to identify those items which are in conformance/nonconformance with the comprehensive plan zoning ordinance, and the provisions of these regulations.
- C. **DEFINITIONS:** For the purposes of these regulations, the following definitions shall apply:
  - 1. **CELLULAR ANTENNA TOWER:** A tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services whether temporary or permanent.
  - 2. **CELLULAR TELECOMMUNICATIONS SERVICES:** a retail telecommunications service that uses radio signals transmitted through cell sites; and mobile switching stations.
  - 3. **CO-LOCATION:** Locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.
  - 4. **PERSONAL COMMUNICATION SERVICE:** As defined in 47 U.S.C. sec. 332(c).
  - 5. **UNIFORM APPLICATION:** means an application for a certificate of convenience and necessity issued under KRS 278.020 submitted by a utility to the Public Service Commission to construct an antenna tower for cellular telecommunications services or personal communications service .in a jurisdiction, that has adopted planning and zoning regulations in accordance with KRS Chapter 100, except for any county that contains a city of the first class.

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6. UTILITY: Any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:
- a. The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
  - b. The production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power or other uses;
  - c. The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
  - d. The diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;
  - e. The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public;
  - f. The treatment of sewage for the public, for compensation.
- D. GENERAL: Cellular antenna towers for cellular telecommunications services or personal communications services may be allowed in any zone as a conditional. use after a planning commission review in accordance with the following procedures to ascertain agreement with the adopted comprehensive plan and the regulations contained within the zoning ordinance, a hearing with the city's board of adjustment and after being granted a Certificate of Necessity and Convenience by the Public Service Commission.
- E. APPLICABILITY: Every utility, or a company that is engaged in the business of providing the required infrastructure to a utility, that proposes to construct an antenna tower for cellular telecommunications services or personal communications services shall submit a copy of the utility's completed uniform application to the planning commission within five (5) consecutive days of applying to the Public Service Commission for a certificate of necessity and convenience.
- F. APPLICATION REQUIREMENTS: Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall include a twenty five hundred dollar (\$2,500.00) fee to assist the commission in verifying the applicant's information in its application and the following:
1. All information that the applicant is required to submit to the Public Service Commission, per the requirements of the uniform application.
  2. A copy of the applicant's FCC license, or, if the applicant is not an FCC license holder, a copy of at least one letter of commitment from an FCC license holder to locate at least one antenna on the applicant's tower.
  3. Unless co-locating, certification, supported by evidence, that co-location of the proposed facility with an existing approved tower or facility cannot be accommodated. The applicant's certification shall include a listing of all existing

towers and facilities within a two (2) mile radius of the proposed tower location, a description of each existing site, and a discussion of the ability or inability to collocate on each existing site, according to the following:

- a. No existing towers or facilities are located or proposed to be located within a two (2) mile radius of the proposed tower location.
  - b. Existing towers or facilities are not of sufficient height to meet the applicant's engineering requirements.
  - c. Existing towers or facilities do not have sufficient structural strength to support the applicant's proposed antenna(s) or related equipment.
  - d. The applicant's planned equipment would cause frequency interference with other existing or planned equipment of the tower or facility, or the existing or planned equipment of the tower or facility would cause frequency interference with the applicant's planned equipment, and which cannot be reasonably prevented.
  - e. Unwillingness of the owner/owners of the existing tower/towers or facility/facilities to entertain a co-location proposal.
4. Unless co-locating, certification, supported by evidence, that the proposed site is the only appropriate site for the location of the facility. The applicant's certification shall include a listing of all potential sites within a two (2) mile radius of the proposed tower location, a description of each potential site, and a discussion of the ability or inability of the site to host such a facility, according to the following:
- a. Unwillingness of the site owner(s); to entertain such a facility.
  - b. Topographic limitations of the site.
  - c. Adjacent impediments that would obstruct adequate transmission.
  - d. Physical site constraints that would preclude the construction of such a facility.
5. A statement demonstrating that the proposal is in agreement with the adopted comprehensive plan and is in conformity with these regulations.
6. A development plan, drawn to a scale not smaller than one (1) inch equals one hundred (100) feet, showing the following information, where applicable. The planning commission's duly authorized representative may waive the submission of such data involving detailed engineering study until such time as the application has been approved.
- a. The total area of the site in question;
  - b. All public and private rights-of-way and easement lines located on or adjacent to the subject property which are proposed to be continued, created, enlarged, relocated or abandoned;

