

## CHAPTER 155: PLANNING AND ZONING

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***GENERAL PROVISIONS***

**§ 155.001 AUTHORITY.**

Zoning authority is granted by the Kentucky Revised Statutes, Chapter 100, as it may have been or be amended.

(Ord. 12-11-1, passed 11-19-12)

**§ 155.002 TITLE.**

This chapter is entitled “Zoning Ordinance for Benton, Kentucky,” and may be Referred to as the “Zoning Ordinance”. The zoning map referred to herein is entitled “Zoning Map of Benton, Kentucky”, and may be referred to as the “zoning map”. The zoning map is hereby made a part of this chapter and certified copies of the ordinance are on file with the Benton Planning Commission, Benton City Clerk and the Marshall County Court Clerk.

(Ord. 12-11-1, passed 11-19-12)

**§ 155.003 PURPOSE.**

The intent, purpose and scope of this chapter is to promote and protect public Health, safety, morals and general welfare of the City of Benton by establishing zoning districts and regulations that facilitate orderly, planned and harmonious development and the visual and historical character of Benton consistent with KRS Chapter 100 and the City of Benton Comprehensive Plan of 2008, as it may be amended or superseded. In establishing zoning districts and regulations, this chapter seeks the public welfare by regulating the density and intensity of populations and land use in order to provide for adequate light, air and safety, to facilitate fire and police protection; to prevent blight, overcrowding of land, and the danger and congestion in the circulation of people and commodities; to provide for adequate vehicle parking and loading space; and to prevent the loss of life, health or property from fire,

flood or other similar dangers. (Other ordinances of the City of Benton, including the Flood Damage Prevention Ordinance, adopted on second reading on March 21, 2011, are also applicable to flood-related issues).

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.004 GOALS.**

Goals of the Zoning Ordinance are to attain a coordinated and compatible land use arrangement which will promote the health, safety and welfare of the citizens of Benton, to establish desirable land use policies and regulations which will facilitate land utilization and attain the most desirable and best use of the resources available to the residents of Benton; and to attain the maximum coordination and integration of the various land uses so that they can be conveniently and efficiently serviced by community services, facilities and public streets.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.005 BENEFITS.**

The most obvious and direct benefit to be derived from the use and application of the Zoning Ordinance will be the attainment of a logical, convenient and workable relationship between the various land uses and the prevention of crowding, congestion and undue mixing of incompatible land uses. The Zoning Ordinance will benefit all the residents of Benton by providing them the legal means to achieve a desirable and compatible land use pattern that facilitates their everyday existence and promotes their health, safety and general welfare.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.006 DEFINITIONS.**

Unless the context otherwise requires, the following definitions shall be used in the interpretation of this chapter. The words that are defined are those having special or limited meanings in this chapter. Words with self-evident meanings are not defined here.

**ACCESSORY USES, ACCESSORY BUILDINGS, OR ACCESSORY STRUCTURES.** Accessory uses, accessory buildings, or accessory structures are subordinate to the principal use of the land or building or structure, are located on the same lot, and serve a purpose that is customarily incidental to the principal land use or principal building use. See § 155.035(F) for key regulatory provisions applicable to **ACCESSORY USES, ACCESSORY BUILDINGS, AND ACCESSORY STRUCTURES**, including, but not limited to, storage sheds and outbuildings.

**ADMINISTRATIVE OFFICER.** That individual or individuals who shall be appointed by the legislative body of Benton to administer this chapter. This officer may be known as the Building



Inspector, Codes Enforcement Officer, Codes Administrator, Administrative Officer or various other titles descriptive of his or her work.

**ALLEY.** Any public or private way affording a secondary means of vehicular access to abutting property and not intended for general traffic circulation.

**ALTERATION.** Any change or addition to the supporting members or foundation of a structure.

**APARTMENT.** A room or suite of rooms in a multi-family building, consisting of at least one habitable room, together with a kitchen or kitchenette and sanitary facilities.

