

Henderson County Zoning Ordinance

TITLE

The Fiscal Court of the County of Henderson does adopt as follows: In pursuance of the authority granted by Kentucky Revised Statutes, Chapter 100, Section 100.201 through 100.271, to a legislative body to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of the lot that may be occupied, the size of yards, courts and open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes, that the County of Henderson be divided into districts as herein after described, and that the regulations, restrictions, and boundaries of districts shall be established, enforced and amended as provided in this Regulation.

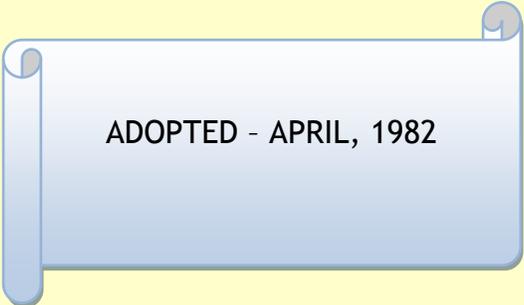
Article I Purpose

Zoning Regulations and districts as herein set forth have been made in order to promote public Zoning Regulations and districts as herein set forth have been made in order to promote public health, safety, morals and general welfare of the community, to facilitate orderly and harmonious development and the visual character of the community, and to regulate the density of population and intensity of land use in order to provide for adequate light and air. Further, these regulations provide for vehicular fire and police protection and preventing the overcrowding of land, blight, danger and congestion in the circulation of people and commodities and the loss of life, health or prosperity from fire, flood and other dangers. It is further employed to protect airports, highways and other transportation facilities, public facilities, including schools and public grounds, commercial, industrial, residential, farmland and other specific uses which warrant special protection by the Community.

Article II Definitions

Section 2.01

For the purpose of these regulations, certain terms and words shall be used and interpreted as defined hereinafter. Words used in the present tense include the future. The singular number includes the plural, and the plural the singular. The word "shall" is mandatory, not merely directive; the word "may" is permissive.



ADOPTED - APRIL, 1982

SECTION 2.01 - DEFINITIONS

ACCESSORY STRUCTURE OR USE - Any structure or use, other than the principal structure or use, and detached there from by a reasonable distance, directly incidental to or required for the enjoyment of the permitted use of any premises; also, as specifically designated under the zoning district regulations of this chapter.

ADMINISTRATIVE OFFICIAL - Any department, employee, or advisory, elected or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and if delegated, any provision of any housing or building regulation or any other land use control regulation.

- A. **AGRICULTURAL USE** - The use of a tract of at least ten (10) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, the raising of mice in a confined production facility and the distribution of such mice to zoos and others to feed to captive eagles, falcons, hawks and other birds of prey, and to reptiles, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the agricultural use on the tract, but not including residential building development for sale or lease to the public. **(Revised March 2015)**
- B. Regardless of the size of the tract of land used, small farm wineries licensed under KRS 243.155; **(Added March 2015)**
- C. A tract of at least ten **(10)** contiguous acres used for the following activities involving horses: **(Added March 2015)**
1. Riding lessons;
 2. Rides;
 3. Training;
 4. Projects for educational purposes;
 5. Boarding and related care; or
 6. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving seventy (70) or less participants. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving more than seventy (70) participants shall be subject to local applicable zoning regulations.

ALLEY - Any public or private way which affords only a secondary means of access to abutting property and which does not constitute a public maintained street upon which property may front.

ALTERATION - Any change, addition or modification in construction or type of occupancy; any change in the structural members of a building, such as walls, partitions, columns, beams, "altered or reconstructed".

APARTMENT - A room or suite of rooms used as a dwelling for one family which does its cooking therein.

BASEMENT - That portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, ventilating facilities, but which is not ordinarily used for the purpose of general household habitation.

SECTION 2.01 - DEFINITIONS

BLOCK - The property abutting one side of a street and lying between the two nearest intersecting streets, or between the nearest such street and railroad right-of-way, un-subdivided acreage, river or live stream, or between any of the foregoing and any other barriers, to the continuity of development.

BOARD - The word "board" shall mean the Board of Zoning Adjustment as established in Article V of this Ordinance.

BOARDING HOUSE - A building arranged or used for lodging with or without meals for compensation, by more than five (5) and not more than twenty (20) individuals.

BUFFER - An area meeting specified widths and depths on the side(s) abutting, facing, or confronting between differing land uses. A buffer area serves as a physical and/or visual means of separating differing land uses. Where required under the provisions of these regulations, a buffer area shall be provided as specified herein.

BUILDABLE AREA - The portion of a building site remaining after required yards have been provided.

BUILDING HEIGHT - The vertical distance measured from the average finished grade at the front building line to the highest point of the structure.

BUILDING, PRINCIPAL - A building, including covered porches, carports, and attached garages in which is conducted the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

BUILDING, SEPARATE - Any portion of any structure completely separated from every other portion by masonry or a fire wall without any window, which wall extends from the ground to the roof.

BUILDING INSPECTOR - The Building Inspector of the Fiscal Court, or his authorized representative.

BUILDING SITE - The land occupied or to be occupied by a principal building and its accessory buildings and including such open spaces, yards, minimum area, off-street parking facilities, and off-street truck loading facilities as are required by this ordinance; every building site shall abut upon a dedicated street. Any building site established after the effective date of this ordinance which occupies only a portion of a lot of record may be established only in accordance with the requirements of the Subdivision Regulations or this ordinance, whichever is more restrictive.

BUILDING LINE - A line established in general, parallel to the front street line between which line and the front street line, no part of a building shall project, except as otherwise provided by these regulations.

CARPORT - A shelter for one or more vehicles which is not fully enclosed by walls and one or more doors.

SECTION 2.01 - DEFINITIONS

CERTIFICATE OF USE AND OCCUPANCY - The certificate issued by the building official which permits the use of a building in accordance with the approved plans and specifications and which certifies compliance with the provisions of law for the use and occupancy of the building in its several parts together with any special stipulation or conditions of the building permit.

CLERK - The Clerk of the Governing Body.

CLUB - An organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics or the like, but not for profit.

COMMISSION - The word "Commission" shall mean the Henderson City-County Planning Commission.

CONDITIONAL USE - A use which is essential to or would promote the public health, safety, or welfare in one or more zones, but would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent and character of performance are imposed in addition to those imposed in the zoning regulation.

CONDITIONAL USE PERMIT - Legal authorization to undertake a conditional use issued by the administrative official pursuant to authorization by the Board of Zoning Adjustment, consisting of two parts:

- A. A statement of the factual determination by the Board of Zoning Adjustment which justifies the issuance of the permit, and,
- B. A statement of the specific conditions which must be met in order for the use to be permitted.

CONSUMER FIREWORKS – Fireworks that are suitable for use by the public, designed primarily to produce visible effects by combustion, and comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission. The types, sizes, and amount of pyrotechnic contents of these devices are limited as enumerated in this Section 3 (KRS 227.700 to 227.750)

CONVALESCENT HOME - A convalescent home is a home for the care of the aged or infirm, or a place of rest for those suffering bodily disorders wherein two or more persons are cared for. Said home shall conform and qualify for license under State Law.

COUNTY - The word "County" shall mean the Fiscal Court of Henderson County, Kentucky.

COURT - An open, unoccupied, unobstructed space, other than a yard on the same lot as a building.

DAY CARE FACILITY - A day care facility is designed to offer care and/or training to children or adults unrelated to the owner or director for any part of a day on some kind of regular basis. Such facility may or may not be operated for profit. For the purpose of the Zoning Regulations, a sitting service that is used at the convenience of parents or other relatives at irregular intervals will not be considered a day care facility.

SECTION 2.01 - DEFINITIONS

Types of day care facilities: The services offered and ages of persons enrolled in a day care facility determine the classification of the facility. The name of the facility should be descriptive of its purpose.

A. A GROUP CARE CENTER (day nursery, day care center) is defined as a facility for six or more children, regardless of age, whose primary purpose is the care of the child for a part of a day.

B. A NURSERY SCHOOL is defined as a school for two, three and four year old children which operates for periods generally not to exceed four (4) hours per day and whose primary purpose is education and guidance.

C. KINDERGARTEN is defined as a school for four and five year olds which operates for periods not to exceed four (4) hours per day and whose primary purpose is education and guidance for health, emotional and social development of the children.

D. FOSTER FAMILY DAY CARE is defined as a service in a private home offering care in a family setting to a maximum of five (5) children, including the foster family's own children during part of the day while the natural parents are absent from their home. Because of the special needs of the very young child, there should be no more than two (2) children under the age of two (2) years in a foster family day care home.

E. ADULT DAY CARE is defined as personal care and supervision in a protective setting for adults outside their own home for less than twenty-four (24) hours per day. The program may include the provisions of daily medical supervision, nursing and other health care support, psycho-social assistance, or appropriate socialization stimuli or a combination of these. Adult day care is available for those persons who do not require twenty-four (24) hour per day institutional care, but who, because of physical and/or mental disability, are not capable of full-time independent living.

DENSITY - The number of families residing on, or dwelling units developed on an acre of land. As used in these regulations, all densities are stated in families per acre.

DEVELOPMENT PLAN - Written and graphic material for the provision of a development, including any and all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions and all other conditions agreed to by the applicant.

DISTRICT - A portion of the jurisdiction of the Governing Body within which on a uniform basis, certain uses of land and buildings are permitted and within which certain yards, open spaces, lot acres and other requirements are established, i.e. residential district, commercial district, etc.

DRIVE-IN ESTABLISHMENT - A business establishment, other than a drive-in restaurant, so developed that its retail or service character is dependent on providing a drive-way approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle, and may include drive-in banks, drive-in cleaners and drive-in laundries.

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DRIVE-IN RESTAURANT - Any place or premises used for the sale, dispensing or serving of food, refreshments, or beverages in automobiles, including establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages in automobiles on the premises.

DWELLING UNIT - A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

DWELLING UNIT, SINGLE FAMILY - A detached conventional or prefabricated building containing one dwelling unit and used exclusively by one family; it shall not be construed to include mobile homes.

DWELLING, TWO-FAMILY - A building designed exclusively for occupancy by two (2) families independent of each other, such as a duplex dwelling unit.

DWELLING, GROUP - A group of two (2) or more single-family semi-detached or multiple dwellings occupying a parcel of land in common ownership and having yards or courts in common.

DWELLING, ROW OR TOWNHOUSES - A row of three (3) or more attached single-family dwellings, not more than two and one-half (2 ½) stories in height, in which each dwelling has its own front and rear entrances.

EFFICIENCY UNIT - An efficiency unit is a dwelling unit consisting of one room, exclusive of bathroom, kitchen, hallway, closets or dining alcove directly off the principal room, providing not less than three-hundred, fifty (350) square feet of floor area.

ERECTED - The word "erected" includes built, constructed, reconstructed, moved upon, or any physical operation on the premises required for the building. Excavations, fill, drainage, and the like, shall be considered a part of erected.

FAMILY - One person, or more than one person living together and inter-related by bonds of consanguinity, marriage, or legal adoption, and occupying a dwelling unit as a single non-profit housekeeping unit as distinguished from a group occupying a hotel, club, boarding house, fraternity or sorority house. A family shall be deemed to include domestic servants, gratuitous guests, and not more than three foster or boarded children whose room and board is paid by a recognized child care agency or organization.

FAST FOOD RESTAURANT - A fast food restaurant is defined to be a restaurant that has all of the following characteristics:

- A. Its principal business is the sale of food items and beverages of the kind which can readily be taken out of the restaurant for consumption off the premises.
- B. Utensils, if used at all, are made of plastic or other disposal materials. Food is packaged in paper or Styrofoam or other disposable containers.

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- C. Service is not customarily provided to customers at their tables by employees of the restaurant.

FILLING - Shall mean the depositing or dumping of any matter on or into the ground, except deposits resulting from common household gardening and general farm care.

FLOOR AREA RATIO - The ratio between the maximum allowable amount of floor space on all floors in a building and the total area of the lot on which the building is located. Example: A FAR of 2.0 would allow floor space of twice the area, or a four-story building covering one-half of the lot. A FAR of 0.5 would allow floor space of one-half the lot area, or a two story building covering one-quarter of the lot.

FLOOR AREA, TOTAL - The area of all floors of a building including finished basements and covered porches.

FLOOR AREA, USABLE - Any floor area within outside walls of a building, exclusive of areas in cellars, unfinished basements, utility area, unfinished attics, garages, open porches and accessory buildings.

FOSTER CHILD - A child unrelated to a family by blood or adoption with whom he or she lives for the purpose of care and/or education.

GARAGE, PRIVATE - An accessory building designed or used for the storage of motor driven vehicles owned and used by the occupants of the building to which it is accessory, for personal use only.

GARAGE, PUBLIC - Any premises used for the storage or care of motor driven vehicles, or place where any such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale.

HANDICAPPED PERSON - A person with a physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, and orthopedic impairments, but not including convicted felons or misdemeanants on probation or parole or receiving rehabilitation services as a result of their prior conviction, or mentally ill persons who have pled guilty but mentally ill to a crime or not guilty by reason of insanity to a crime. "Handicapped person" does not include persons with current, illegal use of or addiction to alcohol or any controlled substance as regulated under KRS 218 A.

HOME OCCUPATION - Professional offices and personal services maintained or conducted within a dwelling or conducted as a conditional use in a detached existing garage. Retail sales of a product on the premises shall be strictly prohibited. The processing of any product shall not qualify as a home occupation. Home occupations include only those which are specifically listed and meet the following performance standards:

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- A. Home occupations shall be incidental to the principal residential use. Home occupations shall be conducted within the principal building only or conducted conditionally within an existing detached garage. A home occupation shall employ no more than one person not a resident of the premises. No home occupation may exceed a total area equal to twenty-five (25) percent of the area of the principal building.
- B. There shall be no visible evidence of the conduct of a home occupation from the exterior of the building other than one sign not exceeding four square feet in area, unlighted, and mounted flat against the wall of the principal building.
- C. No substantial traffic increase shall be generated in the residential area.
- D. Home occupations shall not generate any atmospheric pollution, light flashes, glare, odors, noise, and vibration of truck or other heavy traffic.

HOSPITAL - An institution providing health services, primarily for in-patients and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, out-patient department, training facilities, central service facilities and staff offices.

HOTEL-MOTEL - A building occupied or used as a more or less temporary abiding place of individuals or groups of individuals with or without meals, and in which there are more than five (5) sleeping rooms.

INSPECTOR - The Building Inspector of the Fiscal Court or his authorized agent.

JUNK - The term "junk" means any motor vehicle, machine, appliance, scrap material that is in a condition which prevents its use for the purpose for which it was originally manufactured.

JUNKYARDS, USED AUTO PARTS YARDS, SALVAGE YARDS - The use of an area of any lot for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition, abandonment of automobiles, or other vehicles or machines or parts thereof.

KENNEL - Any lot or premises on which three (3) or more dogs, four (4) months or more old, are kept either permanently or temporarily for commercial or breeding purposes.

LABORATORY - A place devoted to experimental study, such as testing and analyzing. Manufacturing of product or products is not permitted within this definition.

LOADING SPACE - An off-street space on the same parcel of property with a building or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

LOT - A parcel of land occupied or intended for occupancy by a use permitted in these regulations, including one principal building together with the accessory buildings, yard areas, and parking spaces required by these regulations, and having its principal frontage upon a publicly maintained street.

SECTION 2.01 - DEFINITIONS

LOT, CORNER - A corner lot is a lot of which at least two adjacent sides abut for their full length upon a street, provided that such two sides intersect at an interior angle of not more than one-hundred, thirty-five (135) degrees. Where a lot is on a curve, if tangents through the extreme point of the street line of such lot make an interior angle of not more than one-hundred, thirty-five (135) degrees, it is a corner lot. In the case of a corner lot with curved street line, the corner is that point on the street lot line nearest to the point of intersection of the tangents described above.

LOT, COVERAGE - That part or percent of the lot occupied by buildings, including accessory buildings.

LOT DEPTH - The mean horizontal distance from the front street line to the rear lot line.

LOT, DOUBLE FRONTAGE - An interior lot having frontages on two (2) more or less parallel streets as distinguished from a corner lot. In the case of a row of double frontage lots, one street will be designated as the front street in the plat and the request for a building permit will indicate which street is the designated front street.

LOT, INTERIOR - A lot other than a corner lot.

LOT LINES - The property lines abounding the lot.

- A. LOT LINE, FRONT - In the case of an interior lot, that line separating said lot from the street. In the case of a corner lot, or double frontage lot, "front lot line" shall mean that line separating said lot from that street which is designated as the front street in the plat and in the application for a building permit.
- B. LOT LINE, REAR - That lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line not less than ten (10) feet long farthest from the front lot line and wholly within the lot.
- C. LOT LINE, SIDE - Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.
- D. LOT LINE, STREET OR ALLEY - A lot line separating the lot from the right-of-way of a street or alley.

LOT OF RECORD - A lot which is part of a subdivision recorded in the office of the County Court Clerk, or a lot or parcel surveyed or described by metes and bounds, the description of which has been so recorded.

LOT WIDTH - The mean horizontal distance between the side lines at the building line measured along the building line.

SECTION 2.01 - DEFINITIONS

MAJOR THOROUGHFARE - The major streets which carry a relatively large amount of vehicular traffic and may connect to secondary or regional thoroughfares. The major thoroughfares are as delineated in the Comprehensive Land Use Plan as adopted by the Governing Body.

MANUFACTURED HOME - Manufactured home shall mean any single-family residence fabricated in an off-site facility on a chassis or undercarriage as an integral part thereof and consisting of one or more separately towable units for installing and assembling on a building site which can be adequately supported by blocks set on any solid surface and which bears a seal certifying that it was built in compliance with the Federal Housing and Construction Safety Standards. For the purpose of this Ordinance Manufactured Homes shall be inclusive of Mobile Homes.

MOBILE HOME - Mobile home shall mean any single-family residence fabricated in an off-site facility on a chassis or undercarriage as an integral part thereof, consisting of one or more separately towable units for installing or assembling on a building site which can be adequately supported by blocks set on any solid surface and which was manufactured prior to the enactment of the Federal Manufactured Housing Standards Act of 1974, which became effective June 15, 1976. For the purpose of this Ordinance Mobile Homes shall be inclusive of Manufactured Homes.

MODULAR HOME - Modular home shall mean any dwelling unit transported to the building site in one or more pre-constructed sections to be assembled onto a building site and designed to be moored to a permanent foundation and which, on being tied to the foundation could only be moved as a conventionally built home and having the appearance of a conventionally built dwelling.

MOBILE HOME PARK - A unified development of two or more mobile home sites, plots, or stands arranged on a large tract usually under single ownership, meeting the area and yard requirements of this ordinance, and designed to accommodate mobile homes, for more or less permanent duration, whether or not a charge is made for such accommodations, and includes any service building, structure, enclosure or other facility used as part of the mobile home park.

MOTOR VEHICLE REPAIR - General repair, engine rebuilding, rebuilding or conditioning of motor vehicles; collision service such as body, frame or fender straightening and repair; overall painting, completely enclosed spray booth.

MOTOR VEHICLE WASH ESTABLISHMENTS - A building, or portion thereof, the primary purpose of which is that of washing motor vehicles.

NON-RESIDENTIAL STRUCTURE, PRIVATE- Carport, garage, post-frame building or other buildings, not used as a dwelling and designed and used for the storage of motor driven vehicles, mowing equipment, etc., for personal use only.

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NONCONFORMING STRUCTURES OR USES - A structure or use of any premises which does not conform with applicable provisions of this ordinance, but which existed at the time of its designation as nonconforming by the adoption or amendment of this ordinance.

NURSERY - TREES AND SHRUBS - An area or establishment devoted to the raising and care of trees, shrubs, or similar plant materials.

OFF-STREET PARKING LOT - A facility providing vehicular parking spaces, along with adequate drives and aisles for maneuvering, so as to provide access for entrance and exit for the parking of more than two (2) automobiles.

OPEN AIR BUSINESS USES - Open air business uses shall include the following:

- A. Retail sale of trees, shrubs, plants, flowers, seed, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment and other home garden supplies and equipment;
- B. Retail sale of fruit and vegetables;
- C. Tennis courts, archery courts, shuffleboard, horseshoe courts, miniature golf, golf driving ranges, children's amusement parks or similar recreational uses;
- D. Bicycle, trailer, motor vehicle, boats or home equipment sales, service, rental services, farm and construction equipment;
- E. Outdoor display and sale of garages, swimming pools, monuments, and similar uses;
- F. Flea markets and similar open air displays.

PARKING SPACES - An area of not less than ten (10) feet wide by eighteen (18) feet long, for each automobile or motor vehicle, such space being exclusive of necessary drives, aisles, entrances or exits and being fully accessible for the storage or parking of permitted vehicles.

PLANNED UNIT DEVELOPMENT (PUD) - A land development project comprehensively planned as an entity via a unitary site plan which permits flexibility in building siting, mixtures of housing types and land uses, usable open spaces and the preservation of significant natural features.

PUBLIC STREET - A publicly maintained thoroughfare providing the principal means of access to abutting property and listed on the City, County, State, or Federal Road System.

RESIDENTIAL CARE FACILITY - A residence operated and maintained by a sponsoring private or governmental agency to provide services in a homelike setting for handicapped persons.

RESIDENTIAL CARE SERVICES - Services include but are not limited to supervision, shelter, protection, rehabilitation, personal development and attendant care.

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RUBBISH - Means the miscellaneous waste materials resulting from housekeeping, mercantile enterprises, trades, manufacturing and office, including other waste matter such as slag, stone, broken concrete, fly ash, ashes, tin cans, glass, scrap metal, rubber, paper, rags, chemicals or any similar or related combinations thereof.

SALVAGE - Refers to any motor vehicle, machine or appliance having sufficient value to justify its sale for repair or recovery of parts.

SETBACK - The required distance between every structure and any lot line on the lot on which it is located.

SERVICE STATION - A building or structure designed or used for the retail sale or supply of fuels, lubricants, air, water and other operating commodities for motor vehicles, aircraft or boats, and including the customary space and facilities for the installation of such commodities on or in vehicles and including space for facilities for the temporary storage of vehicles, minor repair or servicing.

SHOPPING CENTER - A group of two or more adjoining or adjacent retail stores or service establishments to be planned, constructed and developed as a single unit, and including any additional such stores or establishments subsequently adjoining or adjacent thereto.

SIGN - Any fabricated sign or outdoor display structure including its structure, consisting of any letter, figure, character, mark, point, plane, marquee sign, design, poster, pictorial picture stroke, stripe, line, trademark, reading matter, or illuminating device, constructed, attached, erected, fastened, or manufactured in any manner whatsoever so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise whatsoever, and displayed in any manner out of doors for recognized advertising purposes.

SOIL REMOVAL - Shall mean the removal of any kind of soil or earth matter which includes topsoil, sand, gravel, clay or other materials or any combination thereof, except common household gardening and general farm care.

STORY - That part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.

- A. **FIRST STORY** - The lowermost story entirely above the grade plane.
- B. **MEZZANINE** - An intermediate level between the floor and the ceiling of any story, and covering not more than thirty-three percent (33%) of the floor area of the room in which it is located.

STREET - Any public or private vehicular way which affords the principal means of access to abutting property. The term shall include "road", "highway", or "thoroughfare". A public street is a street accepted according to the Subdivision Regulations and maintained by the governing body. A private street is a street not so accepted or maintained.

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STRUCTURE - Anything constructed or erected, the use of which required fixed location on the ground or attachment to something having a fixed location on the ground, including buildings, radio towers, swimming pools, and walls or fences exceeding three and one-half (3 ½) feet in height, billboards and poster panels; reference to buildings includes structures and vice versa.

STRUCTURAL ALTERATION - Any change in the supporting members of a building or structure, each as bearing walls or partitions, columns, beams or girders or any change in the width or number of exits, or any structural change in the roof.

SUBDIVISION REGULATIONS - Regulations as adopted by the Fiscal Court for the subdivision of land.

SWIMMING POOL - The term "swimming pool" shall mean any structure or container intended for swimming or bathing located either above or below grade designed to hold water to a depth greater than twenty-four (24) inches.

TRAVEL TRAILER - A vehicular portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, with a body width not exceeding eight (8) feet and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one or more persons. For the purposes of these regulations, the term includes recreational vehicle, pickup campers, camping trailers and motorized homes (living facilities constructed as integral parts of self-propelled vehicles).

TRUCK GARDENING - Truck gardening is the use of land for growing edible vegetables, fruits, and other crops for resale and commercial purposes. Household gardening by a property owner for a hobby or purely local consumption by himself and his family residing on the same premises shall not be construed to be truck gardening.

USE - The purpose for which land or premises or a building thereon is designed, arranged, or intended, or for which it is occupied or maintained, let or leased.

UTILITY ROOM - A room or space, located other than in the basement, specifically designed and constructed to house any home appliances (furnace, water heater, pump).

VARIANCE - A departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 and 100.247.

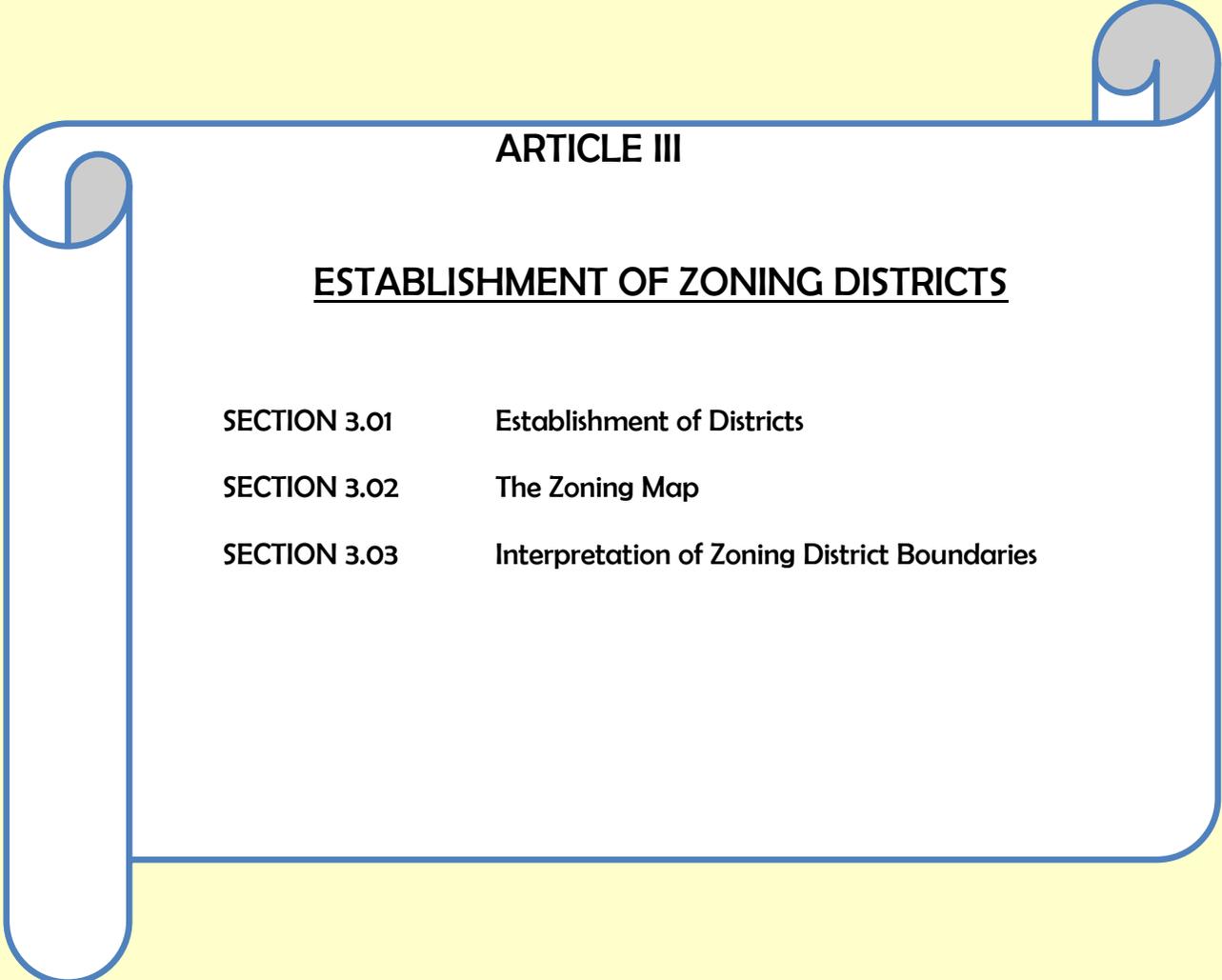
YARD - An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein. The measurement of a yard is the minimum horizontal distance between the lot line and the building or structure.