- c. Existing topography, and approximate delineation of any topographical changes shown by contour with intervals not to exceed five (5) feet;
- d. Location, height, arrangement, and identification of all nonresidential buildings, structures and uses on the subject property and, where applicable, location and arrangement of all lots with lot dimensions;
- e. Location and arrangement of all common open space areas, and methods of ownership and operation and maintenance of such lands, shall be identified;
- f. Landscaping features, including identification of planting areas and the location, type, and height of walls and fences;
- g. Location of signs, indicating their orientation, size, and height;
- h. All utility lines and easements:
  - (1) Water distribution systems, including line sizes, width of easements, type of pipe, location of hydrants, and valves, and other appurtenances;
  - (2) Sanitary sewer system, including pipe sizes, width of easements, gradients, type of pipes, invert elevations, location and type of manholes, the location, type, size of all lift or pumping stations, capacity, and process of any necessary treatment facilities, and other appurtenances;
  - (3) Storm sewer and natural drainage system, including pipe and culvert sizes, gradients, location of open drainage courses, width of easements, location and size of inlets and catch basins, location and size of retention and/or sedimentation basins;
  - (4) Other utilities (e.g. electric, telephone, etc.) including the type of service and the width of easements;
- i. Location of all off-street parking, loading and/or unloading, and driveway areas, including typical cross sections, the type of surfacing, dimensions and the number and arrangement of off-street parking and loading and/or unloading spaces;
- j. Circulation System:
  - (1) Pedestrian walkways, including alignment, grades, type of surfacing, and width;
  - (2) Streets, including alignment, grades, type of surfacing, width of pavement and right-of-way, geometric details, and typical cross sections;

G. **PROCESSING OF APPLICATION:** Applications for the construction of cellular, antenna towers for cellular telecommunications services or personal communications services shall, be processed as follows:

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## 1. New Sites

- a. At least one (1) public hearing on the proposal shall be held, at which hearing interested parties and citizens' shall have the opportunity to be heard. Notice of the time and place of such hearing shall be published at least once, but may be published two (2) or more times, in a newspaper of general circulation in the county, provided that one (1) publication occurs not less than seven (7) calendar days nor more than twenty-one (21) calendar days before the occurrence of such hearing.
- b. Notice of the hearing shall be posted conspicuously on the property in question, for fourteen (14) consecutive days prior to the hearing. Said posting shall consist of one or more signs, constructed of durable material, and clearly depicting the following information: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") on this site" Four, (4) inch high lettering); and address, including telephone number, of the planning commission where additional information regarding hearing may be obtained.
- c. Notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by first class mail; with certification by the commission secretary, or other officer of the planning commission that the notice was mailed to an owner of every parcel of property within five hundred (500) feet of the base of the proposed tower or monopole. It shall be the duty of the person(s) proposing the facility to furnish to the planning commission the names and addresses of said property owners. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.
- d. Upon holding such hearing, the planning commission shall, within sixty (60) days commencing from the date that the application is received by the planning commission, or within a date specified in a written agreement, between the planning commission and the applicant, make its final decision to approve or disapprove the uniform application. The planning commission shall submit to the Public Service Commission, along with their action, the basis for their decision within sixty (60) days.

## 2. Previously Approved Sites

- a. For facilities located on previously approved sites, an officer of the planning commission shall review the application for its conformity with these regulations and the regulations contained within the applicable local zoning ordinance.
  - b. If an officer of the planning commission determines that the application is in conformity with these regulations and the regulations contained within the applicable local zoning ordinance, an administrative approval may be granted. This administrative approval shall not be considered final until it is ratified by a vote of the full commission.
  - c. If an officer of the planning commission determines that the application is not in conformity with these regulations and the regulations contained within the applicable local zoning ordinance, a public hearing, pursuant to Section 1a of these regulations, shall be scheduled.
- H. DESIGN STANDARDS: At the time of application submittal, the applicant shall provide information demonstrating compliance with the following requirements. Where the planning commission, or its duly authorized representative, finds that circumstances or conditions relating to the particular application are such that one or more of the requirements listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the planning commission, or its duly authorized representative, may modify or waive such requirement, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver.
1. All structures, except fences, shall be located at least fifty (50) feet from the property line or lease line of any residentially zoned property.
  2. A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of two hundred (200) feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than fifteen (15) feet constructed on the top of another building or structure, with the height being the overall height of building/structure and tower together, measured from the grade to the highest point. The planning commission may allow antennas greater than two hundred (200) feet in height upon review of the applicant's justification that the additional height meets the criteria identified in Subsection F, above.
  3. When any cellular antenna tower, or alternative antenna tower structure, is taller than the distance from its base to the nearest property line or lease line, the applicant shall furnish the planning commission with a certification from an engineer registered in the Commonwealth of Kentucky that the tower will