**APARTMENT HOUSE.** See **DWELLING, MULTI-FAMILY.**

**ASSISTED LIVING FACILITY.** See § 155.069

**AUTOMOTIVE REPAIR, MAJOR.** Repair of motor vehicles or trailers, including rebuilding or reconditioning of engines and/or transmissions; collision services including body, frame or fender straightening or repair; overall painting or paint shop and vehicle steam cleaning.



**AUTOMOTIVE REPAIR, MINOR.** Incidental minor repairs, oil or other fluid change, upholstery, replacement of parts and motor service to passenger cars and trucks not exceeding one and one-half tons capacity, but not including any operation named under "Automotive Repair, Major", or any other similar thereto. Cars or trucks being repaired or under repair shall not be stored outside the building for more than 48 hours.

**AUTOMOTIVE WRECKING.** The dismantling or disassembling of used motor vehicles, or the storage, sale or dumping of dismantled, obsolete or wrecked vehicles or their parts.

**BASEMENT.** A story whose floor line is below grade at any entrance or exit and whose ceiling is not more than five feet above grades at any such entrance or exit.

**BIG BOX SERVICE BUILDINGS.** New retail and commercial service buildings in excess of 20,000 gross square feet in any non-residential zoning district.

**BOARD.** The Board of Zoning Adjustment of Benton, Kentucky.

**BOARDING OR LODGING HOUSE.** A dwelling or part thereof occupied by a single housekeeping unit where meals and lodgings are provided for four or more persons (not transients) for compensation by previous arrangement.

**BUILDABLE LOT AREA.** The part of a lot not included within the open areas required by this chapter.

**BUILDING.** Any structure having enclosed space and a roof used or intended to be used for the shelter of persons, animals or property.

**BUILDING, HEIGHT OF.** The vertical distance from the average contact ground level at the front wall of the building to the highest point of the copying of a flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip or gambrel roofs.

**BUILDING LINES.** The line beyond which no building or part thereof shall project, except as otherwise provided by this chapter.

**BUILDING PERMIT.** A permit issued by the Administrative Officer authorizing the construction or alteration of a specific building on a specific lot.

**CANNABIS CULTIVATOR.** An entity licensed by the State of Kentucky pursuant to the Kentucky Revised Statutes and 915 KAR 1:030 to plant, grow, cultivate, raise, harvest, trim, store, test, package, label, transfer, transport, sell medical cannabis seed, seedlings, medical plant, medical cannabis, or medicinal cannabis product to other license cannabis business in the state.

***CANNABIS DISPENSARY.*** An entity licensed by the State of Kentucky pursuant to the Kentucky Revised Statutes and 915 KAR 1:070 to perform retail sales of medical cannabis to registered qualified patient or visiting qualified patient as defined by Kentucky Revised Statutes and corresponding regulations.

***CANNABIS PROCESSOR.*** An entity licensed by the State of Kentucky pursuant to the Kentucky Revised Statutes and 915 KAR 1:040 to process and/or package raw medical cannabis plants material or plants into approved forms of medical cannabis under Kentucky Revised Statutes and regulations.

***CANNABIS PRODUCER.*** An entity licensed by the State of Kentucky pursuant to the Kentucky Revised Statutes and 915 KAR 1:050 which operates as both a cannabis cultivator and processor.

***CERTIFICATE OF OCCUPANCY.*** A certificate issued by the Building Inspector, after construction has taken place, which certified that the building meets minimum standards for human occupancy.

***CLINIC.*** A place used for the diagnosis and treatment of sick, ailing, infirm and injured persons and those who are in need of medical or surgical attention, but limited to outpatients only.

***COMMISSION, PLANNING.*** City Planning Commission of Benton, Kentucky.

***COMPREHENSIVE PLAN.*** The 2008 Comprehensive Plan of the City of Benton, Kentucky as it may be amended or superseded.

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

***CONDITIONAL USE PERMIT.*** Legal authorization to undertake a conditional use, issued by the Board of Zoning Adjustment, pursuant to KRS 100.237, as amended, consisting of two parts.

(1) A statement of the factual determination by the Board of Zoning Adjustment, which justified the issuance of the permit; and

(2) A statement of the specific conditions which must be met in order for the use to be permitted.