- A. **Side Yard** - A yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard, or in the absence of either such yard, to the front and rear lot lines, as the case may be; except that on a corner lot, the side yard adjacent to a street shall extend the full depth of the lot.

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- B. Front Yard - A yard extending the full width of the lot; the depth of which is the horizontal distance between the front lot line and the nearest line of the principal building on the lot.

- C. Rear Yard - A yard extending the full width of the lot, the depth of which is the horizontal distance between the rear lot line and the rear line or lines of the principal building on the lot.

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ARTICLE III

ESTABLISHMENT OF ZONING DISTRICTS

- | | |
|---------------------|---|
| SECTION 3.01 | Establishment of Districts |
| SECTION 3.02 | The Zoning Map |
| SECTION 3.03 | Interpretation of Zoning District Boundaries |

ARTICLE III ESTABLISHMENT OF ZONING DISTRICTS

SECTION 3.01. Establishment of Districts - For the purpose of this chapter, the County of Henderson is hereby divided into zoning districts, designated as follows:

R-1	Residential, Single-family
R-2	Residential, Single-family and duplex
R-3	Residential, Multi-family (duplex, townhouses, and apartments)
R-MH	Residential, Mobile Home Park
R-PUD	Residential, Planned Unit Development
P-1	Professional/Service
C-1	Commercial, Neighborhood Business
C-2	Commercial, General Business
H-C	Highway Commercial
M-1	Light Industrial
M-2	Heavy Industrial
AG	Agricultural
SM	Surface Mining District

SECTION 3.02. The Zoning Map - Said districts (as referred to above) are bounded and defined as shown on a map entitled "Zoning Map of the County of Henderson, Kentucky, adopted in 1982, and certified by the County Court Clerk, which accompanies this regulation and which with all explanatory matter thereon, is hereby made a part of this regulation.

SECTION 3.03. Interpretation of Zoning District Boundaries - The following rules shall be used to interpret the exact location of the zoning district boundaries shown on the official zoning map:

- A. Where zoning district boundaries indicated as approximately following the center lines of streets, highways or railroads, street right-of-way lines shall be construed to be such boundaries.
- B. Where a zoning district boundary approximately follows a property line or a series of property lines, such line is the boundary of the district.
- C. Where a zoning district boundary approximately follows a stream or the shore line of a body of water, that stream or shore line as defined on the date this chapter is enacted, is the boundary of this district.
- D. Where a zoning district boundary does not clearly follow any of the features mentioned above, its exact location on the ground shall be determined by measurement according to the official map scale.
- E. Where a zoning district boundary approximately follows a contour or solid boundary as defined by the U.S. Army Corps of Engineers, U.S. Geological Survey or Soil Conservation District, such contour or soil boundary is the boundary of the district.
- F. In any case where the exact location of a boundary is not clear, the County Board of Zoning Adjustment shall use these rules to determine the exact location upon application by the enforcement officer for an original interpretation.

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Except as hereinafter specifically provided, the following general regulations shall apply:

SECTION 4.01. Application of Regulations - All existing and future structures and uses of premises within the County shall conform with all applicable provisions of this chapter. Each zoning district is established to permit only those uses specifically listed as permitted, except as provided under the conditional use provisions and is intended for the protection of those uses. No other uses are permitted.

SECTION 4.02. Coordination with Subdivision Regulations and Access Standards Manual. In all cases where the ownership of land is divided for the purpose of eventual development of lots of any kind, residential, commercial or industrial, the provisions of the Subdivision Regulations shall apply in addition to the provisions of the zoning ordinance. In all cases where applicable, the provisions of the access standards manual, Ordinance No. 46 Series 1990 dated 8-28-90 shall apply in addition to the provisions of the subdivision regulations and the zoning ordinance.

SECTION 4.03. Conditional Use Regulations. Conditional uses may be permitted in districts as designated under the zoning district regulations, but only when specifically approved by the Board of Zoning Adjustment. All conditional uses shall be subject to the following regulations:

- A. All districts. The following conditional uses only may be approved in all zoning districts:
 - 1. Local and non-local public utility transmission lines and pipes
 - 2. Utility structures and public service buildings
 - 3. Expansion of transportation facilities and appurtenances
 - 4. Government buildings and uses.
- B. Specified Districts. Other conditional uses may be approved in only those zoning districts where they are designated as conditional uses under the zoning district regulations.
- C. Procedure. In applying for a conditional use permit, the applicant shall submit an application to the Administrative Official and follow all procedures set forth in this section. The Administrative Official shall refer the application to the Board of Zoning Adjustment. The Board of Zoning Adjustment shall hold a public hearing in accordance with the provisions of Kentucky Revised Statutes, Chapter 424 and Chapter 100.237.
- D. Action. The Board 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 must be done before such 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 permit, along with a reference to the specific section of this chapter listing the conditional use permit for noncompliance with the conditions thereof. Further, the Board shall have the right of

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action to compel offending structures of uses removed at the cost of the violator and may have judgment in personam for such costs.

- E. **Filing.** All conditional use permits approved by the Board of Zoning Adjustments shall be kept on file in the office of the Planning Commission and a Certificate of Land Use Restriction shall be recorded by the administrative official of the board of adjustments in the office of the county court clerk at the expense of the applicant.

- F. **Time Limit.** In any case where a conditional use permit has not been exercised within the time limit set by the Board, or within one year, 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 held by the Board of Zoning Adjustment in accordance with Kentucky Revised Statutes, Chapter 424 and Chapter 100.237. "Exercised" as set out in this section shall mean that binding contracts for the construction of the main building or other improvements has been met, or in the absence of contracts that the main building or other improvement is under construction of the main building or other improvements has been met, or in the absence of contracts that the main building or other improvement is under construction to a substantial investment, is 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 designated in the permit.

- G. **Exemptions.** Granting of a conditional use permit does not exempt the applicant from complying with all the requirements of building, housing, and other codes and regulations.

- H. **Review.** The administrative official 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 landowner 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 administrative official shall report the fact in writing to the Chairman of the Board of Zoning Adjustments. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit and a copy of the report shall be furnished to the Chairman of the Board of Zoning Adjustments. 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 Zoning Adjustments finds that the facts alleged in the report of the administrative official are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the Board may authorize the administrative official to revoke the conditional use permit and take the necessary legal action to cause termination of activity on the land which the conditional use permit authorizes.

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- I. Permanent Approval. Once the Board of Zoning 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 administrative official, upon request by 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 conditional use permit, which is on file in the office of the Planning Commission. Thereafter, the said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

SECTION 4.04. Approved water supply and sewerage disposal for buildings. No person shall construct any building without water supply and sewerage disposal facilities approved by the State Plumbing Inspector. Wherever sewer mains are accessible, buildings shall be connected to such mains. In every other case, individual water supply and sewerage disposal facilities must meet the requirements set by the State Plumbing Inspector. Such certificate of approval must accompany applications for building permits and certificate of occupancy.

SECTION 4.05. Townhouses. Townhouses shall be permitted in the R-3, Multi-Family Residential District, provided that the following requirements are met:

- A. For townhouse development a minimum of two (2) acres, exclusive of streets in single ownership or control shall be developed.
- B. Development involving new or additional streets or any public dedication of land shall be subject to Planning Commission review and approval, as provided in the Subdivision Regulations.
- C. Townhouse minimum yard requirements:
 - Front Yard - 25 feet
 - Side Yard, attached dwellings - Zero feet
 - Side Yard, end dwellings of attached or semi-attached - 10 feet
 - Rear Yard - 20 feet
 - Street Side Yard - Same as the district in which it is located
- D. Townhouse height: Maximum building height - 30 feet

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- E. Townhouse minimum area requirement - No lot shall contain less than 2,000 square feet of land; however, there shall be a minimum open area or play area of one-half acre per two acres or fraction thereof developed exclusive of streets, public ways, parking areas, and any other non-residential uses. It shall be the responsibility of the developer to make the necessary provisions for the perpetual maintenance of such open area and parking area subject to the approval of the Planning Commission.
- F. Townhouse lot size:
 - Minimum frontage for attached dwellings - 18 feet
 - Minimum depth - 80 feet
- G. Other Requirements for Townhouses
 1. The total dwelling units in any group of attached dwellings shall not exceed 10 units.
 2. Off-street parking shall be permitted on each lot. Off-street parking shall be in compliance with Article IX of the Zoning Ordinance.
 3. Maximum area of a lot that can be covered by building floor area shall be 40 percent.

SECTION 4.06. Duplexes. Duplexes shall be permitted in the Residential-2, Two-Family Residential District and the Residential-3, Multi-Family Residential District provided that the area, height, bulk and placement regulations are met (see attached schedule of regulations, Article XXV).

- A. Zero Lot Line - Each unit of a two-family dwelling (duplex) may be located on a separate lot. In such case the minimum lot size and the minimum lot width for each lot shall be one-half (1/2) the respective dimensions required by the district for a two-family dwelling and the minimum side yard for each unit's non-common wall side shall be equal to the minimum dimension required by the district for a two-family dwelling (the common wall side yard being zero (0) by definition).

Application of Zero Lot Line provisions will require special covenants within the deeds of affected lots. Such covenants must respond to issues unique to zero lot line dwelling units. These issues, among others will include:

1. Exterior zero lot line building elements will involve maintenance performed from an adjacent property, thereby necessitating maintenance easements.
2. Common-wall dwelling units should generally correspond in architectural style, color, scheme, etc, which may necessitate a perpetual design control mechanism to define the individual rights and collective responsibilities of affected property owners.

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SECTION 4.07. Mobile Homes

A. Mobile Homes on Private Lots.

1. Mobile homes are permitted as conditional uses in Residential-2, Residential-3, and private lots in the Agricultural District. Such mobile homes may be rented, leased or owner occupied.
2. Lot Requirements: The lot requirements for a mobile home on a private lot shall be identical to the requirements established for a dwelling in the zoning district in which the mobile home is located. The mobile home shall be required to conform with all requirements established by this chapter for a residential dwelling unit, in the district in which the mobile home is located.
3. Building Permit Required: A building permit shall be required prior to the location of a mobile home on a private lot.
4. Screening Required: As a condition to the issuance of a building permit, the owner of a mobile home shall agree to enclose the mobile home in such a manner that the open space beneath the mobile home is completely screened from view. Such enclosure shall be of a non-deteriorating material. Failure to properly enclose a mobile home shall be cause for revocation of the right to maintain the mobile home on a private lot.
5. Mobile Home Supports: Mobile homes, when located on private lots, shall be provided with a concrete foundation of a thickness and size adequate to support the anticipated load during all seasons. Said support shall consist of a concrete slab, concrete ribbons or concrete piers. The proposed method of support shall meet the minimum standards set for manufacturers and shall be approved by the County Engineer prior to the building permit being issued. Failure to property construct the support shall be cause for revocation of the building permit until such time that the concrete foundation passes inspection.
6. Tie-downs Required: Mobile homes shall be equipped with tie-downs intended to secure such units against movement.
7. Mobile Homes: Each mobile home located on a private lot shall contain a flush toilet, sleeping accommodations, a tub or shower bath, kitchen facilities and plumbing and electrical connections designed to be attached to appropriate external systems, in conformance with the standards specified by the County Health Department, the Ordinances of Henderson County and the laws of the State of Kentucky.

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- B. Non-Conforming Mobile Homes and Mobile Home Parks. The lawful use of a mobile home or mobile home park existing at a time of passage of this chapter may be continued, although such uses may not conform to the provisions of this chapter. The continuance of a non-conforming mobile home or mobile home park shall be subject to the non-conforming provisions of this chapter.

SECTION 4.08. Junk Yards. Junk yards are permitted only as conditional uses in Light Industrial Districts.

SECTION 4.09. Obstructions to Vision at Street Intersections on Corner Lots. Within the area defined by the intersection of any two right-of-way lines of streets or railroads and a straight line intersecting those two right-of-way lines at points thirty (30) feet from the intersection, no obstruction to vision between a height of two and one-half (2 1/2) feet and twelve (12) feet above the imaginary plane defined by those three points of intersection are permitted.

SECTION 4.10. Side Yard Regulations for Corner Lots. The side yard requirement for all principal buildings on corner lots shall be such that no corner building extends toward the side street more than ten feet beyond the setback line set for buildings along the street to the corner lot.

SECTION 4.11. Regulations for Double-Frontage Lots. Double frontage lots shall, on both adjacent streets, meet the front yard requirements of the district in which they are located.

SECTION 4.12. Application of Yards to One Building Only. No part of a yard required for any building may be included as fulfilling the yard requirements for an adjacent building.

SECTION 4.13. Use of Yards For Accessory Buildings. No accessory building is permitted in front yards. They are permitted only in rear or side yards according to the dimension and area regulations.

SECTION 4.14. Use Exceptions. Several types of structures and uses are permitted in all districts even though they are not listed as permitted uses under the zoning district regulations. These structures and uses are listed as follows:

No building permit or certificate of occupancy required for:

- A. Local public utility distributing and collecting structures such as pipes and transmission lines, transformers and meters. Large utility structures such as electrical substations or gas pumping stations are permitted only as conditional uses.
- B. Public streets and all official appurtenances necessary for traffic direction and safety. All street and traffic control signs shall conform to the code established and adopted by the Kentucky Department of Highways or the Henderson County Road Department - whichever is applicable.
- C. Private drives, private parking areas, and the parking of vehicles incidental to the principal use on the same premises.
- D. Real estate signs located on the premises or subdivision signs advertising property for sale or rent.

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- E. Signs not over four square feet in area identifying permitted home occupations or the renting of sleeping rooms on the same premises.
- F. Horticulture and landscaping of any premises.

SECTION 4.15. Height Exceptions. Height regulations apply to buildings occupied regularly by persons or their activities. They do not apply to structures of portions of buildings such as radio towers, ornamental spires, water towers, and flag poles which are not occupied regularly by persons except for maintenance, unless otherwise stipulated in the Zoning Ordinance. The Board of Zoning Adjustment shall interpret whether or not the height regulations apply upon application by the enforcement officer in doubtful cases. Federal aviation agency height regulations in the vicinity of an airport shall take precedence over all other height regulations.

SECTION 4.16. Lot of Record (See Section 8.03)

SECTION 4.17. Group Housing. In the case of group housing, two or more buildings to be constructed on a plot of ground, not subdivided into the customary streets and lots, and which will not be so subdivided to where the existing or contemplated street and lot layout make it impractical to apply the requirements of this chapter to the individual building units in such group housing, the application of the terms of this chapter may be varied by the Board of Zoning Adjustments in a manner which will be in harmony with the character of the neighborhood. However, in no case shall the Board of Zoning Adjustment authorize a use prohibited in the district in which the housing is to be located, or a smaller lot area per family than the minimum required in such district or a greater height, or a smaller yard area than the requirements of this chapter permit in such an area.

SECTION 4.18. Streets, Alleys and Railroad Rights-of-way. All streets, alleys and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting up such street, alley or railroad right-of-way. Where the center line of a street or alley serves as a district boundary, the zoning of such street or alley, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

SECTION 4.19. Permitted Uses. No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used, designed or arranged for any purpose than is permitted in the district in which the building or land is located.

SECTION 4.20. Permitted Area. No building shall be erected, converted, enlarged, reconstructed or structurally altered, except in conformity with the area regulations of the district in which the building is located.

SECTION 4.21. Zoning Lot. Every building hereafter erected or structurally altered to provide dwelling units shall be located on a lot as herein defined, and in no case shall there be more than one such building on one lot unless otherwise provided for in these regulations.

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SECTION 4.22. Visibility. No structure, wall, fence, shrubbery or trees shall be erected, maintained, or planted on any lot which will obstruct the view of the driver of a vehicle approaching an intersection, excepting that shade trees will be permitted where all branches are not less than eight (8) feet above the street level. In the case of corner lots, this shall also mean that there shall be provided an unobstructed triangular area formed by the street from the intersection of the street lines, or in the case of a rounded corner, from the intersection of the street property lines extended.

SECTION 4.23. Dwellings in Non-Residential Districts. No dwellings shall be erected in the M-1, M-2, or commercial districts, except as provided for in this ordinance. However, the sleeping quarters of a watchman or caretaker may be permitted in said districts in conformance with the specific requirements of the particular district.

SECTION 4.24. Number of Buildings on Lot. Restriction: Each dwelling hereafter erected or structurally altered shall be located on a lot and except in the case of multiple housing project, or PUD, there shall be not more than one principal building and its accessory buildings on any single lot.

SECTION 4.25. Accessory Buildings. Except as otherwise permitted in these regulations, accessory buildings shall be subject to the following regulations:

- A. Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this Ordinance applicable to main or principal buildings.
- B. Accessory buildings shall not be erected in any required yard except a rear yard, providing that in no instance shall such a building be nearer than five (5) feet to any adjoining side lot line or rear lot line.
- C. An accessory building, not exceeding one (1) story, may occupy not more than twenty-five (25) percent of any non-required yard; provided that in no instance shall the accessory building exceed the ground floor of the principal building; except on tracts containing five acres (5) or larger, persons can apply to the County Board of Zoning Adjustment for a conditional use permit to allow the accessory building to exceed the ground floor of the principal building.
- D. No detached accessory building other than a garage and/or carport shall be located closer than fifteen (15) feet to any principal building. (Revised 4/93).
- E. In the case of double frontage lots, accessory buildings shall observe front yard requirements on both street frontages.
- F. When an accessory building is to be located on a corner lot, the side lot line of which is substantially a continuation of the front lot line of the lot to its rear, said building shall not project beyond the front yard line required on the lot in rear of such corner lot.
- G. Garages. In any residential zone no garage shall be erected closer to the side lot line than the permitted distance for the dwelling unless the garage shall be completely to the rear of the dwelling in which event the garage may be erected five feet from the side and rear lot line. No garage or portion thereof shall extend beyond the front building line of the dwelling; except on tracts containing five acres (5) or larger, persons can apply to the County Board of Zoning Adjustment for a conditional use permit to allow the garage to extend beyond the front building line of the dwelling. Attached garages of fireproof construction may be erected to extend beyond the front line of the house in those areas which are being developed according to a common plan that includes the construction of attached garages extending beyond the front line of the house, except that such garages shall not encroach in or upon the minimum

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front yard area as required by these regulations and provided the cornice, eaves, or overhand shall not extend more than six (6) inches into the required side yard area.

- H. Carports constructed in residential zoning districts shall comply with the following requirements:
1. A carport that is placed at the side of an existing residence and which consists of a roof and supporting posts made of non-combustible materials, may extend to within five (5) feet of an interior side lot line. The carport may also extend to within ten (10) feet of the side lot line along a public street. The requirements stated in this paragraph refer to the distance between a side property line and the roof of the carport.
 2. A carport which is structurally part of a residence (i.e. one that is composed of the same building materials as the house of which it is a part, and one that has the same roof line as the house of which it is a part) shall not extend into a required side yard. Such a carport is usually constructed at the same time as the residence which it is a part.
 3. No carport shall extend into the required front yard of a lot; except on tracts containing five acres (5) or larger, persons can apply to the County Board of Zoning Adjustment for a conditional use permit to allow the carport to extend into the required front yard.
 4. A carport that encroaches into the required side yard of a lot as permitted by this section may not later be converted into living area, a storage room, garage or other walled structure without approval of the Board of Zoning Adjustment.

SECTION 4.26. Prohibited Uses in All Residential Districts.

- A. No appliances such as washing machines and refrigerators shall be stored for more than 24 (twenty-four) hours in any residential district except in a carport on enclosed building or behind the portion of a building nearest to a street. Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored in any residential district other than in completely enclosed buildings. Boats and boat trailers are exempt from the provisions of this Section.
- B. Commercial highway vehicles and tractors, trailers and tractor-trailer vehicles shall not be parked or stored in residentially zoned districts at any time, unless there exists adequate off-street parking to accommodate said vehicles.
- C. It shall be a prohibited use in an open area in all residentially zoned districts to park or store wrecked or junked vehicles, power driven construction equipment, used lumber or metal, or any other miscellaneous scrap or salvageable material.

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SECTION 4.27. Excavation, Soil Removal and Filling of Land. The principal use of land for the excavation, soil removal, filling or depositing of any type of earth material, topsoil, gravel, rock garbage, rubbish or other wastes or by-products is not permitted in any zoning district except under a permit from and under the supervision of the enforcement officer in accordance with a topographic plan, approved by the local government engineer, submitted by the fee-holder owner of the property concerned. The topographic plan shall be drawn at a scale of not less than 200 feet equals 1 (one) inch and shall show existing and proposed grade and topographic features and such other data as may from time to time be required by the local government engineer. Such permit may be issued in appropriate cases upon the filing with the application of a surety bond executed by a surety company authorized to do business in the State of Kentucky, in favor of the Planning Commission in an amount to be established by the local government engineer which will be sufficient in amount to rehabilitate the property upon default of the operator of such excavating or filling operation, and to cover court costs and other reasonable expenses. This regulation does not apply to normal soil removal for basements or foundation work when a building permit has previously been duly issued by the enforcement officer. Neither do these regulations apply to general agricultural uses.

SECTION 4.28. Construction Begun Prior to Adoption of Regulation. Nothing in these regulations shall be deemed to require any change in the plans, construction or designed use of any building upon which actual construction was lawfully begun prior to the adoption of these regulations, and upon which building actual construction has been diligently carried on, and provided further that such building shall be completed within one (1) year from the date of passage of these regulations.

SECTION 4.29. Voting Place. The provisions of these regulations shall not be so construed as to interfere with the temporary use of any property as a voting place in connection with a public election or referendum.

SECTION 4.30. Approval of Plats. No proposed plat of a new subdivision shall hereafter be approved by the Planning Commission unless the lots within such plat equal or exceed the minimum size and width requirements set forth in the various districts of these regulations and unless such plat fully conforms with the statutes of the State of Kentucky and regulations of the Fiscal Court.

SECTION 4.31. Essential Services. The erection, construction, alteration or maintenance by public utilities or governmental departments or commission, of underground or overhead gas, electrical, steam or water distribution or transmission systems, collection, communication supply or disposal systems including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, poles and other similar equipment and accessories in connection therewith, but not including buildings, reasonably necessary furnishing of adequate service by such public utilities or governmental departments or commissions, or for the public health or safety or general welfare shall be permitted as authorized and regulated by law and other regulations of the governing body in any use district, it being the intention hereof to exempt such erection, construction, alteration and maintenance from the application of these regulations.

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SECTION 4.32. Building Grades. Any building requiring yard space shall be located at such an elevation that a sloping grade shall be maintained to cause the flow of surface water to run away from the walls of the building. A sloping grade, beginning at the sidewalk level, shall be maintained and established from the center of the front lot line to the finished grade line at the front of the building. The rear and side yards shall be sloped to allow for the flow of surface water away from the building without creating a nuisance. However, this shall not prevent the grading of a yard space to provide sunken or terraced areas provided proper means are constructed and maintained to prevent the runoff of surface water from creating a nuisance on the adjacent properties. Final grades shall be subject to the approval of the enforcement officer.

SECTION 4.33. Building to be Moved. Any building or structure which has been wholly or partially erected on any premises located within the jurisdiction of the Fiscal Court shall not be moved to and be placed upon any other premises in the same jurisdiction until a building permit for such removal shall have been secured. Any such building or structure shall fully conform to all the provisions of these regulations in the same manner as a new building or structure. No building or structure shall be moved into the jurisdiction of the Governing Body until such building permit has been secured.

Before a permit may be issued for moving a building or structure, the enforcement officer shall inspect same and shall determine if it is in a safe condition to be moved, whether it may be reconditioned to comply with the Building Code and other requirements of the Fiscal Court for the use and occupancy for which it is to be used.

SECTION 4.34. Excavation or Holes. Removal and filling of land, the construction, maintenance or existence within the jurisdiction of the governing body of any unprotected, un-barricaded, open and dangerous excavations, holes or pits which constitute or are reasonably likely to constitute a danger or menace to the public health, safety or welfare, are hereby prohibited; provided however, this section shall not prevent any excavation under a permit issued pursuant to these regulations or the building code of the governing body where such excavations are properly protected and warning signs posted in such a manner as may be approved by the enforcement officer and, provided further, that this section shall not apply to streams, natural bodies of water or to ditches, streams, reservoirs, or other major bodies of water created or existing by authority of the State of Kentucky, or other governmental agencies.

SECTION 4.35. Signs. The erection, construction or alteration of all outdoor advertising structures, billboards, signs and other notices which advertise a business, commercial venture or name of a person or persons, shall comply with the Building Code and all requirements of this regulation.

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SECTION 4.36. Junk and/or Used Auto Parts Yard. Junk and/or used auto parts yards shall comply with the following:

- A. Fences around the entire area of junk yards and/or used auto parts yards or salvage yards, shall be required. Fences shall not be less than six (6) feet nor greater than ten (10) feet in height. Fences shall be designed and constructed in compliance with existing building codes. Fences and/or green belts shall be used to shield contents of such businesses from view of public streets or residential areas. Fences shall be properly maintained at all times.
- B. Stacking of motor vehicles or parts of motor vehicles in a salvage or used auto parts yard shall be limited to a height of ten (10) feet.
- C. Stacking in a junk yard shall be limited to forty (40) feet in height. There must be enough space provided so that if any material falls or is blown over, it will fall on the property. The Board of Zoning Adjustment shall have the authority to permit stacking in excess of forty (40) feet in height.
- D. No items for sale shall be stored or displayed on the fence or outside of the fenced area except complete units which have not been damaged which shall be limited to five (5) such units.
- E. Any new business or old business moving to a new location shall be in full compliance with the regulations of this Ordinance.

SECTION 4.37. Exclusive Use District.

The purpose of this district is to allow rezoning applicants to request that a certain area be designated "Exclusive Use" (EU), which area, after having been recommended by the Henderson City-County Planning Commission and approved by the Fiscal Court, must be used for only those uses prescribed by the application. These uses must be among the uses permitted in the zoning district from which the Exclusive Use is taken. Any applicant applying for an Exclusive Use may ask for and receive consideration by the Planning Commission under the same terms and conditions prescribed for in any other rezoning request. The applicant may be required to submit a site plan, architectural rendering, or other such material as might be of assistance to both the Planning Commission and Fiscal Court in their consideration.

NOTE: All rezoning's must follow public notice requirements for public hearings as set forth in KRS, Chapter 100.

SECTION 4.38. VARIANCES and CONDITIONAL USE PERMITS BY PLANNING COMMISSION - LIMITED. (Added January 2015)

The Planning Commission is empowered to hear and finally determine variances and conditional use permits in the limited instance permitted by KRS 100.203(5) and (6), as the same may be amended from time to time. Please refer to the statute.