- withstand winds of seventy (70) mile per hour, in accordance with current ANSI/EIA/TIA standards.
4. Cellular antenna towers shall not be illuminated, except in accord with other state or federal regulations.
  5. The site shall be unstaffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall only be from approved access points.
  6. A minimum of one (1) off-street parking spaces, per provider, shall be provided on the site.
  7. Woven wire or chain link (eighty (80) percent open) or solid fences made from wood or other materials (less than fifty (50) percent open), shall be used to enclose the site. Such fences shall not be less than four (4) feet in height nor more than eight (8) feet in height. The use of barbed wire or sharp pointed fences shall be prohibited. Such fence may be located within the front, side, or rear yard.
  8. Screening shall be required where the site in question abuts residentially zoned property. Screening shall be provided by evergreen trees, with a minimum height of six (6) feet, planted in a staggered pattern at a maximum distance of fifteen (15) feet on center. The screening shall be placed in an area between the property line, or lease line, and a ten (10) foot set back.
  9. Any site to be purchased or leased for the installation of a cellular antenna tower, or alternative antenna tower, and ancillary facilities, shall comply with the minimum lot size requirements of the zone in which the facility is to be located, provided that such area shall not be required to exceed one-half (1/2) acre.
  10. Surfacing of all driveways and off-street parking areas shall comply with the requirements of the zoning ordinance.
  11. There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs which are required by federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.
  12. All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers.
  13. All option and site lease agreements shall not prohibit the possibility of co-location.
- I. CRITERIA: Evaluation of the proposal shall be based upon the following criteria:

1. Agreement with the various elements of the adopted comprehensive plan, and where applicable, any other adopted plan.
  2. Extent to which the proposal is consistent with the purposes of these regulations.
  3. Adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g. topography, natural features, streets, relationship of adjacent uses, etc.)
  4. Extent to which the proposal responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact.
  5. Extent to which the proposed cellular tower is camouflaged (i.e., use of "stealth technology").
  6. Extent to which the proposed facility is integrated with existing structures (i.e. buildings, signs).
- J. AMENDMENTS: Any amendments to plans, except for minor adjustments as determined by the planning commission, or its duly authorized representative, shall be made in accordance with the procedure required by Subsection F, above, subject to the same limitations and requirements as those under which such plans were originally approved.

### **SECTION 9.30 REQUIRED NOTICE FOR APPROVAL OF DEVELOPMENT PLANS:**

- A. Whenever this ordinance requires the approval by the Planning and Zoning Commission or a development plan then notice shall be given to property owners who abut the property upon which the development plan is applicable. Said notice shall be delivered to the abutting property owners by first class regular mail not more than twenty-one (21) days and not less than seven (7) days prior to the public meeting at which the Planning Commission will consider approval of the development plans.
- B. The chairman of the Planning and Zoning Commission or the Zoning Administrator in reviewing development plans, may authorize minor changes from the approved development plan, provided that the adjustments do not: Substantively affect the spatial relationship of the structures; change land uses, increase overall density, alter circulation patterns (vehicular and pedestrian), decrease the amount of and/or usability of open space or recreation areas, or affect other applicable requirements of this ordinance.
- C. Any amendments to development plans, except for the minor changes which may be permitted by the Planning and Zoning Commission or the Zoning Administrator as noted in Section Two (2), shall constitute a major change and shall be made only in accordance

with the procedure required by this Ordinance in Section One (1) subject to the same limitations and requirements imposed when such plans were originally approved.