***CONVALESCENT OR NURSING HOME OR LONG-TERM CARE FACILITY [DISTINGUISHED FROM ASSISTED-LIVING COMMUNITY.*** A convalescent or nursing home or long-term care facility is a long-term care facility as defined by KRS 216.510, as now in effect or

hereinafter amended, and means those health-care facilities in the Commonwealth of Kentucky which are defined by the Cabinet for Health and Family Services to be family-care homes, personal-care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in federal Omnibus Budget Reconciliation Act of 1987 (OBRA- 87), Title IV, Subtitle C, §§ 4201-4218, 101 Stat. 1330-160 through 1330-221 (December 22, 1987), Pub. L. 100-203, nursing homes, and intermediate-care facilities for the mentally-retarded and developmentally disabled. A hospital or sanitarium shall not be construed to be included in this definition. A **CONVALESCENT OR NURSING HOME OR LONG-TERM CARE FACILITY** is not an assisted-living community for purposes of this Zoning Ordinance or KRS 194A.700 through 194A.729, as now in effect or as it may be amended.

**COUNCIL, CITY.** Legislative body for the City of Benton, Kentucky.

**COURT.** An open, unoccupied and unobstructed space other than a yard, on the same lot with a building or a group of buildings.

**DWELLING.** A building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, but not including a tent, cabin, boarding or rooming house, shed, pole barn, metal building typically designed for equipment, tool and/or vehicular storage, hotel or motel.

(1) **DWELLING GROUP.** A group or two or more detached dwellings located on a parcel of land in one ownership and having any yard or court in common.

(2) **DWELLING, MULTI-FAMILY.** A building or portion thereof designed for or occupied by two or more families living independently of each other.

(3) **DWELLING, SINGLE-FAMILY.** A building for or occupied exclusively for residence purposes by one family.

(4) **DWELLING UNIT.** One or more rooms designed for or used by one family for living or sleeping purposes and having one kitchen or kitchenette.

(5) **DUPLEX DWELLING.** A building containing two single-family dwelling units totally separated from each other by an unpierced wall extending from basement or foundation to roof.

**EXTENDED STAY HOTEL.** Any hotel or motel in which 40% or greater of all guest rooms have facilities for both the storage, refrigeration, and preparation of food, and/or which are advertised, designed, or utilized for weekly, monthly, or longer occupancy. **EXTENDED STAY HOTELS** are regulated specifically by § 155.070.

**FAMILY.** A person living alone or two or more persons related by blood, marriage or adoption, or not more than five unrelated persons living together in a dwelling unit, as distinguished from a group occupying a boarding house, lodging house, hotel or motel. **FAMILY** does not include any society, club, fraternity, sorority, association, lodge, federation, or like organizations; or any group of individuals who

are in a group living arrangement as a result of criminal offenses. **FAMILY** also represents an intentionally structured relationship and implies a permanent and long-term voluntary relationship as opposed to one that is short-term, transient and mandated by law.

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

**GARAGE, PRIVATE.** A detached accessory building or a portion of the principal building used by the occupants of the premises for the shelter or storage of vehicles owned or operated by the occupants of the principal building.

**GARAGE, PUBLIC.** A building or structure used for the parking of vehicles on an intended profit basis.

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

**HOME OCCUPATIONS.** An occupation or profession carried on within a dwelling by the occupant thereof which is clearly incidental and secondary to the use of the dwelling for residential purposes.

**HOSPITAL OR SANITARIUM.** An establishment which provides accommodation, facilities and services over a continuous period of 24 hours or more for observation, diagnosis and care of two or more individuals suffering from illness, injury, deformity or abnormality or from any condition requiring medical services.

**IMPACT FEE FOR INFRASTRUCTURE COSTS ("IFIC").** See § 155.077.

**INDUSTRY, HEAVY.** Those industries whose processing of products result in the emission of any atmospheric pollutant, light flashes or glare, odor, noise or vibration which may be heard and/or felt off the premises and those industries which constitute a fire or explosion hazard.

**INDUSTRY, LIGHT.** Those industries who's processing of products results in none of the conditions described for heavy industry.