The Applicant for a map amendment, at the time of the filing of the application for the map amendment, may elect to have any variances or conditional use permits, for the same development, heard and finally determined by the Planning Commission at the same public hearing set for the map amendment. By filing such application, the applicant shall have elected for the Planning Commission and not the Board of Zoning Adjustments to hear and finally determine such request. (The applicant could not withdraw the application and then file an application with the Board of Zoning Adjustments; nor could the applicant file a request with the Board of Zoning Adjustments after the application was denied or turned down by the Planning Commission.) A denied application may not be refiled with either the Planning Commission or Board of Zoning Adjustments within one (1) year after denial.

In only this limited instance, the Planning Commission shall assume all of the powers and duties otherwise exercised by the Board of Zoning Adjustments pursuant to KRS 100.231, 100.333, 100.237, 100.241, 100.243, 100.247, 100.251 and in this Zoning Code/Ordinance, as the same are amended from time to time.

ARTICLE V

BOARD OF ZONING ADJUSTMENT

SECTION 5.01

POWERS AND DUTIES

ARTICLE V. BOARD OF ZONING ADJUSTMENT

SECTION 5.01. Powers and Duties.

A Board of Zoning Adjustment is hereby created for the County of Henderson, Kentucky. The Board shall be known as the Henderson County Board of Zoning Adjustment. The Board shall have the powers, duties, and responsibilities as set forth in KRS, Chapter 100.

- A. Jurisdiction of the Board of Zoning Adjustment for the County shall be within the unincorporated limits of the County, as exists or may be amended in the future.
- B. The membership, appointment, and term of office of the Board of Zoning Adjustment is as follows:

The Board shall consist of five citizen members, one of which shall be a Planning Commission member and resident of the County of Henderson. The Judge-Executive of the County shall appoint the members of the Board with the approval of the County Fiscal Court. The term of office of members first appointed shall be staggered so that a proper proportionate number serve one, two, three and four years respectively, with later appointments or re-appointments continuing the staggered pattern.

- C. Reimbursement for expenses lawfully incurred by a member of the Board of Zoning Adjustment in the performance of his duties may be authorized by formal action of the Fiscal Court. No member of the Board shall receive any other compensation.
- D. The Board of Zoning Adjustment shall have the power to receive, hold, administer and disburse funds which it may lawfully receive from any and every source. Prior to the beginning of each fiscal year the Board may adopt a budget which will be presented to the Fiscal Court for the purpose of receiving funds for the cost of its operation.
- E. Expenditures of such appropriations and funds shall be in accordance with the formal action of the Board pursuant to the regulations lawfully established. Administration of the Board shall be as described in KRS Chapter 100 and as may be amended in the future.
- F. Vacancies on the Board of Adjustments shall be filled within sixty (60) days by the appointing authority. If the appointing authority fails to act within that time, the planning commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of the term. All appointments shall continue until the successors shall have qualified.
- G. All members of the Board of Zoning Adjustments shall, before entering upon their duties, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before any Judge, Notary Public, Clerk of a Court or Justice of the Peace within the district or county in which he/she resides.

ARTICLE V. BOARD OF ZONING ADJUSTMENT

- H. Any member of the Board of Zoning Adjustments may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance or conflict of interest. Any appointing authority who exercises the power to remove a member of the Board of Zoning Adjustments shall submit a written statement to the Commission setting forth the reasons for removal, and the statement shall be read at the next meeting of the Board of Zoning Adjustments which shall be open to the general public. The member so removed shall have the right to appeal from the removal to the Circuit Court of the County in which he/she resides.
- I. The Board of Zoning Adjustments shall annually elect a Chairman, Vice-Chairman and Secretary and any other such officers it deems necessary and any officer shall be eligible for re-election at the expiration of his term.
- J. The Board of Zoning Adjustments shall conduct meetings at the call of the Chairman who shall give written notice or oral notice to all members of the Board at least seven (7) days prior to the meeting, which notice shall contain the date, time and place for the meeting and the subjects which will be discussed.
- K. A simple majority of the total membership of a Board of Zoning Adjustments as established by regulation or agreement shall constitute a quorum. Any member of the Board of Zoning Adjustments who has any direct or indirect financial interest in the outcome of any question before the body shall disclose the nature of the interest and shall disqualify himself/herself from voting on the questions.
- L. The Board of Zoning Adjustments shall adopt by-laws for the transaction of business and shall keep minutes and records of all proceedings including regulations, transactions, finding, and determinations and number of votes for and against each question, and if any member is absent or abstains from voting, indicating the fact, all of which shall immediately after adoption, be filed in the office of the Board. A transcript of the minutes of a Board of Zoning Adjustments meeting shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.
- M. The Board of Zoning Adjustments may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties.
- N. The Board of Zoning Adjustments shall have the power to issue subpoena to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. The sheriff shall serve such subpoenas. The Circuit Court, may upon application by the Board, compel obedience to such court or such subpoena by proceedings of contempt.
- O. The Chairman of the Board of Zoning Adjustments shall have the power to administer an oath to witnesses prior to their testifying before the Board on any issue.

ARTICLE V. BOARD OF ZONING ADJUSTMENT

- P. The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met.
1. The Board 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 permit along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. The Board shall have the 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 building, housing and other regulations.
 3. In any case where a conditional use permit has not been exercised within the time limit set by the Board, or within one year, if no specific time limit has been set, such conditional use permit shall not revert back 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 improvements have been met; or in the absence of contracts that the main building or other improvements is under construction to a substantial degree, or that prerequisite conditions involving substantial investment under contract, in development are completed. When construction is not a part of the use, exercised shall mean that the use in operation in compliance with the conditions as set forth in the permit.
 4. The administrative official 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 landowner is complying with all of the conditions listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the administrative official shall report the fact in writing to the Chairman of the Board of Zoning Adjustments. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time it is furnished to the Chairman of the Board of Zoning Adjustments. 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 Zoning Adjustments finds that the facts alleged in the report of the administrative official are true and that the landowner has taken no steps to

ARTICLE V. BOARD OF ZONING ADJUSTMENT

comply with them between the date of the report and the date of the hearing, the Board of Zoning Adjustments may authorize the administrative official to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

5. Once the Board of Zoning Adjustments has completed a conditional use permit and all the conditions required are such type that they can be completely and permanently satisfied, the administrative official, upon request of the applicant, may if the facts warrant, make a determination that the conditions have been satisfied and note the conclusion in the margin of the conditional use permit which is on file in the office of the planning commission. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.
- Q. The Board shall have the power to hear and decide on applications for variances. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant.
- R. Before any variance is granted, the Board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings the board shall consider whether:
1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
 2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
 3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- S. The board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.
- T. The Board shall not process the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the zoning regulation in the zone in question, or to alter density requirements in the zone in question.
- U. A dimensional variance applies to the property for which it is granted, and not to the individual who applied for it. A variance runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site.

ARTICLE V. BOARD OF ZONING ADJUSTMENT

- V. The lawful use of a building or premises existing at the time of adoption of any zoning regulations affecting it may be continued, although such use does not conform to the provisions of such regulations except as otherwise provided herein.

The Board of Zoning Adjustments shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the Board permit a change from one nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification provided, however, the Board of Zoning Adjustments may grant approval, effective to maintain nonconforming use status, for enlargements or extensions, made or to be made of the facilities of a nonconforming use where the use consists of the presenting of a major public attraction or attractions such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.

- W. The Board of Zoning Adjustments shall have the power to hear and decide cases where it is alleged by an applicant that there is an error in any order, requirement, decision, grant or refusal made by an administrative official in the enforcement of the zoning regulation. Such appeal shall be taken within sixty days.
- X. Appeals to the Board may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action or decision of the zoning enforcement officer. Such appeal shall be taken within thirty days after the appellant or his agent receives notice of the action appealed from, by filing with said officer and with the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the Board any interested person may appear and enter his appearance and all shall be given an opportunity to be heard.
- Y. The Board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the administrative official at least one week prior to the hearing and shall decide it within sixty days. The affected party may appeal at the hearing in person or by attorney.
- Z. If no building permit has been issued and a builder begins or continues to build, a restraining order may be obtained upon application to the proper court of record and evidence of the lack of a building permit shall establish a prima facie case for the issuance of the restraining order.

ARTICLE VI

ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

- | | |
|--------------|--|
| SECTION 6.01 | Enforcement Officer |
| SECTION 6.02 | Building Permits |
| SECTION 6.03 | Certificates of Occupancy |
| SECTION 6.04 | Violations; Penalties |
| SECTION 6.05 | Clarification of Administrative Jurisdiction |

ARTICLE VI. ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

SECTION 6.01. Enforcement Officer. The provisions of this chapter shall be administered and enforced by a Zoning Administrator appointed by the Henderson County Fiscal Court who shall have the power to make inspection of buildings and premises necessary to carry out his duties in the enforcement of this chapter. The enforcement officer in the performance of his duties and functions may enter upon any land and make examination and surveys that do no damage or injury to private property.

SECTION 6.02. Building Permits.

- A. Required prior to construction or exterior alteration. No person shall commence excavation for or the construction of any building, including accessory buildings, or commence the moving or exterior alteration of any buildings, including accessory buildings until the enforcement officer has issued a building permit for such work.
- B. Exceptions. No building permit or certificate of occupancy shall be required in the following cases:
1. Recurring maintenance work;
 2. Alterations to the interior of a building;
 3. Alterations to the exterior of a building which do not appreciably increase the exterior dimensions of the building (e.g. siding, windows, doors, roofing, etc.)
 4. Installation of required improvements according to an approved subdivision plat.
 5. Exceptions set forth in Section 24.04.
- C. **Procedure:**
1. Application: In applying to the enforcement officer for a building permit the applicant shall submit a plan along with the application, drawn to scale, showing the dimensions of the lot to be built upon, the outside dimensions of all structures, yard depths, and any other information necessary for determining conformance with this order. The State Plumbing Inspector's certificate approving proposed water and sewerage facilities must accompany applications according to Section 4.04 of Article IV. For non-residential and multi-family development, site plans addressing drainage, entrances and exits and other pertinent information shall be approved by the enforcement officer and the local government engineer, acting jointly, in consultation with the Planning Commission, and they may require any changes therein, as may be deemed necessary. Site plan approval must be granted before a building permit can be issued.
 2. Permanent File: The enforcement officer shall keep accurate records in a permanent file for the issuance of building permits, certificates of occupancy, inspection violations, stop orders, and condemnations.

ARTICLE VI. ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

3. **Issuance:** If the proposed construction or alteration conforms with all applicable provisions of this chapter and all other applicable ordinances, regulations and codes, the enforcement officer shall issue a building permit authorizing such construction or alteration. If the proposed construction or alteration fails to conform, the enforcement officer shall refuse to issue a building permit and shall deliver written notice to the applicant stating the reasons for the refusal. The enforcement officer shall act upon applications for building permits within two weeks from the date of their submission or shall inform Fiscal Court in writing as to why no action has been taken.
4. **Validity:** The issuance of a building permit by the enforcement officer shall not waive any provisions of this chapter.
5. **Duration:** A building permit shall become void six months from the date of issuance unless substantial progress has been made by that date on the construction or alteration authorized therein. A building permit may be renewed without fee upon review by the enforcement officer before it becomes void.

SECTION 6.03. Certificates of Occupancy. No land or buildings or part thereof hereafter erected or altered in its use or structure shall be used until the enforcement officer shall have issued a certificate of occupancy, stating that such land, building, or part thereof, and the proposed use thereof, are found to be in conformity with the provisions of this chapter. Within three days after notification that a building or premises or part thereof is ready for occupancy or use, it shall be the duty of the enforcement officer to make a final inspection thereof and to issue a certificate of occupancy, if the land, building, or part thereof and the proposed use thereof, are found to conform with the provisions of this chapter; or if such certification is refused, to state refusal in writing, with the cause and immediately thereupon to mail notice of such refusal to the applicant at the address indicated in the application. Facilities under state jurisdiction are excluded from the provisions of this section.
(Amended by Ordinance No. 03-01, Feb. 4, 2003).

SECTION 6.04. Violations; Penalties.

- A. **Remedies.** In case any building or structure is, or is proposed to be erected, constructed or reconstructed, or any building, structure or land is, or is proposed to be used in violation of this ordinance, the enforcement officer or any other appropriate property owner who would be damaged by such violation, in addition to other remedies may institute an injunction, mandamus or appropriate action or proceeding to prevent the work or occupancy of such building, structure or land in any court of competent jurisdiction.
- B. **Penalties.** Any person violating any provision of this chapter shall, upon conviction, be fined not less than \$10 nor more than \$500 for each conviction. Each day of violation shall constitute a separate offence.

ARTICLE VI. ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

SECTION 6.05. Clarification of Administrative Jurisdiction. The following is a recapitulation of the administrative agencies with jurisdiction and the extent of their jurisdiction concerning the administration of this chapter.

- A. The enforcement officer has initial authority for the literal enforcement of this chapter. He has no discretionary authority to allow any departure from the literal conformance with this chapter.
- B. The Board of Zoning Adjustment has authority to hear appeals from decisions by the enforcement officer and to make literal interpretations of the pertinent provisions to correct any possible misinterpretations by the enforcement officer. The Board also has the authority to make only those initial discretionary interpretations and decisions and allow only those departures from a literal conformance which is specifically delegated to it.
- C. The Circuit Court has jurisdiction to determine all questions and issues properly brought before it on appeal from decisions of the Board of Zoning Adjustment or Henderson County Fiscal Court.

ARTICLE VII

AMENDMENTS

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| SECTION 7.01 | Application for Amendment |
| SECTION 7.02 | Commission Procedure |
| SECTION 7.03 | Notice of Public Hearing |
| SECTION 7.04 | Public Hearing on Application |
| SECTION 7.05 | Recommendation of the Planning Commission on Zoning Amendment |
| SECTION 7.06 | Action by the Legislative Body on Zoning Ordinance Amendment |
| SECTION 7.07 | Schedule of Fees, Charges and Expenses |

ARTICLE VII. AMENDMENTS

SECTION 7.01. Application for Amendment. A proposal for amendment to the Zoning Ordinance may originate with the Planning Commission, Legislative Body, any other government body, the owner of the subject property or by a person having written authorization from the owner of the subject property. Regardless of the origin of the proposed amendment, an application must be filed with the Planning Commission at least twenty-one (21) days prior to the first Tuesday of the following month requesting the proposed amendment, accompanied by such information as required by this Zoning Ordinance and in such form as established by the Planning Commission. The Planning Commission may require the submission of further information subsequent to the filing of an application as provided by the Zoning Ordinance. At the time of the filing of the application, a non-returnable filing fee shall be paid according to the schedule of fees as established herein. Upon the filing of an application for a Zoning Map amendment by a governmental body, the Planning Commission shall promptly notify the owner of the subject property by registered mail. Regardless of the origin of a proposed zoning map amendment, the owners of all property adjoining the subject property shall be notified by registered mail.

SECTION 7.02. Commission Procedure. Upon the filing of an application for an amendment to this Zoning Ordinance, the Planning Commission shall study and review the application as provided in this Zoning Ordinance and the By-Laws of the Henderson City-County Planning Commission.

SECTION 7.03. Notice of Public Hearing. Before voting upon any proposed amendment, notice of the time, place and reason for holding a public hearing shall be given as required by KRS, Chapter 424 and KRS, Section 100.212 and 100.211.

SECTION 7.04. Public Hearing on Application. After notice of the public hearing as provided hereinabove, the Planning Commission shall hold at least one public hearing on the proposed amendment.

SECTION 7.05. Recommendation of the Planning Commission on Zoning Amendment. The Planning Commission shall make its recommendation to the Henderson County Fiscal Court within sixty (60) days of the advertised public hearing. In its finding, the Planning Commission may, after careful review, as a condition to the granting of any zoning change, require the submission of a development plan which, where agreed upon, shall be followed. Development plan means written and graphic material for the provision of a development including any or all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions, and all other conditions agreed to by the applicant. The development plan shall become part of the ordinance for amendment upon motion and approval of the Planning Commission and is then considered as part of the findings recommended to the Fiscal Court.

ARTICLE VII. AMENDMENTS

This development plan shall not take the place of submission of a subdivision plat through the Planning Commission. Before recommending to the Fiscal Court that an application for the amendment to the Zoning Ordinance be granted, the Planning Commission shall find that the map amendment is in agreement with the Comprehensive Plan or in the absence of such a finding that: (1) the existing zoning classification given to the property was inappropriate or improper, or (2) that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the Comprehensive Plan, and which have substantially altered the basic character of such area. The findings of fact made by the Planning Commission shall be recorded in the minutes and records of the Planning Commission. After voting to recommend that an application for amendment to the Zoning Ordinance be granted or denied, the Planning Commission shall forward its findings of fact and recommendation in writing to the Henderson County Fiscal Court. Once the Planning Commission has made a determination of fact and recommendation to the Fiscal Court concerning the disposition of zoning on an individual tract of land, said tract of land, or any portion thereof, shall not be reconsidered for reclassification to the same zone by the Planning Commission for a period of at least six (6) months, except upon application for reclassification initiated by the Planning Commission or Fiscal Court.

SECTION 7.06. Action by the Legislative Body on Zoning Ordinance Amendments. The Henderson County Fiscal Court shall not act upon a proposed amendment to the Zoning Ordinance until it shall have received a written findings of fact and recommendation thereon from the Planning Commission. Proposed map amendments may follow the alternative zoning regulation subject to the regulations of KRS 100.211. The Planning Commission recommendation relating to the proposed amendment shall become final and map amendment shall be automatically implemented subject to the provisions of KRS 100.347, all as set forth in the Planning Commission recommendations, unless within twenty-one (21) days after final action by the Planning Commission:

- A. Any aggrieved party files a written request with the Planning Commission that the final decision shall be made by the appropriate Fiscal body or Fiscal Court; or,
- B. The appropriate legislative body or Fiscal Court files a notice with the Planning Commission that the legislative body or Fiscal Court shall decide the map amendment.

If the alternative zoning regulation is not followed, before an amendment to the Zoning Ordinance is granted the Fiscal Court must find that the map amendment is in agreement with the Comprehensive Plan or, in the absence of such a finding that:

- C. The existing zoning Classification given to the property was inappropriate or improper; or
- D. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the Comprehensive Plan which have substantially altered the basic character of such area.

It shall take a majority of the entire Fiscal Court to override the recommendation of the Planning Commission. Unless a majority of the entire Fiscal Court votes to override the Planning Commission's recommendation, such recommendation shall become final and effective, and if a recommendation of approval was made by the planning commission, the ordinance of the Fiscal Court adopting the zoning map amendment shall be deemed to have passed by operation of law. Upon approval the ordinance with development plans including written agreements, if any, will be published and recorded in the same manner as all other county ordinances.

ARTICLE VII. AMENDMENTS

SECTION 7.07. Schedule of fees, charges and expenses. A schedule of fees, charges and expenses and a collection procedure for requests for amendment to the Zoning Ordinance and appeals from the Board of Zoning Adjustments action, variances and conditional use permits, variances from the access standards manual, and requests for plan and plat approvals from the planning commission is hereby established. No approval shall be granted nor shall any action be taken on proceedings before the Board of Zoning Adjustment unless and until preliminary charges and fees have been paid in full.

Request for amendment to Zoning Ordinance (Rezoning)	\$200.00
Request for variance from access standards	50.00
Conditional Use Permit	40.00*
Request for Variance	40.00*
Request for Appeal or Interpretation	40.00
Development Plan submittal	50.00*
Revision to Development Plan	35.00
Master Plan submittal	50.00*
Revision to Master Plan	35.00
Preliminary Plat Submittal	100.00*
plus \$1.00 per lot	
Minor Subdivision	50.00**
plus \$1.00 per lot	
Agricultural Division	10.00**
Final Plat Submittal	50.00**
Site Plan Submittal	50.00

*In addition to the fees listed in the schedule of fees the applicant shall submit a sixteen dollar (\$16.00) fee for recording the Certificate of Land Use Restriction as required by KRS Chapter 100.3681 through 100.3683. This fee is refundable to the applicant if the request or submittal is not approved. Other fees listed are not refundable.

**In addition to the fees listed in the schedule of fees, the applicant shall submit a twenty dollar (\$20.00*) plat recording fees. This fee is refundable to the applicant, if plat is not approved. Other fees listed are not refundable.

*(Amended 2006).

These fees and charges shall be in addition to the fee schedule established for obtaining a building permit.

ARTICLE VIII

NONCONFORMING USES AND STRUCTURES

SECTION 8.01

Nonconforming Structures

SECTION 8.02

Nonconforming Uses

ARTICLE VIII. NONCONFORMING USES AND STRUCTURES

SECTION 8.01. Nonconforming Structures: Nonconforming structures may remain subject to the following regulations:

- A. Alterations - A nonconforming structure shall not be enlarged, replaced, or structurally altered except that a nonconforming residential structure on a residentially zoned lot of less than fifty (50) feet in width at the time of the adoption of this chapter, may be enlarged provided that the structure conforms with side yard line of the existing nonconforming structure and adheres to all other yard requirements of the applicable residential district. No such structure shall be enlarged by more than twenty-five (25) percent of its original size at the time of the enactment of this chapter.

Nothing in this section shall prohibit the restoration of a structure declared unsafe by the building inspector or other delegated authority to a safe condition.

- B. Restoration - Any structure containing a nonconforming use which has been damaged or deteriorated to the extent of seventy-five (75) percent or more of its fair sales value immediately prior to damage shall not be repaired or reconstructed except in conformity with this chapter.
- C. Prior Approval - Proposed structures for which building permits have been issued prior to their designation as nonconforming by the adoption or amendment of this chapter may be completed and used as originally intended provided they are completed and in use twelve (12) months after the date on which the building permit was issued.

SECTION 8.02. Nonconforming Uses. The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.

If a nonconforming use has been discontinued for a period of one (1) year, it shall become a discontinued use.

- A. Extension - A nonconforming use shall not be extended, enlarged or moved to occupy any portion of the premises. Vacating of premises or building or non-operative status shall be evidence of a discontinued use.
- B. Discontinuance - Whenever a nonconforming use of any premises has been discontinued for a period of twelve (12) months no nonconforming use may be re-established on those premises. Vacating of premises or building or non-operative status shall be evidence of a discontinued use.
- C. Changes - The Board of Zoning Adjustment shall not permit a change from one nonconforming use to another unless the new nonconforming use is in the same classification.

SECTION 8.03 Non-conforming Lots of Record:

- A. At the time of the adoption of this zoning ordinance, there exist substandard lots of record, which do not include sufficient land or road frontage to conform to the minimum lot size or road frontage requirements of the zone(s) in which they are located. Such lots may be used as a building site, and the Zoning Administrator is authorized to issue a permit for the use of the property which conforms to the zoning requirements for the district in which the lots are located as set forth in this ordinance. If proposed structures cannot comply with the abovementioned requirements, an application may be submitted before the Board of Adjustments for a variance from the terms of the Zoning Ordinances as per the terms of Section 5.01.
- B. A non-conforming lot, may not be further subdivided or consolidated in whole, or in part, with another parcel in a manner that increases its non-conformity. It may, however, be altered so as to decrease its non-conformity. However, the Planning Commission may approve the subdivision of a non-conforming lot of record, which has two or more legally constructed principal structures, into separate parcels, for the purpose of sale or transfer of the individual residences if the Planning Commission makes findings that the properties have been used in a separate and distinct manner with separate utilities and other facilities, so that the resulting subdivision will not constitute a material change in the use of the property.

ARTICLE IX

OFF-STREET PARKING AND LOADING REQUIREMENTS

SECTION 9.01 Off-Street Parking Requirements

SECTION 9.02 Off-Street Loading Requirements

SECTION 9.03 Off-Street Waiting Area for Drive-Through
Facilities

OFF-STREET PARKING AND LOADING REQUIREMENTS

SECTION 9.01. Off-Street Parking Requirements. In all zoning districts, off-street parking spaces for the storage and parking of motor vehicles for the use of occupants, employees and patrons of the buildings hereafter erected, or enlarged after the effective date of these regulations, shall be provided as herein prescribed. The remodeling or alteration of present buildings would be exempt from these provision if:

- A. the exterior dimensions are not changed; and
- B. any increase in floor space is confined within the basic structure.

Required parking spaces shall be maintained and shall not be encroached upon so long as said main buildings or structures remain, unless an equivalent number of such spaces are provided elsewhere in conformance with these regulations. The owner or owners of a building, structure or other land use requiring off-street parking space must show, to the satisfaction of the Building Inspector, that he is the record title holder of the property devoted to said principal land use and of the property proposed for off-street parking use, or that he is the lessee of such property.

- A. Area for parking spaces. For the purpose of this section, an area of not less than ten (10) feet wide by eighteen (18) feet long shall be deemed a parking space for one (1) vehicle. Additional area will be required in order to provide vehicle maneuvering space, access and egress space.
- B. Fractional requirements. When units or measurements determining number of required parking spaces result in requirement of a fractional space, any fraction up to, and including one-half ($\frac{1}{2}$) shall be disregarded and fractions over one-half ($\frac{1}{2}$) shall require one (1) parking space.
- C. Loading space limitations. Loading space as required in this article shall not be construed as supplying off-street parking space.
- D. Location of parking space for one (1) and two (2) family dwellings. The off-street parking facilities required for one and two-family dwellings shall be located on the same lot or plot of ground as the building they are intended to serve, and shall consist of a parking strip, parking apron, and/or garage.
- E. Location of parking space for other land uses. The off-street parking facilities required for all other uses shall be located on the lot or within five hundred (500) feet of the permitted use requiring such off-street parking, such distance to be measured along lines of public access to the property between the nearest point of the parking facility to the building to be served.
- F. Usable floor area. For the purpose of this Section, usable floor area in the case of offices, merchandising, or service types of uses, shall mean the gross floor area used or intended to be used by customers, patrons, clients, patients, owners and tenants, less twenty (20) percent thereof.

OFF-STREET PARKING AND LOADING REQUIREMENTS

- G. Seating capacity or seats. As used in this article for parking requirements, shall mean that each twenty-one (21) inches of seating requirements, shall be counted as one (1) seat, except that where specifications and plans filed with the Building Inspector specify a certain seating capacity for a particular building, such specified seating capacity shall be used as the basis for required parking space.
- H. Bed. Whenever the term "bed" is herein referred to, it shall mean such beds as are occupied by the patient or guests of the hospital or building in question, provided however, that bassinets and incubators shall not be counted as beds.
- I. Similar uses and requirements. In the case of a use not specifically mentioned, the requirements for off-street parking facilities for a use which is so mentioned, and which said use is similar, shall apply.
- J. Existing off-street parking at effective date of regulation. Off-street parking existing at the effective date of these regulations which serves an existing building or use, shall not be reduced in size less than that required under the terms of these regulations.
- K. Collective provisions. Nothing in this Section shall be construed to prevent collective provisions of off-street parking facilities for two (2) or more buildings or uses, provided such facilities collectively shall not be less than the sum of the requirements for the various uses computed separately in accordance with the table under this Article.
- L. General use condition. Except when land is used as storage space in connection with the business of a repair or service garage, the time limits for parking in off-street parking areas shall prevail as specified under this Article, it being the purpose and intention of the foregoing that the requirements of maintaining vehicle storage or parking space is to provide for the public safety in keeping parked cars off the streets, but such requirement is not designed to provide and it shall be unlawful to permit the storage or parking on such open land of wrecked or junked cars, or for creating a junk yard or a nuisance in such area.
- M. Joint use. Parking spaces already provided to meet off-street parking requirements for theaters, stadiums, auditoriums and other places of public assembly, stores, office buildings, and industrial establishments lying within 1,500 feet of a church as measured along lines of public access, and that are not normally used between the hours of 6:00 A.M. and 6:00 P.M. on Sundays, and are made available for other parking, may be used to meet not more than seventy-five (75) percent of the off-street requirements of a church.
- N. Required barriers. When off-street parking spaces or access aisles are located adjacent to the right-of-way line of a public street or alley, a concrete or asphalt curb measuring six (6) inches in height shall be placed along the edge of the parking space or access aisle for the purpose of preventing vehicle encroachment onto the street or alley right-of-way.

OFF-STREET PARKING AND LOADING REQUIREMENTS

- O. Table of off-street parking requirements. The amount of off-street parking spaces required as specified above shall be determined in accordance with the following table, and the space so required shall be stated in the application for a building permit and shall be irrevocably reserved for such use and/or shall comply with the initial part of this section.

OFF-STREET PARKING TABLE

	<u>USE</u>	<u>Required # of Parking Spaces</u>	<u>Per each unit of measure as follows:</u>
1	Bank (except drive-in only), Business and Professional Offices of Lawyers, Architects, Engineers, or similar or allied professions.	1	Three hundred (300) square feet of usable floor area.
2	Bank (drive-in only)	1	Per service window, plus one.
3	Beauty Parlor/Barber Shop	2	Each barber and/or beauty shop operator or chair, whichever number is greater.
4	Bowling Alleys	8	Each bowling lane plus required parking for any bar, restaurant, or assembly space attached to a bowling alley.
5	Churches	1	Six (6) seats, based on maximum seating capacity in the main place of assembly therein.
6	Dance Hall, Exhibition Halls, Pool and Billiard Halls, Skating Rinks, Lodge Halls, and Assembly Halls without fixed seats.	1	Forty (40) square feet of usable floor space, with a minimum of ten (10) parking spaces.
7	Elementary Schools, Junior High Schools	1	Two teachers, employees, or administrators in addition to requirements of the auditorium or assembly hall.
8	Establishments other than drive-in for sale and consumption on the premises of beverages, food or refreshments.	1	One hundred (100) square feet of usable floor area.
9	Furniture and appliance, household equipment repair shops, showroom of a plumber or decorator, electrician or similar trade; clothing and shoe repair, laundry, motor vehicle salesroom, hardware stores, wholesale stores, and machinery sales.	1	Eight-hundred (800) square feet of usable floor area exclusive of the usable floor area occupied in procession or manufacturing (for which requirements see industrial establishment below).
10	Hospitals	1	Two (2) beds.
11	Hotels	1	Guest bedroom.
12	Industrial establishments, including manufacturing, research and testing laboratories, creameries, bottling works, printing, plumbing or electrical workshops, warehouses, and storage buildings.	1	Two (2) employees computed on the basis of the greatest number of persons employed at any one period during the night or day.
13	Laundromat and/or dry cleaning center.	1	Each combination of washer-dryer machine plus one space.
14	Libraries and Museums	1	Two hundred (200) square feet of floor space.
15	Mortuary establishments and funeral homes.	1	Sixty (60) square feet of floor space in the slumber rooms, parlors or individual service rooms.
16	Motor Vehicle Car Wash a. Self-Service Operation	4	Each motor vehicle wash establishment, in addition, off-street automobile waiting spaces shall be in accordance with Section 6.03.
	b. Other than self-service operation.	4	Car wash establishment for employees in addition, off-street automobile waiting spaces shall be in accordance with this Article.
17	Fraternity Houses, Dorms	1	Two (2) beds.
18	Professional offices of doctors and dentists.	1	Two hundred (200) square feet of usable floor area.
19	Residential-Single or Two-Family.	2	Per dwelling unit.
20	Multi-Family		
	Efficiency & 1 bedroom apartment.	1.5	Per dwelling unit.
	Two plus bedroom apartments.	2	Per dwelling unit.
	Townhouse	2	Per dwelling unit.
21	Rooming or Boarding House	5	Plus 1 every 5 beds (minimum - 6 spaces).
22	Retail store, except as otherwise specified herein.	1	Square feet of usable floor space.
23	Sanitariums, Convents, homes for the aged, convalescent homes, children's homes.	1	Two beds.
24	Senior High Schools, Colleges and Universities.	1	Each teacher employee and administrator, in addition to the requirements of the auditorium or assembly area therein.
25	Stadiums and sports arenas, auditoriums and places of public assembly.	1	Four (4) seats or seven feet of benches.
26	Tourist Home, Motel	1	Guest Bedroom.
27	Automobile Service Stations	4	Each station plus one additional space for each gasoline pump above three.
28	Service garages, auto salesrooms, auto repair collision or body shops.	1	Eight hundred (800) square feet of usable floor area plus one space for each two employees computed on the basis of the maximum number of employees on duty at any one time, plus two spaces for each stall in a collision, body or painting shop plus one space for each stall or service area or wash rack in a servicing or repair shop.

OFF-STREET PARKING AND LOADING REQUIREMENTS

- P. Off-street parking facilities shall be properly graded for drainage and maintained in proper condition, free of weeds, dust, trash and debris.
- Q. Side yards shall be maintained for a space of not less than ten (10) feet between the side lot lines of adjoining residential lots and the parking area. The depth of the front yard or setback line from the street as established for houses in any block in any given residential area shall be continued and made applicable to parking space in such residential area and it shall be unlawful to use the space between such setback line and the sidewalk for the parking of motor vehicles; provided however, that the barrier shall be located on the setback line as herein required.
- R. Whenever such parking area adjoins residential property and/or a residential street or alley, a protective wall shall be erected and maintained between the required yard space and the area to be used for parking. Location of said wall facing a residential street shall be determined with due regard to side yard and building setback requirements adjoining the residential district as may be required in the particular commercial, office or industrial zoning district. The said wall shall be constructed in such a manner that the first twelve (12) feet back from the street shall be four (4) feet high and the balance shall be six (6) feet high as indicated above. Bumper guards shall be provided to prevent vehicles striking said wall or shrubbery.
- S. In all cases where such parking lots abut public sidewalks, concrete curbing, at least six (6) inches in height, set end to end, shall be placed so that a motor vehicle cannot be driven or parked with any part thereof extending within two (2) feet of a public sidewalk. In all cases where necessary for the protection of the public and adjoining properties, streets and sidewalks, curbs as described above, shall be installed.
- T. Means of ingress and egress shall be provided and shown on plan submitted. Minimum shall be fifteen (15) feet wide for one-way and twenty-four (24) feet wide for two-way traffic.
- U. Where street setback lines are provided by ordinance or established through the adoption of a Comprehensive Plan, such setback lines shall be maintained and required parking spaces shall not encroach thereon.
- V. No repairs or service to vehicles and no display of vehicles for purposes of sale shall be carried on or permitted on such premises.

OFF-STREET PARKING AND LOADING REQUIREMENTS

SECTION 9.02. Off-Street Loading Requirements.

On the same premises with every building, structure or part thereof, erected and occupied for manufacturing, storage, warehouse, truck freight terminal, goods display, department store, wholesale store, market, hotel, hospital, mortuary, laundry, dry cleaning or other uses similarly involving the receipt or distribution of vehicles, materials or merchandising, there shall be provided and maintained on the lot adequate space for standing, loading, and unloading services in order to avoid undue interference with public use of the streets and alleys.

Such loading and unloading space, unless otherwise adequately provided for, shall be an area ten (10) feet by fifty (50) feet, with fifteen (15) foot height clearance, and shall be provided according to the following schedule:

Gross Floor Area In Square Feet	Loading and Unloading Spaces Required in Terms of Square Feet of Usable Floor Area.
0 - 2,000	None
2,000 - 5,000	One (1) space
5,000 - 20,000	One (1) space plus one (1) space for each 5,000 square feet.
20,000 - 100,000	Four (4) spaces plus one (1) space for each 20,000 square feet in excess of 20,000 square feet.
Over 500,000	Fifteen (15) spaces plus one (1) space for each 80,000 square feet in excess of 500,000 square feet.

SECTION 9.03. Off-Street Waiting Area for Drive-Through Facilities.

On the same premises with every building, structure or part thereof erected and occupied for the purpose of serving customers in their automobiles by means of a service window or similar arrangement where the automobile engine is not turned off, there shall be provided three (3) off-street waiting spaces for each service window.

Any off-street waiting space is defined as an area ten (10) feet wide by twenty (20) feet long.

Self-service motor vehicle car wash establishments shall provide four (4) off-street waiting spaces for each washing stall. Motor vehicle car wash establishments other than self-service, shall provide twenty (20) waiting spaces for each washing stall. A drying lane fifty (50) feet long shall also be provided at the exit of each washing stall in order to prevent undue amounts of water from collecting on the public street and thereby creating a traffic hazard.

ARTICLE X

SIGNS AND OUTDOOR ADVERTISING DISPLAYS

SECTION 10.01	Signs and Outdoor Advertising Displays Permitted
SECTION 10.02	Definitions
SECTION 10.03	Permit Required
SECTION 10.04	Location
SECTION 10.05	Lighting
SECTION 10.06	Maintenance
SECTION 10.07	Non-Conforming Signs and Outdoor Advertising Displays
SECTION 10.08	Illegal Signs and Outdoor Advertising Displays
SECTION 10.09	Use Exceptions

ARTICLE X. SIGNS AND OUTDOOR ADVERTISING DISPLAYS

SECTION 10.01. Signs and Outdoor Advertising Displays Permitted. Signs and outdoor advertising displays shall be permitted in all districts subject to the provisions and regulations contained herein.

SECTION 10.02. Definitions - Signs and Outdoor Advertising Displays:

- A. Signs - Any advertising display affixed to land or improvements thereon which it is located and which may be either illuminated or non-illuminated, except where illumination is otherwise specifically prohibited in this chapter.
- B. Outdoor Advertising Display - Any advertising display, whether affixed to land or improvements thereof and which is not an accessory use to the premises upon which it is located and which may be either illuminated or non-illuminated, except where illumination is otherwise specifically prohibited in this chapter.
- C. Directional Sign - A sign conveying directions to a premises other than the premises on which the sign is located. Directional signs shall not exceed sixteen (16) square feet in area and may be either illuminated or non-illuminated, except where illumination is otherwise specifically prohibited in this chapter.
- D. Pennants and Special Events Signs - A sign or advertising display or pennant which relates specifically to a scheduled special event. All such signs or pennants shall be removed within seven (7) calendar days from the final day of the event.

SECTION 10.03. Permit Required. A building permit shall be required for all signs and outdoor advertising displays, except pennants and special events signs.

SECTION 10.04. Location.

- A. Signs - No sign shall be erected or placed nearer to any street right-of-way upon which said display faces than the building lines provided in zones where the use is permitted, except one sign advertising the primary nature of the business or industry conducted on the premises may be placed not closer than five feet to the street right-of-way line, but in no case to be permitted to obstruct the view of traffic. If the use is on a corner lot, two signs are allowed, one on each street. However, in the Central Business District where buildings may be built up to the street right-of-way line, overhanging and projecting signs shall be permitted, provided that no projecting sign shall project from the face of the building or structure over a street, alley or other public space more than ten feet, but in no case shall any such sign project beyond a line drawn perpendicularly upward from two feet inside the curb line. A clear space of not less than ten (10) feet shall be provided below all parts of such signs. Projecting signs shall be securely attached to the building or structure.

ARTICLE X. SIGNS AND OUTDOOR ADVERTISING DISPLAYS

- B. Outdoor Advertising Displays - Outdoor advertising displays shall be permitted only in highway commercial and general business districts. All outdoor advertising displays shall be placed not closer than twenty (20) feet from any street right-of-way line upon which said display faces. The total number of outdoor advertising displays on any one lot shall not exceed two. Back-to-back displays commonly supported shall be considered as one display.
- C. Directional Signs - Directional signs shall be permitted in all commercial and industrial districts only. Such signs shall not be placed closer than five (5) feet to any street right-of-way line nor shall it be permitted to obstruct the flow or view of traffic.
- D. Pennants and Special Events Signs - Pennants and special events signs are allowed in commercial districts and shall not be permitted to obstruct the view or flow of traffic.

SECTION 10.05. Lighting. Signs and outdoor advertising displays which involve lighting or motion resembling traffic or directional signals, warnings - such as "stop" or "danger" or any other signal signs which are normally associated with highway safety or regulations are prohibited. Additionally, no sign or outdoor advertising display device constituting a nuisance because of light, glare, focus, animation, flashing, or any illuminated signs of such intensity of illumination as to unduly disturb the use of residential property shall be erected or continue in operation.

SECTION 10.06. Maintenance. Signs and outdoor advertising displays shall be maintained. Such maintenance shall include proper alignment of structure, continued readability of the structure and preservation of the structure with paint or other preservatives. If a sign or outdoor advertising display is not maintained, written notice of any disrepair shall be issued by the enforcement officer to the owner of said structure. If the disrepair is not corrected within sixty (60) days of issuance of said notice, said structure shall be removed at the owner's expense.

SECTION 10.07. Non-Conforming Signs and Outdoor Advertising Displays. Any sign or outdoor advertising display which does not conform with the provisions hereof shall not be structurally altered.

SECTION 10.08. Illegal Signs and Outdoor Advertising Displays. The County shall remove, at the owner's expense, any sign or outdoor advertising display erected or maintained illegally if the owner or lessee thereof fails to do so within sixty (60) days after receiving notice from the enforcement officer to remove the sign or display.

SECTION 10.09. Use Exceptions. Several types of structures and uses are permitted in all districts even though they are not listed as permitted uses under the zoning district regulations. These structures and uses are listed as follows:

No zoning permit or certificate of occupancy required:

- A. Local public utility distributing and collecting structures such as pipes and transmission lines, transformers and meters. Large utility structure such as electrical substations or gas pumping stations are permitted only as conditional uses.

ARTICLE X. SIGNS AND OUTDOOR ADVERTISING DISPLAYS

- B. Public streets and all official appurtenances necessary for traffic direction and safety. All streets and traffic control signs shall conform to the code established and adopted by the Kentucky Department of Highways or the Henderson County Road Department - whichever is applicable.
- C. Private drives, private parking areas, and the parking of vehicles incidental to the principal use on the same premises.
- D. Real estate signs located on the premises or subdivision signs advertising property for sale or rent.
- E. Signs not over four (4) square feet in area identifying permitted home occupations or the renting of sleeping rooms on the same premises.
- F. Horticulture and landscaping of any premises.

ARTICLE XI
R-1, SINGLE FAMILY RESIDENTIAL DISTRICT

- | | |
|----------------------|---|
| SECTION 11.01 | Statement of Purpose |
| SECTION 11.02 | Permitted Uses |
| SECTION 11.03 | Conditional Uses |
| SECTION 11.04 | Area, Height, Bulk and Placement Regulations |

ARTICLE XI R-1, SINGLE FAMILY RESIDENTIAL DISTRICT

SECTION 11.01. Statement of Purpose. The Single-Family Residential District is established as a district in which the principal use of land is established as a district for single-family dwellings. For the single-family residential district, in promoting the general purpose of this Ordinance, the specific intent of this Section is:

- A. To encourage the construction of, and the continued use of the land for single-family dwellings.
- B. To prohibit business, commercial or industrial use of the land and to prohibit any other use which would substantially interfere with development or maintenance of single-family dwellings in the district.
- C. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this ordinance.
- D. To discourage any land use which would generate traffic on minor or local streets, other than normal traffic to serve the residences on those streets.
- E. To discourage any use which, because of its character or size would create requirements and costs for public services such as fire and police protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family dwellings.

SECTION 11.02. Permitted Uses.

- A. Single-family detached dwellings.
- B. Accessory buildings or uses customarily incidental to any of the permitted uses, when located on the same lot and not involving any business, profession, trade or occupation.
- C. Residential care facilities.
- D. Home occupation as defined in Article II. Home occupations for professional offices and personal services include the following list of specific uses:

- Accountant
- Architect
- Artist
- Attorney
- Bookkeeper
- Broker
- Chiropracist
- Chiropractor
- Contractor, office only

ARTICLE XI R-1, SINGLE FAMILY RESIDENTIAL DISTRICT

Consultant
Counselor
Dentist
Draftsman
Engineer
Interior Decorator
Manufacturers' Agent
Musician
Optometrist
Osteopath
Photographer
Physician
Seamstress or Tailor
Teacher

Any other substantially similar activity.

SECTION 11.03. Conditional Uses

- A. Funeral Homes
- B. Cemeteries
- C. Private non-commercial recreational areas such as the YMCA, Boys Club and golf courses.
- D. Churches and other facilities normally incidental thereto, provided that the proposed site for a church is not less than one (1) acre; that there is adequate access to all required off-street parking areas, and there is no parking in the required front yard.
- E. Public, parochial and private kindergartens, elementary, intermediate, and/or high schools offering courses in general education.
- F. Publicly owned and operated buildings, libraries, parks, parkways, and recreational facilities.
- G. Public or private hospitals, but not including institutions for the care of the feeble-minded or insane, provided that the hospital is adjacent to a major or secondary thoroughfare as defined in the Comprehensive Plan adopted by the governing body.
- H. Nursery schools, day nurseries and child care centers; provided that for each child so cared for, there is provided and maintained a minimum of fifty (50) square feet of outdoor play area.
- I. Governmental buildings and uses.

ARTICLE XI R-1, SINGLE FAMILY RESIDENTIAL DISTRICT

- J. Public utility buildings, telephone exchange buildings, electric transformer stations and sub-stations, and gas regulator stations, but not including service or storage yards, when operating requirements necessitate the locating within the district in order to serve that immediate vicinity.
- K. Temporary buildings for use incidental to construction work for a period not to exceed one (1) year, subject to renewal.
- L. Home occupation within existing detached garage.
- M. Off-street parking and loading in accordance with the requirements of Article IX of this Ordinance.

SECTION 11.04. Area, Height, Bulk and Placement Regulations. (See attached Schedule of Regulations, Article XXV.)

ARTICLE XII
R-2, TWO-FAMILY RESIDENTIAL DISTRICT

SECTION 12.01	Statement of Purpose
SECTION 12.02	Permitted Use
SECTION 12.03	Conditional Uses
SECTION 12.04	Area, Height, Bulk and Placement Regulations

R-2, TWO-FAMILY RESIDENTIAL DISTRICT

SECTION 12.01. Statement of Purpose. The two-family residential district is established as a district in which the principal use of land is for two-family and single-family dwellings. The specific intent of this Article is to protect the residential character of the district by prohibiting commercial activities, to encourage a suitable neighborhood environment for family life, and to preserve the openness of the district.

SECTION 12.02. Permitted Uses. In all R-2 Districts, no building or land, except as otherwise provided in this ordinance, shall be erected or used except for the following specified uses:

- A. Any use permitted in the R-1, Single Family Residential District.
- B. Two-family dwellings (duplexes).

SECTION 12.03. Conditional Uses.

- A. Any use classified as a conditional use in the R-1 Single-Family District.
- B. Mobile homes, provided they meet the following requirements:
 - 1. The mobile home shall be placed on an approved mobile home support, in accordance with Article IV, Section 4.07.
 - 2. The mobile home shall be located on its own lot with not less than 15,000 square feet.

SECTION 12.04. Area, Height, Bulk and Placement Regulations. (See attached Schedule of Regulations, Article XXV.)

ARTICLE XIII
R-3, MULTI-FAMILY RESIDENTIAL DISTRICT

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|----------------------|---|
| SECTION 13.01 | Statement of Purpose |
| SECTION 13.02 | Permitted Use |
| SECTION 13.03 | Conditional Uses |
| SECTION 13.04 | Area, Height, Bulk and Placement Regulations |

R-3 MULTI-FAMILY RESIDENTIAL DISTRICT

SECTION 13.01. Statement of Purpose. The multi-family residential district is established as a district in which the principal use of land is for multi-family dwellings based upon a plan to make the most appropriate use of scattered parcels of land within neighborhoods on major thoroughfares. The specific intent of this Article is to insure that only such residential uses as can be properly designed and built will be allowed in this district so as not to overcrowd the land, cause parking or traffic congestion, or to have injurious effects on adjacent properties.

SECTION 13.02. Permitted Uses. In all multi-family residential districts no buildings or land, except as otherwise provided in this Ordinance, shall be erected except for one or more of the following specified uses:

- A. Any use permitted in the R-2, Two-Family Residential District.
- B. Multi-family dwellings.

SECTION 13.03. Conditional Uses. Any use classified as a conditional use within a R-2, Two-Family Residential District.

SECTION 13.04. Area, Height, Bulk and Placement Regulations. (See attached Schedule Regulations, Article XXV.)

ARTICLE XIV

R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT DISTRICT

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|---------------|-----------------------|
| SECTION 14.01 | Statement of Purpose |
| SECTION 14.02 | Permitted Use |
| SECTION 14.03 | Conditional Uses |
| SECTION 14.04 | Application Procedure |

R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT DISTRICT

SECTION 14.01. Statement of Purpose. It is the intention of this section to provide areas of sufficient size and allowing reasonable flexibility in design and orientation for the establishment of a structure or group of structures which include multiple dwellings designed in a planned unit development of more than one (1) building on a given site. The requirements of area, height, bulk and placement regulations, as they are usually applicable to individual buildings and individual lots of record, would in certain cases of large scale development, have results affording less protection to the public health, safety and welfare than if a measure of flexibility were permitted. The permitting of these planned unit developments as special and particular land uses can, in certain cases, increase the desirability and convenience to the residents or occupants of the planned unit development without causing adverse effects on adjoining properties.

Therefore, the Zoning Ordinance regulations relative to area, height, bulk and placement may, in the Planned Unit Development District, be modified by the Planning Commission, which, in their judgment, provides adequate open space and improvements for circulation, recreation, education, light, air and service needs of the tract when fully developed, provided that in no case may the density of the proposed planned unit development exceed that of the Zoning Ordinance requirements enumerated in Article XXV of this Ordinance and, provided further that the minimum site size for the residential planned unit development is five (5) acres.

Within the Residential Planned Unit Development District the following regulations shall apply:

SECTION 14.02 Permitted Uses. In all Residential Planned Unit Development Districts, no buildings or land, except as otherwise provided in this Ordinance, shall be erected or used except for one (1) or more of the following:

- A. Single family dwellings
- B. Two family dwellings
- C. Multiple dwellings, including apartment houses, row or townhouse dwellings and residential condominiums.
- D. Community garages serving the principal residential building.
- E. Maintenance and management buildings to serve the multiple dwellings.
- F. Private swimming pools designed and operated only for occupants of the principal multiple dwellings and their personal guests.
- G. Community building in the nature of clubhouses, libraries, reading rooms, community facilities such as laundry rooms and wash rooms and entertainment centers provided that all of the uses in this section are designed and operated only for occupants of the multiple dwellings which are the principal buildings and their personal guests.
- H. Accessory buildings and uses.
- I. Off street parking and loading in accordance with the requirements of Article IX. All such parking lots, driveways, and private streets shall be paved with asphalt or concrete and shall be graded and drained so as to dispose of surface water which might accumulate within or upon such area.

R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT DISTRICT

J. Residential care facilities.

K. Those commercial and office uses considered as necessary to serve the occupants of the project area. A proposed list of uses shall be submitted by the applicant for recommendation by the planning commission and rezoning by the fiscal court. Only those commercial and office uses approved by the fiscal court shall be permitted. These may include such uses as drugstores, confectionary stores, jewelers, bake shops, barbershops, hairdressing establishments, and similar uses of a personal service nature, and the offices of doctors, lawyers and other professional services.

SECTION 14.03 Conditional Uses. Home occupation within existing detached garage.

SECTION 14.04 Application Procedure. After the recommendation by the Planning Commission and rezoning by Fiscal Court, the applicant must comply with the following:

- A. An application in writing shall be submitted to the Planning Commission by the owner or his authorized representative for approval of a plan of any proposed development anticipated under this District provision of these regulations.
- B. Ten (10) copies of the Plan, at a scale of not more than one hundred (100) feet to the inch, showing the following, shall be submitted with the application.
 - 1. The title under which the proposed development is to be recorded, the legal description of the land to be developed, the name of the present owner, and the name and address of the technical author of the plan.
 - 2. The owners of adjacent property as well as the existing zoning classification on such tracts.
 - 3. A topographic area map showing the location of existing property lines, the adjoining streets, alleys, buildings, drains, easements, swamps, water courses, and other physical site features which relate to the development.
 - 4. The proposed method of water supply, sewage disposal, and storm drainage, and other data as may be required by the Planning Commission to clearly indicate the general design of said facilities.
 - 5. The size and location of existing sewer, water, storm drainage and thoroughfares in the area.
 - 6. The location and dimensions of lots, building lines, alleys, easements, parks, and other public properties on the property to be developed. All lots in a preliminary plan shall be designated by consecutive numbers starting with one (1).
 - 7. All proposed uses of the property to be developed shall be indicated on the plan.

R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT DISTRICT

8. Date, north point, and graphic scale.
 9. Bearings and distances of all courses of the exterior boundary of the proposed development and its area in acres.
 10. Any other data as may be deemed pertinent by the Planning Commission.
- C. Developer shall furnish to the Planning Commission a statement indicating the proposed use to which the development will be put, along with a description of the type of residential buildings and number of units contemplated, so as to reveal the effect of the development on traffic, fire hazards, or congestion of population.
- D. The Planning Commission may approve, with changes, or deny the plan as submitted. However, the applicant shall not obtain building permits until the Planning Commission has approved the plan.

ARTICLE XV

R-MH, MOBILE HOME DISTRICT

SECTION 15.01	Statement of Purpose
SECTION 15.02	Permitted Uses
SECTION 15.03	Conditional Uses
SECTION 15.04	Building Site Area
SECTION 15.05	Setback Requirements
SECTION 15.06	General Requirements
SECTION 15.07	Mobile Home Park Requirements
SECTION 15.08	Special Conditions
SECTION 15.09	Enforcement
SECTION 15.10	Non-Conforming Mobile Home Parks

R-MH, MOBILE HOME DISTRICT

SECTION 15.01 Statement of Purpose - These districts are composed of areas containing mobile home dwelling sites arranged on a large tract and designed to accommodate mobile homes for more or less permanent duration, as well as other compatible uses which provide related services. Such areas shall be well suited for residential purposes; commercial and office uses are prohibited. These districts encourage a suitable living environment for family life by including among the permitted uses such facilities as schools and churches and preserve the openness of the areas by requiring that certain minimum yard and area standards be met.

SECTION 15.02 Permitted Uses.

- A. Mobile homes
- B. Mobile home parks
- C. Accessory uses
- D. Private swimming pools
- E. Government buildings and uses
- F. A dwelling, one-family is permitted when used by a park manager or park maintenance personnel; it must meet minimum yard requirements of the R-1 District.
- G. Residential care facilities.

SECTION 15.03 Conditional Uses.

- A. Nonprofit public or private facilities such as schools, churches, parks, and recreational facilities.
- B. Home occupations as defined in Article II.

SECTION 15.04 Building Site Area.

- A. Building site area: The minimum building site area shall be:
 - For a mobile home park – 5 acres
 - For any other permitted use -- 15,000 square feet.
- B. Building site width: the minimum lot width at the building setback line shall be:
 - For a mobile home dwelling -- 40 feet
 - For any other permitted use -- 100 feet

R-MH, MOBILE HOME DISTRICT

- C. Building site coverage: The maximum building site coverage by all buildings shall be thirty-five (35) percent.
- D. Building height limit: No structure shall exceed thirty-five (35) feet in height.

SECTION 15.05 Setback Requirements.

- A. For a mobile home park:

No mobile home unit or other structure shall be located within twenty-five (25) feet of a mobile home park boundary line or public right-of-way line.

- B. Mobile home unit or accessory structure within a mobile home park:

Front Yard -- 20 feet

Side Yard -- 10 feet

Rear Yard -- 20 feet

SECTION 15.06 General Requirements.

- A. Sanitation, fire protection, and utility services shall be provided to every dwelling, mobile home lot and dwelling, and mobile home stand in accordance with state and local health and safety regulations.
- B. Every dwelling, mobile home, shall be equipped with foundations and tie-downs intended to secure such units against movement, settling and overturning for the protection of life and property. Said support shall consist of a concrete slab, concrete ribbons or concrete piers. The proposed method of support and tie-downs shall meet the minimum standards set for manufacturers and shall be approved by the County Engineer prior to a building permit being issued. Failure to properly construct the support shall be cause for revocation of the building permit until such time that the concrete foundation passes inspection.

SECTION 15.07 Mobile Home Park Requirements.

- A. Procedure: In applying for a rezoning for a trailer park (mobile home park) the applicant shall submit his plans to the Henderson City-County Planning Commission in a manner conforming with the procedures for major subdivision plats as outlined in the Subdivision Regulations for Henderson County. Mobile Home Parks shall be in conformance with the same procedural requirements, and general provisions as provided for in the Subdivision Regulations for Henderson County, Kentucky with the exception of those requirements as set forth in this section. The plan submitted to the Planning Commission shall contain the following:
 - 1. The area and dimensions of the tract of land being developed.
 - 2. The number, location and size of all mobile home lots.
 - 3. The area within each mobile home lot intended for locations of each mobile home dwelling.

R-MH, MOBILE HOME DISTRICT

4. A detailed drawing of the foundation for the placement of the mobile home stand within the mobile home lots.
 5. The location and width of roadways, driveways and walkways.
 6. The number, location and size of all off-street automobile parking spaces.
 7. The location of park street lighting and electrical system.
 8. A detailed drawing of the sewage disposal facilities, including specifications of the sewage plant.
 9. A detailed drawing of the refuse storage facilities.
 10. The location and size of water and sewer lines, vents, and riser pipes.
 11. The size and location of playground areas within the park.
- B. **Area Requirements:** No mobile home park shall be permitted on an area of less than five (5) acres in size although the developer may be permitted to develop the park in stages or sections if he complies with an overall approved plan for the entire tract. Any variation to the overall development plan must be resubmitted to the Planning Commission for approval.
- C. **Lot Requirements:** Individual lots within a mobile home park shall not be less than 4,000 square feet in area and in no instance shall there be more than one (1) mobile home permitted on a single lot. The minimum lot width shall be forty (40) feet at the building line. The minimum lot depth shall be one hundred (100) feet from the front lot line.
- D. **Buffer:** A screening of evergreen trees and/or shrubs not less than six (6) feet in height after one full growing season and which at maturity is not less than twelve (12) feet high, shall be located and effectively maintained at all times along all park boundary lines except at established entrances and exits serving the park. Each mobile home shall be located at least ten (10) feet from the buffer.
- E. **Spacing:** No mobile home shall be located closer than twenty (20) feet to any building within the park, other than an accessory building.
- F. **Off-Street Parking:** Each mobile home shall be provided with one off-street parking space.

R-MH, MOBILE HOME DISTRICT

- G. **Streets:** Streets within a mobile home park may be defined as either public or private right-of-way subject to the following conditions:
1. That if said streets are defined as private right-of-ways on the plats, the developer shall agree to effectively maintain such streets and right-of-ways. Said agreement shall be recorded along with the recording plat of mobile home park.
 2. Construction standards for all streets shall meet the specifications and approval of the Subdivision Regulations. Minimum paving widths for streets shall be:
 - (a) Two-way street with guest parking permitted on both sides -- 36 feet.
 - (b) Two-way street with guest parking permitted on one side only -- 27 feet.
 - (c) Two-way street with no parking permitted -- 18 feet.
 - (d) One-way street with guest parking permitted on both sides -- 32 feet.
 - (e) One-way street with guest parking permitted on one side only -- 23 feet.
 - (f) One-way street with no parking permitted -- 14 feet.
 - (g) The mobile home park entrance shall be -- 36 feet wide with no parking permitted.
- H. All mobile homes shall be under pinned or skirted in a safe, attractive manner; each mobile home shall provide an accessory structure of a minimum of 100 square feet of outside storage which shall be placed a minimum of ten (10) feet from the mobile home.
- I. Not less than eight (8) percent of the gross site area of the mobile home park shall be devoted to recreational facilities generally provided in a central location. Recreation areas may include space for community buildings and community use facilities, such as indoor recreation areas, swimming pools, park office and service buildings, and self-service laundry facilities to serve the park residents.
- J. **Utilities:** All mobile home lots within the mobile home park shall be provided with water, sewer or approved septic disposal system, fire protection devices and electrical facilities meeting the standards specified by the County Health Department, the ordinances of the County of Henderson, and the laws of the Commonwealth of Kentucky, and each mobile home shall be properly connected with said utilities. All utilities shall be installed underground.

R-MH, MOBILE HOME DISTRICT

- K. Mobile Home Support: Each mobile home site shall be provided with a stand consisting of either a solid concrete slab or two concrete ribbons of a thickness of size adequate to support the maximum anticipated loads during all seasons.
- L. Lighting of the Park: All exterior park lights shall be so located and shielded as to prevent direct illumination of any areas outside the park.
- M. Convenience Facilities: Coin-operated laundries may be permitted in the park provided they are located, designed, and intended to serve only the needs of persons living in the park.

SECTION 15.08 Special Conditions. The Planning Commission may attach reasonable special conditions to its approval of a trailer park and may direct the Administrative Official to issue a building permit only when such conditions have been complied with.

SECTION 15.09 Enforcement. The Administrative Official shall insure that all trailer parks (mobile home parks) maintain valid permits to operate and maintain in conformance with all applicable regulations of the zoning regulations and all special conditions.

SECTION 15.10 Non-Conforming Mobile Home Parks. The lawful use of a mobile home park existing at the time of passage of this regulation may be continued, although such use may not conform to the provisions of this chapter. The continuance of a non-conforming mobile home or mobile home park shall be subject to the non-conforming provision of this chapter with the exception that a non-conforming mobile home park may not be enlarged or expanded unless such enlargement or expansion shall meet the regulations set forth in this section.

ARTICLE XVI

P-1, PROFESSIONAL/SERVICE DISTRICT

SECTION 16.01	Statement of Purpose
SECTION 16.02	Permitted Uses
SECTION 16.03	Conditional Uses
SECTION 16.04	Area, Height, Bulk and Placement Regulations

P-1, PROFESSIONAL/SERVICE DISTRICT

SECTION 16.01. Statement of Purpose. The Professional/Service District is established to provide for professional offices, limited personal service businesses, and for community-oriented public and private facilities. The district should be used to buffer business districts from residential neighborhoods and also to provide for a greater distribution of offices, personal and professional services within residential areas where business districts would be undesirable. The district is designed to protect the abutting and surrounding areas by requiring that certain minimum yard and area standards comparable to those called for in the residential districts be met. Retail sales are prohibited except where related directly to office functions.

SECTION 16.02. Permitted Uses. In all P-1, Professional/Service Districts, no buildings or land, except as otherwise provided in this ordinance shall be erected or used except for one (1) or more of the following specified uses:

- A. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies without drive-in facilities.
- B. Offices for business, professional, governmental, civic, social, fraternal, political, religious and charitable organizations.
- C. Schools and colleges for academic, technical, vocational, or professional instruction.
- D. Libraries, museums, art galleries, and reading rooms.
- E. Funeral home, mortuary or undertaking establishments.
- F. Swimming pools, tennis courts, putting greens, and other similar recreational uses.
- G. Medical and dental offices, clinics and laboratories.
- H. Telephone exchanges, radio and television studios (does not include transmitter).
- I. Studios for work or teaching of fine arts, such as photographic, music, drama, dance and theater.
- J. Community Centers and private clubs, Sunday Schools and Churches.
- K. Hospitals: nursing, convalescent and rest homes.
- L. Computer and data processing centers.
- M. Ticket and travel agencies.
- N. Apothecary (limited to the sale of pharmaceutical and medical supplies).

P-1, PROFESSIONAL/SERVICE DISTRICT

- O. Single-family residences.
- P. Multi-family dwellings up to four (4) units, townhouses and condominiums.
- Q. Boarding houses.
- R. Religious houses.
- S. Home occupations as defined in Article II.
- T. Residential care facilities.

SECTION 16.03. Conditional Uses.

- A. Banks, credit agencies, savings and loan companies with drive-in facilities.
- B. Nursery schools, day nurseries, and child care centers.
- C. Parking lots and structures.
- D. Home occupation within existing detached garage.

SECTION 16.04. Area, Height, Bulk and Placement Regulations.

(See attached Schedule of Regulations, Article XXV).

ARTICLE XVII

C-1, NEIGHBORHOOD BUSINESS DISTRICT

SECTION 17.01	Statement of Purpose
SECTION 17.02	Permitted Uses
SECTION 17.03	Conditional Uses
SECTION 17.04	General Regulations for All Commercial Districts
SECTION 17.05	Area, Height, Bulk and Placement Regulations

C-1, NEIGHBORHOOD BUSINESS DISTRICT

SECTION 17.01. Statement of Purpose. The Neighborhood Business District established in this Article is intended to be that permitting retail business and service uses which are needed to serve the nearby residential areas. In order to promote such business development so far as is possible and appropriate in each area, uses are prohibited which would create hazards, offensive and loud noises, vibration, smoke, glare, heavy truck traffic, or late hours of operation. The intent of this district is also to encourage the concentration of local business areas in locations proposed in the Comprehensive Plan to the mutual advantage of both the consumers and merchants and thereby promote the best use of land at certain strategic locations and avoid the continuance of encouraging marginal, strip business development along major streets.

SECTION 17.02. Permitted Uses. The usable floor area of the principal building shall be limited to a maximum of 4,000 square feet.

- A. Grocery store
- B. Self-service laundry
- C. Drug store
- D. Meat or fruit market
- E. Barber or beauty shop
- F. Branch laundry or dry cleaning establishment provided no laundering or cleaning is to be done on the premises
- G. Bicycle rental or repair shop
- H. Offices, either business, professional or governmental
- I. Repairs - electrical or other household appliances, locks, radios, TV., shoes and time pieces, etc.
- J. Antique shops
- K. Nursery or day care facilities
- L. Bake shops
- M. Any accessory use or building customarily incidental to the above permitted uses.

SECTION 17.03. Conditional Uses.

- A. Public facilities such as churches, libraries, parks, recreational facilities, hospitals and institutions.
- B. Apartments

C-1, NEIGHBORHOOD BUSINESS DISTRICT

- C. Uses similar to the above permitted uses, when in the opinion of the Board of Zoning Adjustment, it meets the regular needs and convenience of the adjacent residential areas. The burden of proof that the proposed use meets the criteria lies with the prospective developer.

SECTION 17.04. General Regulations for All Commercial Districts

- A. There shall be no outdoor storage of merchandise or materials and no outdoor processing in any commercial district unless authorized as a conditional use. All above ground structures accessory to any outdoor use shall be located a minimum of twenty-five (25) feet from any front lot lines.
- B. All commercial districts located on lots adjacent to a residential district shall maintain a minimum setback of twenty-five (25) feet on the side adjacent to the residential district.
- C. All signs and outdoor advertising displays are subject to the provisions established in Article X.
- D. All uses shall exhibit performance standard characteristics equal to or greater than those which define Light Industry.

SECTION 17.05. Area, Height, Bulk and Placement Requirements.

(See attached Schedule of Regulations, Article XXV).

ARTICLE XVIII

C-2, GENERAL BUSINESS DISTRICT

SECTION 18.01	Statement of Purpose
SECTION 18.02	Permitted Uses
SECTION 18.03	Conditional Uses
SECTION 18.04	General Regulations for All Commercial Districts
SECTION 18.05	Area, Height, Bulk and Placement Regulations

C-2, GENERAL BUSINESS DISTRICT

SECTION 18.01. Statement of Purpose. The general business district is intended to permit a wider range of business and entertainment activities than that permitted in the Neighborhood Business District. The permitted uses would serve not only nearby residential areas, but also people further away for types of business and services usually found in major shopping centers and Central Business Districts at the juncture of principal streets. These uses would generate larger volumes of vehicular traffic, would need more off-street parking and loading, and would require more planning to integrate such districts with adjacent residential areas.

SECTION 18.02. Permitted Uses.

- A. Any use permitted in the C-1, Neighborhood Business District.
- B. Places of amusement and assembly, offices, hotel, motel, used car lot, public garages and other motor vehicle service.
- C. Automobile, motorcycle, trailer or boat showrooms; new car sales room; outdoor sales space for the sale of new and used automobiles, house trailers, or boats provided that there may be sales space for used articles only if carried on in conjunction with a regularly authorized new automobile, house trailer or boat sales and service agency which is housed in a permanent building on the same parcel of land or on contiguous parcels of land.
- D. Car wash establishments, including self-service facilities.
- E. Automobile service stations.
- F. Banks
- G. Blueprinting
- H. Bus passenger stations
- I. Business schools and colleges, or private schools operated for profit.
- J. Carpet, rug, linoleum, or other floor covering stores.
- K. Catering establishments.
- L. Clothing or costume rental establishments.
- M. Department stores.
- N. Eating or drinking establishments, with entertainment, except those having the principal character of a drive in facility wherein food is served to a customer in his vehicle.

C-2, GENERAL BUSINESS DISTRICT

- O. Electrical, glazing, heating, painting, paperhanging, plumbing, roofing or ventilation contractors establishments, excluding outside storage yards.
- P. Exterminators
- Q. Furniture stores
- R. Hotels and motels
- S. Interior decorating establishments
- T. Medical or dental laboratories for research or testing, not involving any danger of fire or explosion, nor of offensive noise, vibration, smoke, odorous matter, heat, humidity, glare, or other objectionable effects.
- U. Monument sales establishments, with incidental processing to order, but not including the shaping of headstones.
- V. Mortuary establishments.
- W. Moving or storage offices.
- X. Musical instrument repair shops.
- Y. Office or business machine stores, sales or rental.
- Z. Photographic developing or printing establishments and studies.
- AA. Printing establishments.
- BB. Private clubs.
- CC. Public auction rooms.
- DD. Publicly owned buildings, public utility buildings and service yards but not including storage yards.
- EE. Radio and television studios.
- FF. Sign painting shops, limited to 2,500 square feet of floor area per establishment.
- GG. Studios for music, dancing, or theatrical instruction.
- HH. Taxidermist shops.
- II. Television, radio or household appliance repair shops.

C-2, GENERAL BUSINESS DISTRICT

- JJ. Theater, dance halls or similar places of assembly.
- KK. Typewriter or other small business machine repair shops.
- LL. Automotive and equipment repair.
- MM. Upholstering shops dealing directly with consumers.
- NN. Venetian blind, window shades, or awning shops, custom shops, including repairs, limited to 2,500 square feet of floor area per establishment.
- OO. Wedding chapels or banquet halls.
- PP. Any retail business or retail service, including the making of articles to be sold at retail on the premises. Any such manufacturing, or processing shall be incidental to a retail business or service and not more than five (5) persons shall be employed in such manufacture.
- QQ. Accessory uses permitted Any accessory use of building customarily incidental to the above permitted use.
- RR. Consumer Fireworks, retail sales, storage, and related supplies in accordance with the National Fire Protection Association (NFPA 1124).

SECTION 18.03. Conditional Uses.

- A. If a commercial use, not listed above is proposed, the prospective developer shall request a conditional use permit on the basis that the proposed use would not be detrimental to the development of the general business district.
- B. Shopping Centers.
- C. The owner operator of a permitted general business district commercial use may be allowed to establish one dwelling unit for his use only as an accessory conditional use to the commercial use. Said residential use shall follow the procedure for obtaining a conditional use permit as outlined in Section 4.03 of Article IV. All provisions of Section 4.03 shall apply to this section. Additionally, the residential use shall be required to have one off street parking space in addition to the required spaces for the commercial use. The proposal shall be submitted to the Board of Zoning Adjustment which may alter, deny or grant any request in accordance with Section 4.03.

C-2, GENERAL BUSINESS DISTRICT

SECTION 18.04. General Regulations for all Commercial Districts.

- A. There shall be no outdoor storage of merchandise or materials and no outdoor processing in any commercial district unless authorized as a conditional use. All above ground structures accessory to any outdoor use shall be located a minimum of twenty five (25) feet from any front lot lines.
- B. All commercial districts located on lots adjacent to a residential district shall maintain a minimum setback of twenty five (25) feet on the side adjacent to the residential district.
- C. All signs and outdoor advertising displays are subject to the provisions established in Article X.

SECTION 18.05. Area, Height, Bulk and Placement Regulations.

(See attached Schedule of Regulations, Article XXV.)

ARTICLE XIX

H-C, HIGHWAY COMMERCIAL DISTRICT

SECTION 19.01	Statement of Purpose
SECTION 19.02	Permitted Uses
SECTION 19.03	Conditional Uses
SECTION 19.04	General Requirements
SECTION 19.05	Area, Height, Bulk and Placement Requirements

H-C, HIGHWAY COMMERCIAL DISTRICT

SECTION 19.01. Statement of Purpose. This district is established to provide areas for commercial uses which are mainly oriented to vehicular traffic.

SECTION 19.02. Permitted Uses.

- A. Any use permitted in the General Business District.
- B. Animal hospital, veterinary clinic, or kennel, provided that any such purpose, including pens, or exercise runways shall be at least two-hundred (200) feet distance from any residential district.
- C. Commercial greenhouses and plant nurseries, including offices and sales yards, provided that no building for any heating plant, ventilation flue or other opening except stationary windows be located within fifty (50) feet of any residential district.
- D. Drive-in eating and drinking establishments and branch drive-in banks.
- E. Farm implement or contractor's equipment display, hire or sales establishment, service and repair shops.
- F. Mobile home and trailer sales lot.
- G. Drive-in Theaters.
- H. Truck Terminal.
- I. Ice storage of three tons or less in capacity.
- J. Electric Welding.
- K. Motels.
- L. Automobile service stations.
- M. Restaurants.
- N. Building supplies.
- O. New and used automobile and truck sales.
- P. Taverns or package liquor stores.
- Q. Accessory uses permitted - Accessory uses or buildings customarily incidental to the above permitted uses provided all general and special requirements for principal buildings are met.

H-C, HIGHWAY COMMERCIAL DISTRICT

- R. Consumer Fireworks, retail sales, storage, and related supplies in accordance with the National Fire Protection Association (NFPA 1124).

SECTION 19.03. Conditional Uses.

- A. Any uses not allowed above, which are of the same general character as the above permitted uses which will not be detrimental to the district in which they are located, and which will not be objectionable by reason of odors, dusts, smoke, cinders, gas, fumes, noise, vibrations and refuse matter are eligible for a conditional use permit. The procedure in Section 4.03 shall be followed.
- B. Shopping centers in conformance with these regulations.

SECTION 19.04. General Requirements.

- A. A permanent landscaped buffer of evergreen plant material or a solid wall or fence or other suitable enclosure of a commercial land abutting a residential district.
- B. Plans for building construction, parking area, yards, driveways, entrances and exits shall be approved by the enforcement officer and the local government engineer, acting jointly, in consultation with the Planning Commission, and they may require any changes therein as may be deemed necessary or desirable to insure safety, to minimize traffic difficulty and to safeguard adjacent properties.
- C. There shall be no outdoor storage of merchandise or materials and no outdoor processing in any commercial district unless authorized as a conditional use. All above ground structures accessory to any outdoor use shall be located a minimum of twenty-five (25) feet from any front lot lines.
- D. All commercial districts located on lots adjacent to a residential district shall maintain a minimum setback of twenty-five (25) feet on the side adjacent to the residential district.
- E. All signs and outdoor advertising displays are subject to the provisions established in Article X.

SECTION 19.05. Area, Height, Bulk and Placement Requirements.

(See attached Schedule of Regulations, Article XXV).

ARTICLE XXI

M-1, LIGHT INDUSTRIAL DISTRICT

SECTION 21.01	Statement of Purpose
SECTION 21.02	Permitted Uses
SECTION 21.03	Conditional Uses
SECTION 21.04	Area, Height, Bulk and Placement Regulations

M-1, LIGHT INDUSTRIAL DISTRICT

SECTION 21.01. Statement of Purpose. The intent of this Article is to permit certain industries that are of a light manufacturing character, including but not limited to light manufacturing and processing, research and development, certain office uses, and warehousing, to locate in planned areas of the County. So that such uses may be integrated with land uses, such as commercial and residential areas, limitations are placed upon the degree of noise, smoke, glare, waste, and other features of industrial operations so as to avoid adverse effects. It is further intended that these light industrial uses act as a transition between heavier industrial uses and non-industrial uses and not necessarily require railroad access or major utility facilities.

SECTION 21.02. Permitted Uses. These permitted uses to include any manufacturing, treatment, altering, finishing or assembling incidental thereto:

- A. Accessory uses and buildings that are subordinate, customary and incidental to the permitted primary uses. Any accessory structure shall meet site and other requirements of this zone.
- B. Assembly of finished or semi-finished materials
- C. Bakeries
- D. Book binding
- E. Bottling works
- F. Building material sales yards
- G. Cabinet making
- H. Confectionary
- I. Contractor's office and accessory storage yards including the storage of general construction equipment
- J. Dry cleaning
- K. Greenhouses, wholesale
- L. Ice plants
- M. Laboratories
- N. Laundries, commercial

M-1, LIGHT INDUSTRIAL DISTRICT

- O. Manufacturing of precision instruments, bicycles, business machines, brooms and brushes, cameras and photo equipment, ceramic products, clothing, condensed and powdered milk products, electronics, small appliances, film, furniture, hemp and jute products, jewelry, medical appliances, musical instruments, optical goods, and pharmaceutical products.
- P. Metal fabrication and assembly
- Q. Millwork and woodworking
- R. Office use resulting from information processing, industrial training, engineering, drafting or graphic arts service and computer hardware or software development.
- S. Plastic Molding
- T. Plating, electrolytic
- U. Printing or publishing
- V. Recycling collection facility
- W. Retail sale of any commodity designed especially for use in agriculture, mining, industry, or construction.
- X. Storage facilities and warehousing, including self-storage facilities
- Y. Tool gauge and machine shops
- Z. Truck terminals
- AA. Consumer Fireworks, retail sales, storage, and related supplies in accordance with the National Fire Protection Association (NFPA 1124).

SECTION 21.03. Conditional Uses.

- A. Animal hospitals
- B. Animal kennels
- C. Child care centers
- D. Gasoline, oil, alcohol, or liquefied petroleum storage aboveground in excess of five-hundred (500) gallons and other industrial uses not listed above shall be considered conditional uses and will require the approval of the board of zoning adjustment.
- E. Junkyards and/or auto parts yards

M-1, LIGHT INDUSTRIAL DISTRICT

- F. Medical hospitals and medical institutions
- G. Private education institutions
- H. Uses which constitute a fire hazard or emit smoke, noise, odor or dust which would be obnoxious or detrimental to neighboring properties shall not be allowed.

SECTION 21.04. Area, Height, Bulk and Placement Regulations.

(See attached Schedule of Regulations, Article XXV).

ARTICLE XXII

M-2, HEAVY INDUSTRIAL DISTRICT

SECTION 22.01	Statement of Purpose
SECTION 22.02	Permitted Uses
SECTION 22.03	Conditional Uses
SECTION 22.04	Area, Height, Bulk and Placement Regulations

M-2, HEAVY INDUSTRIAL DISTRICT

SECTION 22.01. Statement of Purpose. The intent of this Article is to provide for the development in desirable areas of the County, based upon the Comprehensive Plan, of those heavy commercial and industrial establishments which may create some nuisance and which are not properly associated with or compatible with any of the development proposed for the other land use districts. These uses are primarily of a manufacturing, assembling, and fabricating nature requiring good access by road, railroad, and/or river or water access and needing special sites or public utility services. Reasonable regulations apply to uses in this district, so as to permit the location of industries which will not cause adverse effects on residential and commercial areas.

SECTION 22.02. Permitted Uses.

- A. Any use permitted in the Light Industrial District.
- B. Manufacturing, fabrication and/or processing of any commodity, except those uses listed in Section 22.03 which require a conditional use permit.
- C. Accessory buildings and uses (garages and other buildings and uses accessory to the principal use).

SECTION 22.03. Conditional Uses.

The following shall require a conditional use permit according to the procedure in Section 4.03. Any use not in conflict with any other Ordinances of the county, provided however, that the following uses shall be considered conditional uses and require approval by the Board of Zoning Adjustment: bag cleaning, boiler works, tank works, central mixing plant for cement, mortar, plaster or paving materials, coke oven, curing, tanning and storage of raw hides and skins, distillation of bones, coal, wood or tar, fat rendering, forge plant, foundry or metal fabrication plant, gasoline or oil storage above ground in excess of five hundred (500) gallons, slaughter house or stockyards, recycling processing facility, river terminal/barge facility, smelting plant, and the manufacturing of acetylene, acid, alcohol, or alcoholic beverages, ammonia, bleaching powder, chemicals, brick, pottery, terra cotta or tile, candles, disinfectants, dye-stuffs, fertilizers, illuminating or heating gas (or storage of same) linseed oil, paint, oil, turpentine, varnish, soap and tar products, synthetic fuel production or operation, or any other use which in the opinion of the Board of Zoning Adjustment would emit detrimental or obnoxious noise, vibrations, smoke, odors, dust or other objectionable conditions beyond the confines of its property. The Board may grant approval if it determines that the proposed use would not extend its detrimental or obnoxious effects beyond the limits of the heavy industrial district in which it is located.

SECTION 22.04. Area, Height, Bulk and Placement Requirements.

(See attached Schedule of Regulations, Article XXV).

ARTICLE XXIII

AG, AGRICULTURE DISTRICT

SECTION 23.01	Statement of Purpose
SECTION 23.02	Permitted Uses
SECTION 23.03	Conditional Uses
SECTION 23.04	Exceptions
SECTION 23.05	Area, Height, Bulk and Placement Regulations

AG, AGRICULTURE DISTRICT

SECTION 23.01. Statement of Purpose. The Agriculture District is established for lands the principal use of which is for farming, dairying, forestry and other agricultural activities. It is the intent of this zoning district that land needed and used for agriculture be protected from encroachment by premature residential, commercial, or industrial development.

SECTION 23.02. Permitted Uses.

- A. Churches
- B. Commercial dog kennels
- C. Farm buildings
- D. Any Agricultural use, as that term is defined in Section 2.01 hereof. **(Revised March 2015)**
- E. Greenhouses and nurseries, both wholesale and retail.
- F. Home occupation as defined in Article II.
- G. Horse stables and riding schools/academies
- H. Libraries, parks and other recreational facilities
- I. Monastery, convent or other religious community
- J. Public, parochial and private schools designed for children of elementary school, junior high school and senior high school age.
- K. Temporary assembly, for periods not exceeding thirty (30) days and subject to the Building and Electrical Codes of the governing body and regulations of the Henderson County Public Health Department.
- L. Veterinary clinics and hospitals
- M. Golf courses or country clubs
- N. Oil well or gas wells including the drilling thereof
- O. Storage of oil or gas drilling equipment
- P. Selling on the premises of agricultural products produced on the premises; provided that the roadside stand should be considered temporary and shall be set back from the road right of way at least twenty five (25) feet to permit parking, ingress and egress and shall not be constructed in such a location as to create an undue traffic hazard.
- Q. Single family dwellings.

AG, AGRICULTURE DISTRICT

SECTION 23.03. Conditional Uses.

- A. Airports or landing fields
- B. Cemeteries
- C. Public or private landfills
- D. Hospitals and sanitariums
- E. *Deleted item*
- F. Retail and wholesale sales of farm machinery and farm supplies (seed, fertilizer, herbicides, etc.) on lands for which the principal use is agriculture. (Revised 12/96, Wholesale added).
- G. Commercial outdoor recreational facilities (example: pay lake, campground).
- H. Public utility buildings, telephone exchange buildings, electric transformer (sub) stations and gas regulator stations which are considered by the County Board of Zoning Adjustment to be necessary for the
- I. Mobile/manufactured homes. (Revised 7/96)
- J. Home occupation within existing detached garage.
- K. Non-residential structures, private; located on a minimum of five (5) acres (See Section 2.01, Definitions). The preceding sentence shall not be construed to require a conditional use permit for Agricultural Uses (agricultural uses and agricultural structures which are uses for the purposes set out in the Definition of Agricultural Use in Section 2.01, when such uses and structures are located on the minimum required acreage - as the same are permitted uses and are also Exempt pursuant to Section 23.04 below and KRS 100.203(4). (**Revised March 2015**)

SECTION 23.04. Exceptions.

Land which is used for agricultural purposes (any Agricultural Use as defined in Section 2.01) shall have no zoning regulations imposed except that: (**Revised March 2015**)

- A. Setback lines may be required for the protection of existing and proposed streets and highways;
- B. That all buildings or structures in a designated floodway or flood plain, or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated;
- C. Mobile/manufactured homes and other dwellings shall require building permits and certificates of occupancy; and mobile/manufactured homes are only permitted as a conditional use, See Section 23.03 (I). (**Added March 2015**)

SECTION 23.05. Area, Height, Bulk and Placement Regulations. (See attached Schedule of Regulations, Article XXV).

ARTICLE XXIV

FLOOD PRONE AREAS

SECTION 24.01	Statement of Purpose
SECTION 24.02	Boundaries
SECTION 24.03	Definitions
SECTION 24.04	Warning
SECTION 24.05	Notification
SECTION 24.06	Disclaimer of Liability

FLOOD PRONE AREAS

SECTION 24.01. Statement of Purpose.

The purpose of this Article is to identify areas within the County which are subject to periodic inundation in order to insure that potential land buyers and developers are notified that property is in an area which is subject to periodic flooding.

SECTION 24.02. Boundaries.

The boundaries of flood prone areas shall be established to include those areas identified by the U.S. Corps of Engineers to be subject to inundation by an Intermediate Regional Flood or, based on other reliable engineering data, areas determined by the Planning Commission to be subject to inundation by a 100 year flood.

SECTION 24.03. Definitions.

Intermediate Regional Flood - An Intermediate Regional Flood is a flood that could occur once in 100 years on an average although it could occur in any year, as determined by flood plain studies conducted by the U.S. Corps of Engineers for major watersheds in Henderson County. The peak flow of this flood was developed from statistical analyses of stream flow, precipitation records and runoff characteristics for the study areas.

100 Year Flood - A 100-year flood is one that could occur once in 100 years on an average, although it could occur in any year.

SECTION 24.04. Warning. The intent of this Article is to insure that potential land buyers and developers are notified when a track of land is located in a flood prone area. Larger floods can and may occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Article does not imply that land outside the areas designated as being flood prone will be free from flooding or flood damages. The provisions of this Article are not intended to prohibit development in flood prone areas, however, individuals who place or construct improvements (example: buildings, mobile homes, etc.) on land which has been platted and approved by the Henderson City-County Planning Commission with the stipulation that all or portions of said land is in a flood prone area, or individuals who acquire land so designated shall not be entitled to public relief for damages or losses associated with flooding.

SECTION 24.05. Notification. Any subdivision plat of land which is located in a flood prone area shall have affixed to the final plat the following statement of notification:

NOTICE: FLOOD PRONE AREA

THE TRACT(S) OF LAND DESCRIBED HEREON IS (ARE) LOCATED IN A FLOOD PRONE AREA AS ESTABLISHED BY ARTICLE XXIV OF THE ZONING REGULATION OF THE COUNTY OF HENDERSON, KENTUCKY, AND IS (ARE) SUBJECT TO THE PROVISIONS THEREOF.

FLOOD PRONE AREAS

SECTION 24.06. Disclaimer of Liability. This Article shall not create liability on the part of the County of Henderson, the Henderson City-County Planning Commission, or by any officer or employee thereof for any flood damages that result from reliance on the provisions of this Article or any administrative decision lawfully made there under.

ARTICLE XXV

SCHEDULE OF REGULATIONS

	RESIDENTIAL-1	RESIDENTIAL-2	RESIDENTIAL3	PROFESSIONAL SERVICE
MAXIMUM LOT COVERAGE	35%	35%	40%	40%
MAXIMUM BUILDING HEIGHT(FT)	30	30	40	
MINIMUM LOT WIDTH (A)	*	*	*	*
1 Family 2 Family Multi Family Others	80	60 75(B)	60 75(B) 70©	60
MINIMUM SETBACKS (FT)				
Front Yard	25	20	20	20
Rear Yard	25	20	20	20
Side Yard	10	8	8	8
MINIMUM LOT AREA (SQ. FT.)	*	*	*	*
1 Family 2 Family Multi Family Other	10,000	7,500 10,000	7,500 10,000 10,000	7,500

- (A) At the required front yard setback line
 (B) Zero lot line (2-Family Dwelling) - Minimum Lot Width 37.5'; See Article IV, Section 4.06 for additional requirements.
 (C) Except townhouses - See Article IV, Section 4.05.

*

- These standard regulations apply to lots with community water and sewer services.
- Lots with community water and individual septic tanks must comply with 100 ft. lot width and-lot size of fifteen thousand (15,000) square feet requirement for lots in existence prior to Jan. 1, 2013. For new lots created on or after Jan. 1, 2013, the minimum lot size is one acre for single family development, and 0.75 acres per dwelling unit for multi-family development.
- Lots with individual well and septic tank must comply with Kentucky Green River Health Department regulations.
- Manufactured Homes/Mobile Homes must comply with minimum lot size of 15,000 sq. feet on community water and sewer; Mobile Homes with community water and individual septic tanks must comply with the minimum lot size of one acre per single family development for placement on lots on or after Jan. 1, 2013.

ARTICLE XXV

SCHEDULE OF REGULATIONS

	C-1	C-2	H-C	M-1	M-2	AG
MAXIMUM LOT COVERAGE						
MAXIMUM BUILDING HEIGHT (FT)	30	30	30	30	160	
MINIMUM LOT WIDTH (A) 1 Family 2 Family Multi Family Others						* 80
MINIMUM SETBACKS (FT) Front Yard Rear Yard Side Yard	25	25	30 20 10	50 25 25	50 25 25	25 25 10
MINIMUM LOT AREA (SQ. FT.) 1 Family 2 Family Multi Family Other						* 1 acre**

(A) At the required front yard setback line

(B) Zero lot line (2-Family Dwelling) - Minimum Lot Width 37.5'; See Article IV, Section 4.06 for additional requirements.

(C) Except townhouses - See Article IV, Section 4.05.

*

-- These standard regulations apply to lots with community water and sewer services.

-- Lots with community water and individual septic tanks must comply with 100 ft. lot width and feet and lot size of fifteen thousand (15,000) square feet requirement for lots in existence prior to Jan.1. 2013. For new lots created on or after Jan. 1, 2013, the minimum lot size is one acre for single family development, and 0.75 acres per dwelling unit for multi-family development.

-- Lots with individual well and septic tank must comply with Kentucky Green River Health Department regulations.

-- Manufactured Homes/Mobile Homes must comply with minimum lot size of 15,000 square feet, on community water and sewer; Mobile Homes with community water and individual septic tanks must comply with the minimum lot size of one acre per single family development for placement on lots on or after Jan. 1, 2013.

**

--Lots in existence prior to Jan.1. 2013, must comply with a minimum lot size of 10,000 square feet. For new lots created on or after Jan. 1, 2013, the minimum lot size is one acre for single family development, and 0.75 acres per dwelling unit for multi-family development.

ARTICLE XXVI

SM, SURFACE MINING DISTRICT

SECTION 26.01	Statement of Purpose
SECTION 26.02	Definition
SECTION 26.03	Permit Required
SECTION 26.04	Subsequent Zoning

ARTICLE XXVI

SM, SURFACE MINING DISTRICT

SECTION 26.01. Statement of Purpose. The Surface Mining District is established as a district in which the only permitted uses are surface mining and agricultural and those accessory uses as are necessary to the operation of surface mining activities. Due to the potentially adverse impact of surface mining operations, such activity must be restricted to an exclusive district in order to protect the public health and safety, insure compatibility with adjacent land uses, protect and preserve natural resources such as prime farmland, and promote public welfare.

SECTION 26.02. Definition. Surface mining (strip mining) shall be defined as the breaking of the soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a land owner for his own non-commercial use from land owned or leased by him; the extraction of coal as an incidental part of federal, state or local government financed highway or other construction under regulations established by the department nor shall it include the surface effects or surface impacts of underground coal mining.

SECTION 26.03. Permit Required. No person shall engage in surface mining operations without having first obtained a permit from the County of Henderson in accordance with Article XXVII, Surface Mining Regulations.

SECTION 26.04. Subsequent Zoning. Surface mining of land is a limited duration use, and once such use is terminated, the site shall revert to its original zoning classification.

- A. The use of land for surface mining shall be considered terminated when all requirements of the Surface Mining Regulations have been fulfilled and the bond has been released in full by the County.
- B. Alternative Postmining Land Use. In the case where an Alternative Postmining Land Use is approved in accordance with Section 27.06 (D), the tract shall be rezoned to an appropriate classification upon termination of surface mining operations. The procedures for Amendments to the Zoning Ordinance established in Article VII shall apply.

ARTICLE XXVII
SURFACE MINING REGULATIONS

SECTION 27.01	Statement of Purpose
SECTION 27.02	Definitions
SECTION 27.03	General Provisions
SECTION 27.04	Permit Requirements
SECTION 27.05	Inspection and Enforcement Procedure
SECTION 27.06	Postmining Land Use
SECTION 27.07	Signs and Markers
SECTION 27.08	Topsoil Handling
SECTION 27.09	Revegetation
SECTION 27.10	Access Roads, Haul Roads, and other Transport Facilities
SECTION 27.11	Backfilling and Grading
SECTION 27.12	Diversions of Surface and Underground Flows
SECTION 27.13	Sediment Control Measures
SECTION 27.14	Permanent Impoundments
SECTION 27.15	Prime Farmland

SURFACE MINING REGULATIONS

SECTION 27.01. Statement of Purpose. The purpose of this article is to establish rules and regulations for the surface mining coal on lands in Henderson County. The rules and regulations set forth herein are established in order to minimize or prevent the injurious effects of surface mining on the people and resources of the County including, but not limited to, the preservation of the value of land for agricultural purposes, aesthetic values; the conservation of soil, water and other natural resources; the preservation of the property rights of citizens; and, the prevention of hazards dangerous to life and property which constitute an imminent and inordinate peril to the welfare of the County.

SECTION 27.02. Definitions. Unless otherwise specifically defined in this Article or otherwise clearly indicated by their context, terms in this Article shall be defined as follows:

ACID DRAINAGE - Water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by surface mining operations.

ACID-PRODUCING OR ACID-FORMING MATERIALS - Earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

APPROXIMATE ORIGINAL CONTOUR - That surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, (when not necessary to support its approved postmining use) closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all high walls and spoil piles eliminated; water impoundments may be permitted where the County determines that they are in compliance with Section 27.14.

AREA OF LANDS AFFECTED - The area of land from which overburden is to be or has been removed and upon which overburden is to be or has been deposited and shall include all lands affected by the construction of new roads or the improvement or use of existing roads other than public roads to gain access and to haul coal.

AQUIFER - A zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

AUGER MINING - A method of mining coal at a cliff or high wall by drilling holes laterally into an exposed coal seam from the high wall and transporting the coal along an auger bit to the surface.

BENCH - The ledge, shelf or terrace formed in the contour method of surface mining.

BUREAU - The Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources and Environmental Protection.

SURFACE MINING REGULATIONS

COAL - Combustible, carbonaceous rock, classified as anthracite, bituminous, sub-bituminous, or lignite by American Society for Testing Materials designation O-388-66.

COMBUSTIBLE MATERIAL - Organic material that is capable of burning either by fire, or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

COMMISSIONER - The Commissioner of the Bureau of Surface Mining Reclamation and Enforcement of the Department for Natural Resources and Environmental Protection.

COMPACTION - The reduction of pore space among the particles of soil or rock generally done by running heavy equipment over the earth materials.

COUNTY - The Fiscal Court of Henderson County, Kentucky, or an authorized representative thereof.

DEGREE - The angular measurement of land slope from the horizontal, and in each case shall be subject to a tolerance of five (5) percent of error.

DEPARTMENT - The Department for Natural Resources and Environmental Protection.

DISTURBED AREA - Those lands that have been affected by surface mining and reclamation operations.

DIVERSION - A channel, embankment or other manmade structure constructed for the purpose of diverting water from one area to another.

DOWN SLOPE - The land surface between a valley floor and the projected outcrop of the lowest coal bed being mined along each high wall.

EMBANKMENT - An artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purpose.

EROSION - The detachment and movement of soil and rock fragments by water, wind, ice, or gravity.

FILL BENCH - That portion of the bench which is formed by depositing overburden beyond the cut section.

FINAL GRADE - The finished elevation of any surface disturbance prior to replacement of topsoil.

GROUND WATER - Subsurface water that fills available openings in rock and soil material such that they may be considered water-saturated.

SURFACE MINING DEFINITIONS

GULLY EROSION - The erosion process whereby water accumulates in narrow channels over short periods and removes the soil from this narrow area to depths greater than one (1) foot.

HIGHWAY - The face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

HYDROLOGIC BALANCE - The relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

HYDROLOGIC REGIME OR HYDROLOGIC SYSTEM - The entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

IMMINENT DANGER TO THE HEALTH AND SAFETY OF THE PUBLIC - The existence of any condition or practice, or any violation of a permit or other requirement of applicable local, state and federal laws and regulations in a surface mining operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

IMPOUNDMENT - A closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

INTERMITTENT OR PERENNIAL STREAM - A watercourse or part of a watercourse that flows continuously during all (perennial) or for at least one (1) month (intermittent) of the calendar year as a result of ground water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one (1) month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

LEACHATE - A liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

METHOD OF OPERATION - The method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the coal.

SURFACE MINING DEFINITIONS

NOXIOUS PLANTS - Species that have been included on the official state lists of noxious plants for the State of Kentucky.

OPERATIONS - All of the premises, facilities, roads and equipment used in the process of producing coal from a designated surface mine area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal.

OPERATOR - Any person engaged in surface mining who removes or intends to remove more than 250 tons of coal from the earth by surface mining within twelve (12) successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a natural coal deposit.

OUT SLOPE - The exposed area sloping away from a bench or terrace being constructed as a part of a surface mining and reclamation operation.

OVERBURDEN - All of the earth and other materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of surface mining.

PERMIT - The written document issued by the County to the permittee pursuant to this chapter.

PERMITTEE - Any person holding a valid permit to conduct surface mining and reclamation operations issued by the County pursuant to this chapter.

PERSON - Any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization.

PRODUCTIVITY - The vegetative yield produced by a unit area for a unit of time.

RECHARGE CAPACITY - The ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

RECLAMATION - The reconditioning of the area affected by surface mining under a plan approved by the County.

RECURRENCE INTERVAL - The precipitation event expected to occur, on the average, once in a specified interval. For example, the ten (10) year, twenty-four (24) hour precipitation event would be that twenty-four (24) hour precipitation event expected to be exceeded on the average once in ten (10) years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.", May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed there from.

RILL EROSION - An erosion process in which numerous small channels only several inches deep are formed.

SURFACE MINING DEFINITIONS

ROADS - Access and haul roads constructed, used, reconstructed, improved or maintained for use in surface mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within forty five (45) days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds as all federal, state, county, or local roads are excluded from this definition.

RUNOFF - Precipitation that flows overland before a defined stream channel and becoming stream flow.

SAFETY FACTOR - The ratio of the available shear strength to developed shear stress on a potential surface of sliding determined by accepted engineering practice.

SECRETARY - The Secretary of the Department for Natural Resources and Environmental Protection.

SEDIMENT - Undissolved organic and inorganic material transported or deposited by water.

SEDIMENTATION POND - Any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

SHEET EROSION - An erosion process whereby a uniform layer of soil is removed from the land surface by runoff water.

SIGNIFICANT, IMMINENT ENVIRONMENTAL HARM TO LAND, AIR OR WATER RESOURCES

- A. An environmental harm to an adverse impact on land, air, or water resources, including but not limited to plant and animal life.
- B. An environmental harm is imminent if a condition, practice or violation exists which:
 1. is causing such harm; or
 2. may be reasonably expected to cause such harm at any time before the end of the reasonable abatement time.
- C. An environmental harm is significant if that harm is appreciable and not immediately reparable.

SLOPE - Average inclination of a surface, measured from the horizontal, normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v to 5h = 20 percent = 11.3 degrees).

SURFACE MINING DEFINITIONS

SOIL HORIZONS - Contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

- A. "A Horizon" - The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.
- B. "B Horizon" - The layer immediately beneath the A Horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C Horizons.
- C. "C Horizon" - The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by the biologic activity.

SPOIL - Overburden that has been removed during surface mining.

STABILIZE - Any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting or revegetating.

SUBIRRIGATION - Irrigation of plants with water delivered to the roots from underneath.

SURFACE MINING - The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a land owner for his own noncommercial use from land owned or leased by him; the extraction of coal as an incidental part of federal, state or local government financed highway or other construction under regulations established by the County nor shall it include the surface effects or surface impacts of underground coal mining.

SURFACE WATER - Water, either flowing or standing on the surface of the earth.

SUSPENDED SOLIDS - Organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

TOXIC FORMING MATERIALS - Earth materials or wastes which, if acted upon by air, water, weathering, or micro-biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to the flora, fauna or uses of water.

SURFACE MINING DEFINITIONS

TOXIC-MINE DRAINAGE - Water that is discharged from active or abandoned mines and other areas affected by surface mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure or impair flora or fauna commonly present in the area that might be exposed to it.

VALLEY FILL AND HEAD-OF-HOLLOW FILL - A structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any extent any watercourse other than those minor watercourses located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. For example, such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located further downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock under drains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

WASTE - Earth materials which are combustible, physically unstable or acid-forming or toxic-forming, washed or otherwise separated from product coal and are slurred or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

WATER TABLE - Upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

SECTION 27.03 General Provision.

- A. The regulations in this article shall apply to all operations for the surface mining of coal conducted on or after the date of adoption of the Zoning Regulations of the County of Henderson, Kentucky, on lands from which coal has not yet been removed by surface mining operations, and to any other lands used, disturbed, or redisturbed in connection with or to facilitate the surface mining of coal except:
1. The extraction of coal by a land owner for his own non-commercial use from land owned or leased by him;
 2. The extraction of coal as an incidental part of federal, state or local government financed highway or other constructions.
 3. The extraction of coal in any operation or activity in which are extracted 250 tons or less of coal within a period of twelve (12) consecutive calendar months; and
 4. The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the total mineral tonnage extracted for commercial use or sales.

SURFACE MINING DEFINITIONS

- B. **Compatibility with Public Law 95-87 and KRS Chapter 350.** The provisions of this Article are to be construed as compatible with federal regulations adopted pursuant to Public Law 95-87, the "Surface Mining Control and Reclamation Act 10 1977" and KRS Chapter 350, "Strip Mining" regulations. Wherein this Article there exist rules and regulations which differ in scope and text from those federal and state regulations on the same subject, said provisions shall not be construed as being contradictory, however, the more stringent of the applicable provisions shall apply
- C. **Conflicting Provisions.** The provisions of this Article are to be construed as being compatible with and complimentary to each other. In the event that provisions within this Article are found to be contradictory, the more stringent provisions shall apply.
- D. **Severability.** In the event that any provision or regulation of this Article is found to be invalid, the remaining provisions of this Article shall not be affected nor diminished thereby.
- E. **Obligations of Operators.**
1. No person or operator shall engage in surface mining for coal without having obtained from the County a valid permit covering the area of land to be affected.
 2. A person or operator engaged in the surface mining of coal shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit by the County, and for which bond has been posted pursuant to Section 27.04, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to Section 27.04.
 3. A person or operator engaged in surface mining for coal shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.
 4. A person or operator engaged in surface mining for coal shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
 5. Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall immediately notify the persons whose life, health or property are so threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall immediately provide notice of the emergency conditions to the County, to local

SURFACE MINING DEFINITIONS

law enforcement officials and to other appropriate local government officials. Any emergency action taken by an operator pursuant to this paragraph shall not relieve the operator of other obligations under this chapter or of obligations under other applicable local, state or federal laws and regulations.

SECTION 27.04 Permit Requirements.

A. Permit Required

1. No person shall engage in surface mining of coal without having first obtained a permit from the County of Henderson.
2. The permit shall authorize the permittee to engage in surface mining of coal upon the area described in his application for a period of two (2) years from the date of issuance.
3. The permit shall confer upon the operator a qualified right to surface mine coal, but shall not relieve the operator of responsibility to comply with all applicable federal, state, and local laws and regulations.

B. Preliminary Requirements. A person desiring a permit shall submit to the County a preliminary application of the form and content prescribed by the County. The preliminary application shall contain pertinent information including, but not limited to, a U.S. geological survey 7 1/2 minute topographic map marked to show the approximate boundaries of the area of land to be affected, and the approximate locations of the coal seam(s) to be mined, access roads, haul roads, soil disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the County. Personnel of the County shall conduct, within thirty (30) days after filing, an on-site investigation of the area with the person or his representatives and representatives of the appropriate local, state or federal agencies, after which the person may submit a permit application.

C. Permit Application.

1. A person desiring a permit shall submit an application of form and content as prescribed by the County. The application shall be on forms provided by the County and originals and copies of the applications shall be prepared, assembled and submitted in the number, form and manner prescribed by the County with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the as the County may require pursuant to this section.
2. The application shall include the information described in this subsection through subsection (13) of this section:
 - (a) The location and area of land to be affected by the operation with a general description of access to the site from the nearest public highway.
 - (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area within 500 feet of any part of the affected area;

SURFACE MINING DEFINITIONS

- (c) The owner or owners of the coal to be mined;
 - (d) The source of the applicant's legal right to mine coal on the land affected by the permit;
 - (e) The permanent and temporary post-office address of applicant;
 - (f) Whether or not the applicant or any person associated with the applicant, holds or has held any other permits issued by the County or under KRS Chapter 350, and an identification of such permits.
3. **Maps.** The application shall include or be accompanied by such number of copies as the County may determine of a U.S. Geological Survey 7 1/2 minute topographic map or other such map acceptable to the County on which the operator has indicated the location of the operations, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.
4. **Enlarged Maps.** The application shall include or be accompanied by such number of copies as the County may determine of an enlarged U.S. Geological Survey 7 1/2 minute topographic map or other such map acceptable to the County, meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:
- (a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the surface mining laws of this County and State. The certification shall be signed and notarized. The County may reject any map as incomplete if its accuracy is not so attested.
 - (b) Identify the area of land to be affected to correspond with the application.
 - (c) Show adjacent underground mining and the boundaries of surface properties and names of owners on the affected area and within 500 feet of any part of the affected area.
 - (d) Be of a scale between 400 feet to the inch and 600 feet to the inch.
 - (e) Show the names and locations of all streams, lakes, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas well, public parks, public property, and utility lines on the area of land affected and within 500 feet of such area.
 - (f) Show by appropriate markings the boundaries of the area of land to be affected, the crop line of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land to be affected.
 - (g) Show the date on which the map was prepared, the north point and the quadrangle name.

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- (h) Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drain ways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.
- 5. **Transportation Plan.** The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Department of Transportation) of Henderson County which shall set forth the portions of the public road system within the county, if any, over which the applicant proposes to transport coal extracted in the surface mining operation.
- 6. **Prime Farmland.** The application will include or be accompanied by a plan for the mining and restoration of prime farmland consistent with the requirements of Section 27.15 of this regulation.
- 7. **Postmining Land Use Plan.** The application shall include or be accompanied by a plan for postmining land use which shall demonstrate to the satisfaction of the County that the proposed operations will comply with the requirements of Section 27.06 regarding postmining land use.
- 8. **Topsoil Handling Plan.** The application shall include or be accompanied by a plan for the handling of topsoil which shall demonstrate to the satisfaction of the County that the proposed operation will comply with the requirements of Section 27.08 with regard to topsoil and handling.
- 9. **Backfilling and Grading Plan.** The application shall include or be accompanied by a plan for backfilling and grading which shall demonstrate to the satisfaction of the County that the proposed operation will comply with the requirements of Section 27.11 with regard to backfilling and grading.
- 10. **Spoil Disposal Plan.** The application shall include or be accompanied by a plan for the disposal of spoil in excess of that required to meet the backfilling and grading requirements of Section 27.11 which shall demonstrate to the satisfaction of the County that the proposed operation will comply with the requirements of 405 KAR 1:140 with regard to disposal of spoil.
- 11. **Surface Water Control and Monitoring Plan.** The application shall contain or be accompanied by a plan for the control of surface water, which shall demonstrate to the satisfaction of the County that the proposed operation will comply with the requirements of:
 - (a) Section 27.13 with regard to sediment control measures; and
 - (b) Section 27.12 with regard to diversions of surface flows.
- 12. **Revegetation Plan.** The application shall include or be accompanied by a revegetation plan which shall demonstrate to the satisfaction of the County that the proposed operation will comply with the requirements of Section. 27.09 with regard to revegetation.

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13. In the required operational plans specified in subsections (5) through (12) of this section and in the other requirements of this section, the County may require all such supporting documentations as the County may deem necessary to insure that the provisions of this section will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and documentation prepared by qualified persons in other appropriate technical fields or sciences.
14. Fees. The applications shall be accompanied by a cashier's check or money order payable to the County of Henderson in the amount of \$250. plus \$50. for each acre or fraction thereof of the area of land to be affected by the operation. No permit application shall be processed unless such fees have been paid.
15. Bonds. The applicant shall file with the County a performance bond payable to the County of Henderson, with surety satisfactory to the County in an amount to be determined by the County conditional upon the faithful performance of the requirements set forth herein. The performance bond shall be established in an amount equal to the estimated total cost of reclamation of the area of land to be affected as determined by the County. The County shall accept in lieu of the surety provided here, the deposit by the applicant of United States Government securities, cash, or its equivalent in a sum equal to the principal amount of the required bond.

D. Procedures for Processing of Application.

1. Complete, but separate and distinct copies of the application, in such number as the County may determine shall be submitted to the County at the location and address prescribed by the County. The County will provide written acknowledgment of receipt of the application.
2. Within thirty (30) working days the County shall either:
 - (a) Issue a permit to the applicant, or deny the application; or
 - (b) Notify the applicant in writing, by certified mail, return receipt requested, or registered mail, of any deficiencies in the application, and allow it to be temporarily withdrawn for the purpose of correcting the deficiencies.
 - (c) Temporary withdrawal periods shall not be considered in computation of the thirty (30) working days.
3. If the County denies an application, it shall set forth in writing the reasons for the denial.

E. Deletion of Areas and Denial of Permit.

1. The County shall delete from a permit areas proposed to be affected by surface mining operations, or shall deny a permit when necessary to insure compliance with the provisions of this regulation.
2. No application for a permit and no operation shall be approved or allowed by the County if there is found on the basis of the information set forth in the application, or based on other relevant information available to the County, that the requirements of this Article will not be observed, or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this Article.

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3. If the County finds, based upon experience with similar operations upon lands with similar overburden, that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be prevented, the County may delete such part of the land described in the application upon which such overburden exists.
4. Subject to valid existing rights no surface mining operation shall be permitted to be within 300 feet from any occupied dwelling unless waived by the owner thereof, nor within 300 feet of any public building, school or church, community or institutional building or public park, or within 100 feet of a cemetery.
5. The County shall not issue a permit if it finds that the operation will constitute a hazard to, or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property. The County shall delete such areas from the permit application or operation.
6. The County shall not give approval to surface mine any area which is within 100 feet of the outside right of way line of any public road, except where mine access roads or haulage roads join such right of way line, provided however, that the County may permit such public roads to be relocated, or may permit the area affected to lie within 100 feet of such public road, if after public notice and opportunity for public hearing in the locality, a written finding is made by the County that the interest of the public and the land owner affected thereby will be protected.
7. The County shall not issue a permit to surface mine an area unless it finds that adequate measures have been or will be undertaken to eliminate damage to members of the public, their real and personal property, public roads, streams, and all other public property, from soil erosion, rolling stones and overburden, water pollution, blasting, and hazards dangerous to life and property.
8. No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface mining and reclamation operations unless the County specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and be marked as specified in 405 KAR 1:080 regarding signs and markers.
9. Denial of permit for past violations:
 - (a) An operator or person whose mining permit or operation has been revoked, suspended, or terminated shall not be eligible to have another permit or begin another operation, or be eligible to have suspended permits or operations reinstated, until he shall have complied with all the requirements of this Article in respect to all permits issued him.
 - (b) No operator or person who has forfeited any bond shall be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the County or the operator or person has paid such sum as the County finds is adequate to reclaim such lands.

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- (c) The county shall not issue any additional permits to, or allow future operations by, any operator or person who has been in noncompliance with or in violation of this Article, or who has had permits revoked or operations terminated by state authorities. Issuance of surface mining permits to operators who have had permits revoked shall be at the discretion of the Henderson County Fiscal Court.
- F. Increase or Decrease of Area Under Permit. Upon application by the operator, the County may amend a valid existing permit so as to increase or decrease the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.
- 1. Increase of Area Under Permit:
 - (a) Application. The operator shall file an application in the same form and with the same content as required for an original application.
 - (b) Fees. The operator shall pay in the manner prescribed herein for an original application, a basic fee of \$250 plus a fee of \$50 for each acre or fraction of an acre of increased area requested.
 - (c) The operator shall file with the County, a supplemental bond in the amount to be determined as provided in this regulation for each acre or fraction of an acre of the increased area approved.
 - (d) The date of expiration of the amended permit shall be the same as the date of expiration of the permit prior to amendment.
 - 2. Decrease of Area Under Permit:
 - (a) Application. The operator shall file an application upon forms provided by the County with such documentation as the County may require, showing the undisturbed area which is requested to be subtracted from the area of land covered by the existing valid permit.
 - (b) Release of Bond. If the County approved the decrease in permitted area it shall release the bond for each acre of the decrease.
- G. Renewal of Valid Existing Permit.
- 1. Any valid permit issued pursuant to this regulation shall carry with it the right of successive renewal upon expiration, with respect to areas within the boundaries of the existing permit. Any permit renewal shall be for a term not to exceed the period of the original permit.
 - 2. If an application for renewal of a valid existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to new applications, and a new and original application shall be required for such areas.

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3. Application for permit renewal shall be made not later than thirty (30) working days prior to the expiration of the existing valid permit. The holders of the permit may apply for renewal and such renewal shall be issued provided that the requirements of paragraph (a) through (g) of this subsection are met.
 - (a) The application for renewal shall be submitted in the form, manner and content as prescribed by the County and shall be subject to current surface mining regulations in effect at the time of renewal.
 - (b) The application for renewal shall be accompanied by a cashier's check or money order payable to the County of Henderson in the amount of \$250. plus \$50. for each acre or fraction thereof of the area of land to be affected by the operation. No application for renewal of a permit shall be processed unless such fees have been paid.
 - (c) The operator shall submit, in the manner prescribed by the County all revised or updated information required by the County. Such information shall include but not be limited to, an updated operational plan current to the date of request for renewal, showing the status and extent of all strip mining and reclamation operations on the existing permit.
 - (d) The terms and conditions of the existing permit are being satisfactorily met.
 - (e) The present surface mining and reclamation operation is in compliance with this regulation.
 - (f) The renewal requested does not substantially jeopardize the operator's continuing responsibility on existing permit areas.
 - (g) The operator shall provide evidence that the performance bond is in effect for the renewal requested, as well as any additional bond which the County might require.

H. Succession of One Operator by Another.

1. When one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the County may release the first operator from all liability under this Article for that particular operation provided the requirements of paragraph (a) and (b) of this section are met.
 - (a) The successor operator shall have been issued a permit and shall have otherwise complied with the requirements of this chapter.
 - (b) The successor operator shall assume as part of this obligation under this Article, all liability for the reclamation of land areas affected by the former operator.
2. A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest, and who is able to obtain the Bond coverage of the original permittee, may continue surface mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

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I. Release of Bond.

1. When the backfilling and grading have been completed for an area in a manner consistent with the requirements of this Article, and the soil pH level as required by the County has been established, the permittee may submit to the County a report and request for partial release of bond for the area. The report shall state the number of acres and type of area affected for which the partial bond release is requested and shall contain appropriate maps, cross sections, and other engineering and technical documentation as the County may require to demonstrate to the satisfaction of the County that the requirements of the Article have been met with regard to backfilling and grading and that the required soil pH level has been established.
2. Upon verification of the report and request, the County shall partially release to the permittee the bond which was posted for that area in an amount not to exceed fifty (50) percent of the total bond posted for that area.
3. After the preparation, planting and mulching of a given area and after not less than two (2) growing seasons, the permittee may submit a report and request for release of the remaining bond. The report shall demonstrate to the satisfaction of the County that the requirements of this Article have been met with regard to revegetation.
4. After verification of the request and report of vegetation, the County shall release to the permittee the remaining bond.
5. **Transfer of Liability.** A person or organization, having qualifications acceptable to the County may post bond or a cash deposit in a sum determined by the County and assume the liability for carrying out the reclamation plan approved by the County in areas where the mining operation and any necessary backfilling and grading have been completed. The County shall then release the bond posted by the permittee for such area.

SECTION 27.05 Inspection and Enforcement Procedures.

- A. **Inspection Procedures.** The County shall make such inspections or investigations as it deems necessary to insure compliance with any provisions of this Article.
- B. **Enforcement Procedures.**
 1. **Determination of Violations.** The County shall determine whether violations of the provisions of this Article have occurred.
 2. **Notice of Violations.** If the County determines that such violations have occurred, the County shall by certified mail (return receipt requested) provide written notice to the operator that such violation has occurred and shall therein stipulate a reasonable time period for the feasible correction of such violations.
 3. **Notice of Noncompliance, Order of Suspension:**
 - (a) If any of the requirements of this Article have not been complied with within the time limits set by the County, the County shall cause a notice of noncompliance to be served upon the operator, or where found necessary, the county shall, after a hearing, order the suspension of a permit or operation.
 - (b) Such notice or order shall be handed to the person in charge of the operation. Such notice or order shall also be handed to the operator in person, or shall be served upon the operator by certified mail (return receipt requested), or by registered mail, addressed to the permanent address shown on the permit application.

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- (c) The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with the regulations.
 4. Revocation of permit; termination of operation; forfeiture of bond. If the operator has not reached an agreement with the County or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked or the operation terminated, after a hearing, by order of the County and the performance bond shall then be forfeited to the County.
- C. Penalties.
1. Any person or operator who violates any of the provisions of this Article or who fails to perform the duties imposed by these provisions, or fails or refuses to obtain a permit as provided herein, or who violates any determination or order promulgated pursuant to the provision of this Article, shall be liable to a civil penalty of not less than one hundred (\$100) nor more than five thousand dollars (\$5000) for said violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided in this section. Such penalties shall be recoverable in an action brought in the name of the County of Henderson by the Office of the County Attorney in the Henderson Circuit Court, and all sums recovered shall be placed in the County treasury. It shall be the duty of the County Attorney to bring an action for the recovery of the penalties herein provided for and to bring against any operator or other person violating or threatening to violate any of the provisions of this Article or violating or threatening to violate any order of determination promulgated pursuant to the provisions of this Article. Any person who shall willfully violate any of the provisions of this Article or any determination or order promulgated pursuant to the sections of this article which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5000). Each day on which such violation occurs shall constitute a separate offense.

SECTION 27.06 Postmining Land Use.

- A. General. All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or to higher or better uses achievable under criteria and procedures of this regulation.
- B. Determining Premining Land Use.
 1. The pre-mining land uses to which the post-mining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.
 2. The post-mining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best economic or public use that can be achieved and is compatible with surrounding areas.
 3. The post-mining land use for land that has received improper management shall be judged on the basis of the pre-mining use of surrounding lands that have received proper management.

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C. Land Use is categorized as follows:

1. Heavy industry. Manufacturing facilities, power plants, airports or similar facilities.
2. Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.
3. Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.
4. Residential. Single and multiple family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than five (5) percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.
5. Agricultural or silvicultural.
 - (a) Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.
 - (b) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.
 - (c) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.
 - (d) Forest land. Land with at least a twenty-five percent (25%) tree canopy or land at least ten percent (10%) stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially forested.
6. Impoundments of Water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation or water supply.
7. Fish and wildlife habitat and recreation lands. Wetland, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.
8. Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

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- D. Criteria for Approving Alternative Post-Mining Land Uses. Change from one to another land use category or subcategory in pre-mining to post-mining constitutes an alternate land use and the applicant shall meet the requirements of this regulation and all other applicable provisions of this Article. An alternative post mining land use shall be approved by the Henderson City-County Planning Commission after consultation with the landowner if the criteria of this regulation are met.
1. The proposed land use is compatible with adjacent land use and with the Comprehensive Land Use Plan of Henderson County. An alternative postmining land use plan shall be approved by the Henderson City-County Planning Commission.
 2. Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The County may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.
 3. Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the applicant, as appropriate, to provide them in a manner compatible with the applicant's plans.
 4. Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the applicant as appropriate, if the postmining use is to be developed by such parties.
 5. The plans are designed under the general supervision of a registered professional engineer or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetation cover, and aesthetic design appropriate for the postmining use of the site.
 6. The proposed use or uses will neither present actual probable hazard to public health or safety nor will they pose any actual or probable threat to water flow diminution or pollution.
 7. The use or uses will not involve unreasonable delays in reclamation.
 8. Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the appropriate state and federal fish and wildlife management agencies.
 9. Proposals to change pre-mining land uses of range, fish, wildlife habitat, forest land, hayland, or pasture to a post-mining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, shall be reviewed by the County to assure that:
 - (a) There is a firm written commitment of the applicant or by the landowner or land manager to provide sufficient crop management after release of applicable performance bond to assure that the proposed post-mining cropland use remains practical and reasonable.

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- (b) There is sufficient water available and committed to maintain crop production; and
- (c) Topsoil quality and depth are shown to be sufficient to support the proposed use.

SECTION 27.07 Signs and Markers.

Signs and Markers shall be posted, where applicable, as required by state and federal strip mine regulations.

SECTION 27.08 Topsoil Handling.

- A. To prevent topsoil from being contaminated by spoil or waste materials, the topsoil shall be removed from the area to be disturbed as a separate operation. The topsoil shall be immediately redistributed on the areas graded to the approved post-mining configuration unless storage of the topsoil by stockpiling or other means is approved by the County. If sufficient grading areas are not immediately available for topsoil redistribution and the stockpiling of topsoil is approved by the County, the topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which would lessen its capability to support vegetation.
- B. Topsoil Removal. All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.
 - 1. All topsoil shall be removed unless the use of alternative materials is approved by the County in accordance with Subsection (F) of this regulation. The size of the area from which topsoil may be removed at any one time shall be limited if the removal of the topsoil would result in erosion that may cause air or water pollution. The County may specify methods of treatment to control erosion of exposed overburdens.
 - 2. All of the A horizon as identified by soil surveys shall be removed as provided in this section and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than six (6) inches, a six (6) inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than six (6) inches) shall be removed and the mixture segregated and replaced as the surface soil layer.
 - 3. The County may require that the B Horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil where necessary to obtain productivity consistent with the approved post-mining land use.
- C. Topsoil Redistribution.
 - 1. After the final grading has been completed and before the topsoil is replaced, the regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.
 - 2. The topsoil shall be redistributed on the regraded area in a manner which:
 - (a) Achieves an approximate uniform thickness consistent with postmining land uses;
 - (b) Prevents excessive compaction of the spoil and topsoil; and

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- (c) Protects the topsoil from wind and water erosion before it is seeded and planted.
- D. **Topsoil Storage.** Stockpiled topsoil shall be placed on stable areas within the permit area. The locations should be such that the stockpiled topsoil will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which would lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiled topsoil shall be protected either by a vegetative cover or by other methods demonstrated to provide equal protection, including but not limited to chemical binders and mulching. Unless approved by the County, stockpiled topsoil shall not be moved until it is moved for redistribution on a disturbed area.
- E. **Nutrients and soil amendments,** in appropriate amounts and analyses as determined by soil tests, shall be applied to the surface soil layer so that it will support the post-mining land use requirements and revegetation requirements of this Article.
- F. **Alternative Materials.** When the existing topsoil is of insufficient quantity or poor quality for sustaining vegetation, the County may approve the use of selected overburden materials, alternative soil materials or soil amendments as alternatives or supplements to topsoil, where the resulting soil medium is equally or more suitable for vegetation, provided the requirements of this subsection are met:
 - 1. The applicant shall demonstrate by the results of chemical and physical analyses that the selected alternative material or alternative topsoil for restoring land capability and productivity. These analyses shall include determination of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, water holding capacity, and such other analyses as the County may require. The County may also require the use of field-site trials or greenhouse tests to demonstrate the feasibility of using such alternative materials.
 - 2. Chemical and physical analyses and results of field-site trials and greenhouse tests shall be accompanied by a certification from a qualified soil scientist or agronomist.
 - 3. The alternative material shall be removed, segregated, and replaced in conformance with this subsection as necessary.

SECTION 27.09. Revegetation.

- A. **General.**
 - 1. The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the approved post mining land uses. For areas designated by the County as prime farmland, the reclamation procedures of Section 27.15 shall apply.
 - 2. Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetation cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the post mining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre and post mining land use is intensive agricultural, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.
- B. **Use of Introduced Species.** Introduced species may be substituted for native species only if approved by the Kentucky Department for Natural Resources and Environmental Protection.

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C. Timing of Revegetation.

1. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate.
2. Any disturbed areas, except water areas and surface areas of roads that are approved as part of the post mining land use, which have been graded shall be seasonable seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established.
3. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the post mining land use, form in regraded areas as specified in Section 26.11, additional regrading or other stabilization practices will be required before seeding and planting.

D. Mulching.

1. Mulch shall be used on all regraded and top soiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus, providing micro climatic conditions suitable for germination and growth, and do not interfere with the post mining use of the land.
2. Mulch shall be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation.
3. Application rates of mulch shall be consistent with those rates submitted on the revegetation plan except as otherwise approved by the County.
4. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the County that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the post mining use.

E. Methods of Revegetation.

1. The permittee shall use technical publications or the results of laboratory and field test approved by the Kentucky Department for Natural Resources and Environmental Protection to determine the varieties, species, seeding rates and soil amendment practices essential for establishment and self-regeneration of vegetation. The Department for Natural Resources and Environmental Protection shall approve species selection and planting plans.
2. Where hayland or pasture is to be the postmining land use, the species of grasses, legumes, browse, or trees for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, distribution and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The County in consultation with the permittee and the landowner, shall determine when the revegetated area is ready for livestock grazing.
3. Where forest is to be the postmining land use, the permittee shall plant trees adapted to local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, or woody plants to provide a diverse, effective and permanent vegetative cover with the seasonal variety, succession, and regeneration capabilities native to the area.

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4. Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate state and federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.
- F. Standards for Measuring Success of Revegetation. Standards for measuring the success of revegetation measures shall be in accordance with 405 KAR 1:110, Section 6.

SECTION 27.10 Access Roads, Haul Roads, and Other Transport Facilities.

The requirements for the design, construction, maintenance and reclamation of access roads, haul roads, and other transport facilities shall be in accordance with 405 KAR 1:120.

SECTION 27.11 Backfilling and Grading.

- A. In order to achieve the approximate original contour, the permittee shall, except as provided in this regulation, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials) and grade all spoil material to eliminate all high walls, spoil piles, and depressions. The postmining graded slopes must approximate the premining natural slopes in the area as defined in this regulation.
- B. Slope Management.
 1. To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or where this is impractical, at locations specified by the County. Where area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the County to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of the natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.
 2. After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the County. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.
- C. Final Graded Slopes.
 1. The final graded slopes shall not exceed either the approximate premining slopes as determined according to Subsection B (1) or any lesser slope specified by the County based on consideration of soil, climate or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform.
 2. On approval by the County and in order to conserve soil moisture, ensure stability, and control erosion of final graded slopes, cut and fill terraces may be allowed if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements.

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- (a) The width of the individual terrace bench shall not exceed twenty (20) feet unless specifically approved by the County as necessary for stability, erosion control or roads included in the approved postmining land use plan.
 - (b) The vertical distance between terraces shall be as specified by the County to prevent excessive erosion and to provide long term stability.
 - (c) The slope of the terrace OUT SLOPE shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may high walls be left as part of terraces.
 - (d) Culverts and underground rock drains shall be used on terraces only when approved by the County.
- D. **Small Depressions.** If approved by the County, small depressions may be constructed to minimize erosion, conserve soil moisture, or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than one (1) cubic yard of water or, if it is necessary that they be larger, shall not constrict normal access throughout the area or constitute a hazard.
- E. **Permanent Impoundments.** If approved by the County permanent impoundments may be retained on mined and reclaimed areas provided all high walls are eliminated by grading to appropriate contour and the provisions of this regulation for postmining land use, 405 KAR 1:160 for protection of the hydrologic system and Section 27.14 with regard to permanent impoundments are met.
- F. **Regrading or Stabilizing Rills and Gullies.** When rills or gullies deeper than nine (9) inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas in accordance with this regulation with regard to revegetation. The County shall specify that rills and gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.
- G. **Thin and Thick Overburden Areas.**
- 1. **Applicability.** The provisions of this section shall apply only when operations cannot be carried out to comply with the requirements of Subsections A, B and C of this regulation with regard to achieving approximate original contour.
 - 2. **Definitions:**
 - (a) **Initial Thickness** is the sum of the overburden thickness and coal thickness.
 - (b) **Final thickness** is the product of the overburden thickness times the bulking factor to be determined for each mine area.
 - (c) **Thin overburden** exists when the final thickness is less than 0.8 of the initial thickness.
 - (d) **Thick overburden** exists when the final thickness is greater than 1.2 of the initial thickness.

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3. Thin overburden areas. In surface mining operations carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials, as defined in Subsection H, is demonstrated to be insufficient to achieve approximate original contour, operations shall be conducted to meet at a minimum, the standards of this subsection.
 - (a) Transport, backfill, and grade, using all available spoil and suitable waste materials, as defined in Subsection H of this regulation, from the entire mine area to attain the lowest practicable stable grade.
 - (b) Eliminate high walls by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent) or such lesser slopes as specified by the County to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.
 - (c) Transport, backfill, grade and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.
 - (d) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the satisfaction of the County that all requirements of 405 KAR 1:160 have been met and that the impoundments have been approved by the County as meeting the requirements of this Article and all other applicable federal, state, and local regulations.
4. Thick overburden areas. In surface mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour, operations shall be conducted to meet, at a minimum, the standards of this subsection.
 - (a) Transport, backfill, and grade all spoil and unsuitable wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.
 - (b) Deposit, backfill and grade excess spoil and suitable wastes only within the permit area and dispose of such materials in conformance with this Article.
 - (c) Transport, backfill and grade excess spoil and suitable wastes to maintain the hydrologic balance and to provide long term stability.
 - (d) Transport, backfill, grade and revegetate suitable wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.
 - (e) Eliminate all high walls and depressions except as stated in Subsection E of this regulation by backfilling with spoil and suitable waste material.
- H. Use of Waste Materials as Fill. Waste material from a coal preparation or conversion facility or other activities conducted outside the permit area may be used for fill material if approved by the Kentucky Department for Natural Resources and Environmental Protection.
- I. Covering and Stabilization. All exposed coal seams remaining after mining and any acid forming, toxic forming, combustible materials, or any other hazardous waste materials that are exposed, used, or produced during mining shall be covered in accordance with applicable state and federal regulations.
- J. Grading Along the Contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil shall be done along the contour unless such grading would be hazardous to equipment operators. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

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SECTION 27.12 Diversions of Surface and Underground Flows.

- A. **Diversions of Overland Flows.** In order to minimize erosion and to prevent or remove water from contacting toxic producing deposits, overland flow from undisturbed areas may, if required or approved by the County, be diverted away from disturbed areas by means of temporary or permanent diversions structures. The following requirements shall be met:
1. Diversions shall be designed, constructed, maintained in a manner to prevent additional contributions of suspended solids to stream flow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable local, state or federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures and detention basins.
 2. Temporary diversion structure are those used during mining and reclamation, and when no longer needed these structures shall be removed and the areas reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one (1) year recurrence interval or a larger event as specified by the County. The design criteria must assure adequate protection of the environment and public during existence of the temporary diversion structure.
 3. Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the County and other appropriate state and federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100 year occurrence interval, or a larger event as specified by the County. Permanent diversion structures shall be constructed with apparently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the county.
- B. **Stream Channel Diversions.**
1. Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the County and they are in compliance with local, state and federal statutes and regulations. When stream flow is allowed to be diverted, a new stream channel shall be designed and constructed to meet the requirements of this subsection.
 - (a) The average stream gradient shall be maintained and the channel designed, constructed and maintained to remain stable and to prevent additional contributions of suspended solids to stream flow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable local, state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the County for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.
 - (b) Channel, bank and flood plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten (10) year recurrence interval for temporary diversions and a 100 year recurrence interval for permanent diversions, or larger events as specified by the County.

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- (c) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate state and federal fish and wildlife management agencies.
- 2. All temporary diversion structures shall be removed, and the affected land regraded and revegetated consistent with the requirements of this Article regarding backfilling, grading and revegetation. At the time such diversions are removed, the permittee shall insure that downstream water treatment facilities previously protected by the diversion are either modified or removed to prevent overtopping or failure of the facilities.
- C. Stream Buffer Zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface mining and reclamation operations unless the County specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified herein.
- D. Discharge Structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.
- E. Discharge of Waters into Underground Mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

SECTION 27.13 Sediment Control Measure.

- A. Sediment Control Required. Appropriate sediment control measure shall be designed, constructed, and maintained to prevent additional contributions of sediment to stream flow or to runoff outside the permit area to the extent possible using the best technology currently available but in no event shall contributions be in excess of requirements set by applicable local, state or federal law.
 - 1. Sediment control measure include practices carried out within and adjacent to the disturbed area. For the purpose of this regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds or roads are installed and the upstream area is not otherwise disturbed by the mining operation. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination) including but not limited to:
 - (a) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and timely revegetation.
 - (b) Consistent with the requirements of this Article, shaping and the backfill material to promote a reduction of the rate and volume of runoff;
 - (c) Retention of sediment within the pit and disturbed area;
 - (d) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;
 - (e) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume or entrap sediment; and
 - (f) Sedimentation ponds.

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2. All surface drainage from the disturbed area including disturbed areas which have been graded, seeded, or planted shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met applicable water quality requirements and the revegetation requirements of these regulations have been met. All sedimentation ponds required shall be constructed in accordance with this Article and in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water. Sedimentation ponds shall be certified by a qualified registered engineer as having been constructed as designed and as approved by the County. Sedimentation ponds may be used individually or in series, and should be located as near as possible to the disturbed area and where possible out of major stream courses.
 3. Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment removal may be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and ground water quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas, otherwise, the sediment shall be disposed of as waste material.
 4. All ponds shall be designed by a registered professional engineer.
 5. All ponds shall be removed and the affected land regraded and revegetated consistent with the requirements of this Article, unless the County approves retention of the ponds as permanent impoundments.
 6. In the design of sedimentation ponds pursuant to the regulations, the responsible design engineer shall determine the structure hazard classification as set forth in 405 KAR 1:020 and the structure hazard classification shall be clearly shown on the first sheet of the design drawings.
 7. Sedimentation ponds classified (B) moderate hazard, or (C) high hazard shall be designed, constructed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.
- B. The County may require other actions necessary to insure that the provisions of this regulation are met.

SECTION 27.14 Permanent Impoundments

- A. **General Requirements.** The permittee may construct, if authorized by the County, permanent water impoundments on mining sites only when they are adequately demonstrated to be in compliance with the requirements of this Article in addition to the following requirements:

The size of the impoundment is adequate for its intended purposes;

1. The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83 566 (16 U.S.C. 1006).
2. The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable federal and state law.
3. The level of water will be reasonably stable.

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4. Final grading will comply with the provisions of the backfilling and grading requirements and will provide adequate safety and access for proposed water users.
 5. Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses.
- B. Permanent Impoundments (except those classified as Class (A) pursuant to 405 KAR 1:020 Section 5 (2)(d)) shall be designed, constructed and maintained in accordance with the provisions of KRS 151.250 and regulations adopted pursuant thereto.

SECTION 27.15 Prime Farmland

- A. **Objective.** The objective of this section is to set forth those soil removal, stockpiling, and replacement operational requirements and revegetation and other reclamation standards for prime farmland to insure both that the land will have agricultural productive capacity which is equal after mining to premining levels (or potential premining levels), and the land is not lost as an important natural resource of Henderson County.
- B. **Applicability.** Permittees of surface mining operations conducted on prime farmland shall comply with all applicable requirements of this Article in addition to the special requirements of this regulation.
- C. **Definition.** Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops, and land that is also available for these uses (the land could be cropland, pasture land, Forest land, or other land but not urban built up land or water); it has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. Prime farmland means those lands that meet the specific technical criteria prescribed by the Secretary of the United States Department of Agriculture which are specified herein. Terms used in this section are defined in U.S. Department of Agriculture publications: Soil Taxonomy, Agriculture Handbook 436; Soil Survey Manual, Agricultural Handbook 18; Rainfall Erosion Losses from Cropland, Agricultural Handbook 282; and Saline and Alkali Soils, Agricultural Handbook 60. To be considered prime farmlands, soils must meet all of the criteria of this section.
1. The soils have:
 - (a) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water supply capacity within a depth of forty (40) inches or in the root zone, if the root zone is less than forty (40) inches deep, to produce the commonly grown crops in seven (7) or more years out of ten (10) or;
 - (b) Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (a dependable water supply is one in which enough water is available for irrigation in eight (8) out of ten (10) years for the crops commonly grown); or;
 - (c) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality.

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2. The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that at a depth of twenty (20) inches have a mean annual temperature higher than thirty two (32) degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with a O horizon is higher than forty seven (47) degrees Fahrenheit; in soils that have no O horizon the mean summer temperature is higher than fifty nine (59) degrees Fahrenheit.
 3. The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.
 4. The soils can be managed so that, in all horizons within a depth of forty (40) inches or in the root zone if the root zone is less than forty (40) inches deep, during part of each year the conductivity of saturation extracts less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than fifteen (15).
 5. The soils have a product of K (erodibility factor) X percent slope of less than 2.0 and a product of I (soil erodibility) XC (climate factor) not exceeding sixty.
 6. The soils have a permeability rate of at least 0.06 inch per hour in the upper twenty (20) inches and the mean annual soil temperature at a depth of twenty (20) inches is less than fifty nine (59) degrees Fahrenheit; the permeability rate is not a limiting factor if the mean annual soil temperature is fifty nine (59) degrees Fahrenheit or higher.
 7. Less than ten (10) percent of the surface layer (upper six (6) inches) if these soils consists of rock fragments coarser than three (3) inches.
- D. Identification of Prime Farmland. Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The County also may require data on irrigation, drainage, flood control, and subsurface water management. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) and shall include:
1. Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with subsection C of this regulation.
 2. A map designating the exact location and extent of the prime farmland.
 3. A description of each soil mapping unit.
- E. Plan for Restoration of Prime Farmland. The applicant shall submit to the County a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the County in judging the technological capability of the applicant to restore prime farmlands. The plan shall include:
1. A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored and replaced.
 2. The proposed method and type of equipment to be used for removal, storage and replacement of the soil in accordance with this regulation.
 3. The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.

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4. If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that support the use of other suitable material, instead of the A, B or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and
 5. Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation until such time that revegetation is completely established as determined by the County.
 6. Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation will achieve within a reasonable length of time, equivalent or higher levels of yield after mining as existed before mining.
- F. Consultation with Secretary of Agriculture and Issuance of Permits.
1. The County may grant a permit which shall incorporate the plan submitted under Subsection E of this regulation if the County finds in writing that the applicant:
 - (a) Has the technological capability to restore prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and
 - (b) Will achieve compliance with the standards established by this regulation.
 2. Before any permit is issued for areas that include prime farmlands, the County shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through the State Conservationist.
- G. Prime Farmland: Special Requirements. Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:
1. Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Subsection H and in a manner that prevents mixing or contaminating these materials with undesirable materials. Where removal of soil materials results in erosion that may cause air and water pollution, the regulatory authority shall specify methods to control erosion of exposed overburden.
 2. Revegetation success on prime farmlands shall be measured upon the basis of a comparison of actual crop production from the disturbed area, compared to the predetermined target level of crop production approved by the County in the permit.
- H. Prime Farmland: Soil Removal.
1. Surface coal mining and reclamation operations on prime farmland shall be conducted to:
 - (a) Separately remove the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining.

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- (b) Separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining.
 - (c) Separately remove the underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon. When replaced, these combinations shall be equal to, or more favorable for plant growth than, the B horizon.
 2. The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Subsection J.
- I. Prime Farmland: Soil Stockpiling.

If not utilized immediately, the A horizon or other suitable soil materials specified in Subsection H.1.a. and the B horizon or other suitable soil materials specified in Subsections H.1.b and H.1.c. shall be stored separately from each other and from spoil. These stockpile shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than 30 days shall meet the requirements of 30 CRF 816.23 or 817.23.
- J. Prime Farmland: Soil Replacement. Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:
 1. The minimum depth of soil and soil material to be reconstructed for prime farmland shall be 48 inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The County shall specify a depth greater than 48 inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots or plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.
 2. Replace soil material only on land which has been first returned to final grade and scarified, unless site specific evidence is provided and approved by the County showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.
 3. Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction. Compaction shall be considered excessive if, on more than 10 percent of the replacement area, any layer of reconstructed soil has a moist bulk density of 0.1 gram per cubic centimeter more than the values stated in the approved permit application for the equivalent layer of the undisturbed soil.
 4. Replace the B horizon or other suitable material specified in Subsection H.1.b. or H.1.c. to the thickness needed to meet the requirements of paragraph 1 of this subsection.
 5. Replace the A horizon or other suitable soil materials specified in Subsection H.1.a. as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.
 6. Apply nutrients and soil amendments as needed to quickly establish vegetation growth.

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K. Prime Farmland: Revegetation.

1. Following soil replacement the applicant shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the County and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 30 CRF 816.113 - 816.114 or 817.113 - 817.114 shall be met.
2. Within a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading any portion of the permit area which is prime farmland must be used for crops commonly grown, such as corn, soybeans, grain, hay, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. The crops may be grown in rotation with hay or pasture crops as defined for cropland. The County may approve a crop use of perennial plants for hay, where this is a common long term use of prime farmland soils in the surrounding area. The level of management shall be equivalent to that on which the target yields are based.
3. Measurement of success in prime farmland revegetation will be determined based upon the techniques approved in the permit by the County. As a minimum the following standards shall be met:
 - (a) Average annual crop production shall be determined based upon a minimum of 3 years data. Crop production shall be measured by the three years immediately prior to release of bond.
 - (b) Adjustment for weather induced variability in the annual mean crop production may be permitted by the County.
 - (c) Revegetation on prime farmland shall be considered a success when the adjusted 3 year average annual crop production is equivalent to, or higher than, the predetermined target level of crop production specified in the permit.

L. Prime Farmland: Release of Bond.

1. Upon completion of backfilling and grading operations, as specified in Section 27.04 (I) (1), the permittee may submit to the County a report and request for partial release of the bond for the area.
2. Upon verification of the report and request, the County shall partially release to the permittee the bond which was posted for that area in an amount not to exceed fifty (50) percent of the total bond posted for that area except that the amount of bond retained shall not be less than \$5,000 per acre or fraction thereof.
3. Upon completion of revegetation requirement in accordance with Subsection (K) above, the permittee may submit a report and request for release of the remaining bond. The report shall demonstrate to the satisfaction of the County that the requirements of this Article have been met with regard to revegetation of prime farmland.

ARTICLE XXVIII

HENDERSON CITY COUNTY AIRPORT HEIGHT RESTRICTION REGULATIONS

SECTION 28.01	Statement of Purpose
SECTION 28.02	Definitions
SECTION 28.03	Airport Zones
SECTION 28.04	Airport Zone Height limitations
SECTION 28.05	Use Restrictions
SECTION 28.06	Nonconforming uses
SECTION 28.07	Permits

Sec. 28.01. Statement of purpose.

This article is intended to promote the use and development of land in a manner that is compatible with the continued operation and utility of the Henderson City-County Airport so as to protect the public investment in and benefit provided by the facility to the region. The article also protects the public health, safety, convenience and general welfare of citizens who utilize the facility or live and work in the vicinity by preventing the creation or establishment of obstructions or incompatible land uses that are hazardous to the airport's operation or public welfare. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the Henderson City-County Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums for the Henderson City-County Airport; and maneuvering of aircraft, thus tending to destroy or impair the utility of the Henderson City-County Airport and the public investment therein. Accordingly, it is declared:

- (a) That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by Henderson City-County Airport.
- (b) That it is necessary in the interest of the health, safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented.
- (c) That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.
- (d) It is further declared that the prevention of the creation or establishment of hazards to air navigation; the elimination, removal, alteration or mitigation of hazards to air navigation; or the marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in the land.

Sec. 28.02. Definitions.

Unless otherwise specifically defined in this article or otherwise clearly indicated by their context, terms in this article shall be defined as follows:

Airport: Henderson City-County Airport.

Airport elevation: The highest point of an airport's usable landing area measured in feet from sea level.

Approach surface: A surface longitudinally centered on the extended runway center line, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 28.04 of this article. In plan the perimeter of the approach coincides with the perimeter of the approach zone.

Approach, transitional, horizontal, and conical zones: These zones are set forth in Section 28.03 of this article.

Conical surface: A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of four thousand (4,000) feet.

Hazard to air navigation: An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Height: For the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

Heliport primary surface: The area of the primary surface coincides in size and shape with the designated takeoff and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.

Horizontal surface: A horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

Larger than utility runway: A runway that is constructed for and intended to be used by propeller driven aircraft of greater than twelve thousand five hundred (12,500) pounds maximum gross weight and jet powered aircraft.

Nonconforming use: Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this article or an amendment thereto.

Nonprecision instrument runway: A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

Obstruction: Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 28.04 of this article.

Precision instrument runway: A runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

Primary Surface: A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface exceed 200 feet beyond each end of the runway; for military runways when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at the end of the runway. The width of the primary surface is set forth in Section 28.03; Airport Zones of this Article. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

Runway: A defined area on an airport prepared for landing and take-off of aircraft along its length.

Structure: An object including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

Transitional Surface: These surfaces extend outward at a ninety (90) degree angle to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at ninety (90) degree angles to the extended runway centerlines.

Tree: Any object of natural growth.

Utility Runway: A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

Visual Runway: A runway intended solely for the operation of aircraft using visual approach procedures.

Sec. 28.03. Airport zones.

In order to carry out the provisions of this article, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Henderson City-County Airport Zoning Map consisting of the Henderson City-County Airport Airspace Plan and Land Use Plan Sheets. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

- (a) Utility runway visual approach zone: The inner edge of this approach zone coincides with the width of the primary surface and is two hundred fifty (250) feet wide. The approach zone expands outward uniformly to a width of one thousand two hundred fifty (1,250) feet at a horizontal distance of five thousand (5,000) feet from the primary surface. Its center line is the continuation of the center line of the runway.
- (b) Utility runway nonprecision instrument approach zone: The inner edge of this approach zone coincides with the width of the primary surface and is five hundred (500) feet wide. The approach zone expands outward uniformly to a width of two thousand (2,000) feet at a horizontal distance of five thousand (5,000) feet from the primary surface. Its center line is the continuation of the center line of the runway.
- (c) Runway larger than utility visual approach zone: The inner edge of this approach zone coincides with the width of the primary surface and is five hundred (500) feet wide. The approach zone expands outward uniformly to a width of one thousand five hundred (1,500) feet at a horizontal distance of five thousand (5,000) feet from the primary surface. Its center line is the continuation of the center line of the runway.
- (d) Runway larger than utility with visibility minimum greater than three-fourths of mile nonprecision instrument approach zone: The inner edge of this approach zone coincides with the width of the primary surface and is five hundred (500) feet wide. The approach zone expands outward uniformly to a width of three thousand five hundred (3,500) feet at a horizontal distance of ten thousand (10,000) feet from the primary surface. Its center line is the continuation of the center line of the runway.

(e) Runway larger than utility with visibility minimum as low as three-fourths of mile nonprecision instrument approach zone: The inner edge of this approach zone coincides with the width of the primary surface and is one thousand (1,000) feet wide. The approach zone expands outward uniformly to a width of four thousand (4,000) feet at a horizontal distance of ten thousand (10,000) feet from the primary surface. Its center line is the continuation of the center line of the runway.

(f) Precision instrument runway approach zone: The inner edge of this approach zone coincides with the width of the primary surface and is one thousand (1,000) feet wide. The approach zone expands outward uniformly to a width of sixteen thousand (16,000) feet at a horizontal distance of five thousand (5,000) feet from the primary surface. Its center line is the continuation of the center line of the runway.

(g) Heliport approach zone: The inner edge of this approach zone coincides with the width of the primary surface and is fifty (50) feet wide. The approach zone expands outward uniformly to a width of five hundred (500) feet at a horizontal distance of four thousand (4,000) feet from the primary surface.

(h) Primary Surface: A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface exceed 200 feet beyond each end of the runway; for military runways when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at the end of the runway. The width of the primary surface is set forth in Section 28.03: Airport Zones of this Article. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

(i) Transitional zones: The transitional zones are the areas beneath the transitional surfaces.

(j) Heliport transitional zones: These zones extend outward from the sides of the primary surface and the heliport approach zones, a distance of two hundred fifty (250) feet from the primary surface center line and the heliport approach zone center line.

(k) Horizontal zone: The horizontal zone is established by swinging arcs of ten thousand (10,000) feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

(l) Conical zone: The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of four thousand (4,000) feet.

(m) Navigable airspace zone: That airspace which begins at ground level and overlies all of Henderson City and the county.

Sec. 28.04. - Airport zone height limitations.

Except as otherwise provided in this article, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this article to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

(a) *Utility runway visual approach zone:* Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand (5,000) feet along the extended runway center line.

(b) *Utility runway nonprecision instrument approach zone:* Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand (5,000) feet along the extended runway center line.

(c) *Runway larger than utility visual approach zone:* Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand (5,000) feet along the extended runway center line.

(d) *Runway larger than utility with visibility minimum greater than three-fourths of mile nonprecision instrument approach zone:* Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway center line.

(e) *Runway larger than utility with a visibility minimum as low as three-fourths of mile precision instrument approach zone:* Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway center line.

(f) *Precision instrument runway approach zone:* Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway center line; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of forty thousand (40,000) feet along the extended runway center line.

(g) *Heliport approach zone:* Slopes eight (8) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a distance of four thousand (4,000) feet along the heliport approach zone center line.

(h) *Transitional zone:* Slopes seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of one hundred fifty (150) feet above the airport elevation which is three hundred eighty-six (386) feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward

beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending a horizontal distance of five thousand (5,000) feet measured at ninety-degree angles to the extended runway center line.

(i) *Heliport transitional zone:* Slopes two (2) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the heliport approach zones and extending a distance of two hundred fifty (250) feet measured horizontally from and at ninety-degree angles to the primary surface center line and heliport approach zones center line.

(j) *Horizontal zone:* Established at one hundred fifty (150) feet above the airport elevation or at a height of five hundred thirty-six (536) feet above mean sea level.

(k) *Conical zone:* Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at one hundred fifty (150) feet above the airport elevation and extending to a height of three hundred fifty (350) feet above the airport elevation.

(l) *Navigable airspace zone:* Established at two hundred (200) feet above ground level (AGL) at all points in the county except those encompassed by other airport zones defined herein.

(m) *Excepted height limitations:* Nothing in this article shall be construed as prohibiting the construction or maintenance of any structure or growth of any tree to a height up to fifty (50) feet above the surface of the land.

Sec. 28.05. - Use restrictions.

Notwithstanding any other provisions of this article, no use may be made of land or water within any zone established by this article in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, maneuvering of aircraft intending to use the airport.

Sec. 28.06. - Nonconforming uses.

(a) *Regulations not retroactive.* The regulations prescribed by this article shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this article, or otherwise interfere with the continuance of nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this article, and is diligently prosecuted.

(b) *Marking and lighting.* Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Commissioner, Department of Aviation, Kentucky Transportation Cabinet and the Kentucky Airport Zoning Commission, to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the Henderson City-County Air Board, the Kentucky Transportation Cabinet and the Aviation Administration, jointly or severally.

Sec. 28.07. - Permits.

(a) *Future uses.* Except as specifically provided in the subsections hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefor shall have been applied for and granted by the Board of Zoning Adjustment and the Kentucky Airport Zoning Commission. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this article shall be granted unless a variance has been approved as provided herein.

(1) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

(2) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than four thousand two hundred (4,200) feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

(3) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

(4) In areas lying outside other airport zones but within navigable airspace, no permit shall be required for the establishment of structures which extend less than two hundred (200) feet in height above the ground.

(5) Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this except as set forth in Section 28.04

(b) *Existing uses.* No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this article or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

(c) *Nonconforming uses abandoned or destroyed.* Whenever the enforcement officer determines that a nonconforming tree or structure has been abandoned or more than eighty (80) percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

(d) *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any street, or use property, not in accordance with the regulations prescribed in this article, may apply to the board of zoning adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration and Kentucky Airport Zoning Commission as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this article. Additionally, no application for variance to the requirements of this article may be considered by the board of adjustment unless a copy of the application has been furnished to the Henderson City-County Air Board for advice as to the aeronautical effects of the variance. If the Henderson City-County Air Board does not respond to the application within fifteen (15) days after receipt, the board of zoning adjustment may act on its own to grant or deny said application.

(e) *Obstruction marking and lighting.* Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this article and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the board of zoning adjustment, this condition may be modified to require the owner to permit the Henderson City-County Air Board at its own expense, to install, operate, and maintain the necessary markings and lights.

(f) *Air board review.* No permit shall be granted for any structure subject to this article prior to the review of the application for permit by the Henderson City-County Air Board and Kentucky Airport Zoning Commission as provided for herein. All such applications shall be submitted to the air board by the Executive Director of the Henderson City-County Planning Commission within five (5) days of receipt of the application from the applicant. The air board shall have fifteen (15) days thereafter to review/comment upon the application. Any negative comments shall be submitted in writing to the Executive Director, Henderson City-County Planning Commission.

ARTICLE XXIX

HENDERSON COUNTY CELLULAR ANTENNA TOWERS REGULATIONS

SECTION 29.01	Statement of Purpose
SECTION 29.02	Definitions
SECTION 29.03	Where Permitted
SECTION 29.04	Uniform Application Requirements
SECTION 29.05	Design Standards
SECTION 29.06	Planning Commission Action
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ARTICLE XXIX. REGULATION OF CELLULAR ANTENNA TOWERS

Section 29.01. Purpose.

The purpose 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.

Section 29.02. Definitions.

- A. *Alternative Cellular Antenna Tower* - means man-made trees, clock towers, bell towers, steeples, light poles and similar alternative-design mounting structures that accommodate, camouflage, minimize or conceal the presence of cellular antennas or cellular antenna towers and that are constructed primarily for the purpose of accommodating cellular antennas or cellular antenna towers or are reconstructed for the purpose of accommodating cellular antennas or cellular antenna towers. This does not include existing structures erected for another primary purpose, but which subsequently have cellular antennas attached to or located within them, without any reconstruction of the original structure. For the provisions of these regulations, an alternative cellular antenna tower is considered a cellular antenna tower.
- B. *Antennas or Related Equipment* - means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.
- C. *Cellular Antenna, Rooftop* - Any exterior transmitting or receiving device mounted on, or attached to, the rooftop of a building through gravity mounts or other surface attachments used for wireless or other telecommunication signals; integrated into the natural rooftop profile of a building so that it resembles a permissible rooftop structure, such as a ventilator, cooling equipment, solar equipment, water tank, chimney or parapet.
- D. *Cellular Antenna Tower* - means 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.
- E. *Cellular Antenna Tower Height* - The distance from the anchored base of the tower, whether on the top of another building or at grade, to the highest point of the antenna structure.
- F. *Cellular Equipment Cabinet* - A cabinet designed to house radio equipment, similar in size to a traffic signal cabinet, not designed for human occupancy. Any maintenance to radio equipment can only be done from outside the cabinet, as opposed to a larger sized equipment shelter that can be totally accessed by service personnel.
- G. *Cellular Telecommunications Service* - means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.
- H. *Cellular Telephone Transmitting Facility, Temporary* - Any system of wires, poles, rods, reflecting disks, or similar devices used for the transmission or reception of electromagnetic waves, not meeting the definition of a "structure" as defined by this Zoning Ordinance. Temporary facilities shall be subject to issuance of a locational permit from the Division of Planning prior to being located on a property.
- I. *Co-location* - means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.

- J. *Environmentally Sensitive Areas*- means significant wildlife habitat and migration corridors, unique vegetation and critical plant communities, and ridge lines.
- K. *Geologic Hazards*- means unstable or potentially unstable slopes, undermining, faulting, landslides, rock falls, flood, wildfire, or similar naturally occurring dangerous features or soil conditions or natural features unfavorable to development
- L. *Guyed Cellular Antenna Tower* - means a type of wireless transmission tower that is supported by thin guy wires.
- M. *Lattice Cellular Antenna Tower* - means a self- supporting tower with multiple legs and cross bracing of structural steel.
- N. *Monopole Cellular Antenna Tower* - means a slender self-supporting tower on which wireless antenna can be placed.
- O. *Personal Communication Service* - has the meaning as defined in 47 U.S.C. sec. 332(c).
- P. *Search Ring* - The necessary search area within which a site for a cellular antenna tower should, pursuant to radio frequency requirements, be located.
- Q. *Uniform Application* - means an application to construct a cellular antenna tower submitted to the planning commission in conformity with KRS 100.985 through KRS 100.987.
- R. *Utility* - has the meaning as defined in KRS 278.010(3).

Section 29.03. Where Permitted.

- A. To the greatest extent feasible, applicants are encouraged to consider properties owned by the local government for the location of cellular towers. Whenever possible, cellular antenna towers, whether temporary or permanent, shall be sited at locations that minimize their adverse effect on residential uses in the immediate area. Only when no other adequate site is available shall a cellular antenna tower be permitted in a residential zone, unless located on a property not used or intended for residential purposes. In accordance with the procedures established by this Article, cellular antenna towers may be permitted in any zone when approved by the Planning Commission, with the following exceptions:
 1. No cellular antenna tower shall be constructed on land that is environmentally sensitive or a geologic hazard area as delineated in the Henderson City-County Comprehensive plan and the definitions herein, unless the tower has received approval or necessary permits from the appropriate state or federal governmental regulatory agency charged with permitting activities in these areas.
 2. No cellular antenna tower shall be located along a Scenic Byway, as designated by the State of Kentucky, so as to have a negative impact on the scenic qualities of the roadway and the views from the roadway. When approved by the Planning Commission, any wireless communication facility proposed to be located along a state and/or federally designated Scenic Byway, or within a Scenic View Corridor, shall be located on an existing tower structure or utility pole, or shall be designed as an alternative tower, as described in Section 29.02. Any tower or antenna that is not an alternative tower design shall be designed to blend into the surrounding environment through the use of color and/or other camouflaging architectural treatments, except in instances where color is dictated by

federal or state authorities, such as the Federal Aviation Administration. In addition, the base of the tower and any supporting equipment shall be located either three hundred (300) feet from the right-of-way, or beyond the view shed of the designated Scenic Byway; whichever is greater.

Section 29.04 Uniform Application Requirements.

Cellular antenna towers for cellular telecommunications services or personal communications services may be allowed in any zone 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. *Applicability.* Every utility, or company that is engaged in the business of providing the required infrastructure to a utility, that proposes to construct a cellular antenna tower shall submit a completed uniform application to the Planning Commission. Where the Planning Commission finds that circumstances or conditions relating to the application of an alternative cellular antenna tower are such that one or more of the requirements of the uniform application 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 of the uniform application, 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. The Planning Commission shall not regulate the placement of antennas or related equipment on an existing structure.

B. *Uniform Application Requirements.* Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall include the following:

1. The full name and address of the applicant.
2. The applicant's articles of incorporation, if applicable.
3. A geotechnical investigation report signed and sealed by a professional engineer registered in Kentucky that includes boring logs and foundation design recommendations.
4. A written report, prepared by a professional engineer or land surveyor registered in Kentucky, of findings as to the proximity of the proposed site to flood hazard areas.
5. The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the County Clerk, an applicant may file a copy of the agreement as recorded by the County Clerk and, if applicable, the portion of the agreement that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.
6. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.
7. A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system.

8. A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas.
9. The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky.
10. A map, drawn to a scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower.
11. A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:
 - (a) Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction.
 - (b) Given the telephone number and address of the local planning commission; and
 - (c) Informed of his or her right to participate in the planning commission's proceedings on the application.
12. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.
13. A copy of the notice, that the Chief Executive Officer of the affected local government and the legislative body (i.e., City Manager, Board of Commissioners of the City of Henderson; County Judge-Executive, Henderson County Fiscal Court; Mayor of Corydon) have been notified, in writing, of the proposed construction.
14. A statement that the Henderson City-County Airport has been notified, in writing, of the proposed construction and a copy of the notification.
15. A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities.
16. A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.
17. A grid map that shows the location of towers or other structures (including buildings) located within the search ring for the subject facility and which are capable of its support within an area that includes:
 - a. All of the planning unit's jurisdiction (Henderson County, Kentucky); and
 - b. A one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers.
 - c. Confidentiality of Application. All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The Planning Commission shall deny any public request for the inspection of this

information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030. The confidentiality of the applications and any updates of the application can be waived by the written authorization of the applicant.

- C. *Application Fee.*** An applicant for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall pay an application fee in the amount set by the Planning Commission upon submission of a Uniform Application.
- D. *Processing of Application.*** Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall be processed as follows:

1. 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, in the highest circulation newspaper in the City-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. A public notice sign will also be placed on the property by the Planning Commission.

2. Notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, to the owner of every parcel of property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed. Records maintained by the Property Valuation Administrator may be relied upon conclusively to determine the identity and address of said owner. In the event a 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 that administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the Property Valuation Administrator's records as having the same address.

3. Upon holding the 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. If the Planning Commission fails to issue a final decision within sixty (60) days, and if there is no written agreement between the Planning Commission and the utility to a specific date for the Planning Commission to issue a decision, it shall be presumed that the Planning Commission has approved the utility's Uniform Application.

Section 29.05 Design Standards.

Applicant shall provide information demonstrating compliance with the requirements contained herein. Potential sites that should be considered (in order from most-preferred to least-preferred) include street right-of-way, existing utility towers, industrial zones, commercial zones, and government buildings. Where the Planning Commission 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.

- A. *Monopole Cellular Antenna Towers*** - Shall be permitted in any zone. Lattice and guyed cellular antenna towers shall be permitted in any zone except for residential zones.

- B. *Lattice and Guyed Cellular Antenna Towers Distance from Residential Buildings* - Constructed in an agricultural zone shall be located a minimum distance of not less than 250 feet from all existing residential structures. Distance shall be measured from the base of the tower to the nearest wall of the residential structure.
- C. *Setbacks* - For all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least one-half (1/2) the height of the tower, but not less than fifty (50) feet. All structures constructed in connection with monopole or alternative cellular antenna tower shall comply with the applicable setback requirements established for other structures within the applicable zoning district. Alternative cellular antenna towers that are to be located as part of a utility service facility (e.g. power pole or telephone pole) shall comply with setback requirements applicable to such utility service facilities, if any.
- D. *Height* - 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 herein Section 29.05.
- E. *Construction* - the cellular antenna tower shall be constructed in compliance with the current ANSI/EIA/TIA 222-F standards and other applicable state standards.
- F. *Illumination* - Cellular antenna towers shall not be illuminated, except in accordance with other state or federal regulations.
- G. *Site Unstaffed* - Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall be only from approved access points.
- H. *Fencing* - 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 more than eight (8) feet in height, and may be located within the front, side, or rear yard. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential or MHP zones.
- I. *Screening* - 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 setback.
- J. *Access Drives* - Surfacing of all driveways and off-street parking areas shall comply with the requirements of the applicable local zoning ordinance; the Planning Commission may allow gravel access drives in cases where it is determined there is a hardship or other mitigating circumstances.
- K. *Signs* - There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs that are required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.
- L. *Number of Service Providers* - All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers.

- M. *Lease Agreements* - All option and site lease agreements shall not prohibit the possibility of co-location, and in the case of abandonment, shall include a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.
- N. *Approval of Federal Aviation Administration and the Kentucky Airport Zoning Commission* - Required; or documentation where approval is not required shall be submitted prior to the issuance of a building permit for the construction of the cellular antenna tower.
- O. *Mitigating Design Standards for Cellular Antenna Towers in Residential Zones* - When no adequate alternate site for a cellular antenna tower is available, a site in a residential zone may be permitted. The Planning Commission shall consider the following mitigating design standards and may reduce or modify these standards in cases where it can be demonstrated that there is extreme hardship:
 - 1. The Planning Commission shall have the power to impose additional landscaping requirements, which may include plantings, trees, and fencing designed to complement the character of the landscaping in the surrounding residential area.
 - 2. Design and materials to be used in the accessory building or buildings may be required to be submitted to the Planning Commission for review and approval.
 - 3. Asphalt or other hard-surface paving shall be provided for driveways and parking.
 - 4. A 1:1 height-to-yard ratio shall be required. A reduction in the height-to-yard ratio may be permitted if no other location for the tower can be found.
 - 5. Monopole or alternative tower design shall be used in any residential zone; and paint colors, such as light gray or light blue, shall be used to minimize any negative visual impact the tower or antenna may have on adjoining properties. The tower must be maintained on a regular basis by the owner of the facility in order to ensure that it continues to have a minimal visual impact on the surrounding area.

Section 29.06. Planning Commission Action.

The Planning Commission shall have the authority to hear and decide requests by an applicant for a cellular antenna tower. The Planning Commission may approve, disapprove, or take no action on the request for a cellular antenna tower. The burden shall be on the applicant to establish the following by a clear preponderance of the evidence:

- 1. The application meets all requirements of the Zoning Ordinance;
- 2. The application is in agreement with the Comprehensive Plan;
- 3. Reasons why the site is appropriate for a cellular antenna tower and why it will not have an adverse effect on the health, safety and welfare of the adjoining area;
- 4. Reasons why the tower will not alter the essential character of the surrounding area;
- 5. Reasons why the applicant has been unsuccessful in its attempts to co-locate on towers designed to host multiple wireless service providers' facilities or other existing structures, such as a telecommunication tower or another suitable structure capable of supporting the applicant's facilities.

6. The Planning Commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that the proposed facility complies with the regulations of the Federal Communications Commission concerning radio frequency emissions.

Section 29.07. 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 Section 29.04, subject to the same limitations and requirements as those under which such plans were originally approved.