**JUNK YARD.** A place where junk, waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled including auto wrecking yards, house wrecking for storage of salvaged house wrecking and structural steel materials and equipment; but not including such uses when conducted entirely within a completely enclosed building, and not including pawn shops, and establishments for the sale, purchase or storage of used furniture and household equipment, used cars in operable condition, used or salvaged machinery in operable condition or the processing of used, discarded or salvaged materials as a minor part of manufacturing operations.

**KENNEL, NONCOMMERCIAL.** A compound in or adjoining a private residence where hunting or other dogs are kept for the hobby of the householder or for protection of the householder's property. The occasional sale of pups by the keeper of a **NONCOMMERCIAL KENNEL** does not change the character of residential property.

**LAND USE PLAN OR COMPREHENSIVE PLAN.** Proposals for most appropriate economic, desirable and feasible patterns for the general location, character, extent, and inter-relationship of the manner in which the community should use its public and private land as contemplated by KRS Chapter 100. The **LAND USE PLAN** is a component of the 2008 **COMPREHENSIVE PLAN** for the City of Benton, Kentucky, as it may be amended or superseded.

**LOADING SPACE.** An off-street space or berth on the same lot with a building or contiguous to a group of buildings and accessory buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts on a street, alley or other appropriate means of access.

**LOT.** A piece or parcel of land occupied or intended to be occupied by a principal building or group of such buildings and accessory buildings, or utilized for a principal use and uses accessory thereto, together with such open spaces as required by this chapter and having frontage on a public street.

**LOT AREA.** The computed area contained within the lot lines.

**LOT, CORNER.** A lot abutting and situated at the intersection of two streets.

**LOT, DEPTH.** The mean horizontal distance between the front and rear lot lines.

**LOT, INTERIOR.** A lot other than the corner lot.

**LOT LINES.** The property lines bounding a lot.

**LOT LINE, FRONT.** The property line separates the lot front and the street.

**LOT LINE, REAR.** The lot line opposite and most distant from the front lot line.

**LOT LINE, SIDE.** Any lot line other than a front or rear lot line. A **SIDE LOT LINE** separating a lot from a street is called a side street lot line. A **SIDE LOT LINE** separating a lot from another lot or lots is called an interior side lot line.

**LOT LINE, STREET OR ALLEY.** A lot line separating the lot from a street or alley.

**LOT, THROUGH.** A lot having frontage on two parallel or approximately parallel streets.

**LOT WIDTH.** The mean width of the lot measured at right angles to its depth.

**LOT OF RECORD.** Recorded lot on file in the County Court Clerk's Office.

**MOBILE HOME OR TRAILER.** Any vehicle or structure constructed in a such a manner as to permit occupancy thereof as sleeping or living quarters and so designed that it is, has been, or may be mounted on wheels and used as a conveyance on highways and streets, propelled or drawn by its own or other motor power.

**MOBILE HOME PARK OR TRAILER PARK.** An area of land upon which two or more occupied mobile homes are placed, either free of charge or for revenue purposes.

**MANUFACTURED HOME.** A single-family residential dwelling constructed after June 15, 1976, in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401 *et seq.*, as amended, and designed to be used as a single-family residential dwelling with or without permanent foundation when connected to the required utilities, and which includes the plumbing, heating, air conditioning and electrical systems contained therein.

**MANUFACTURED HOUSING.** See § 155.051.

**MIXED USE ZONING OVERLAY DISTRICT.** Includes both C-1 Central Business Commercial District and C-2 Neighborhood Commercial District and any other property specifically placed in this zoning district by zoning map amendment. The **MIXED USE ZONING OVERLAY DISTRICT** is the only district in which mixed commercial and residential use of a building with a commercial use on the majority square footage of the first floor and residential use on the second or any higher floor may be approved by conditional use permit pursuant to this Zoning Ordinance. Home occupation uses are governed by separate sections of this Zoning Ordinance and are not required to be undertaken in a Mixed Use Overlay District.

**MIXED USE CONDITIONAL USE PERMIT.** A permit for a specific property to be used for mixed commercial and residential uses based on standards in § 155.071 and other conditions as added by Board of Zoning Adjustment.

**MOTEL OR MOTOR HOTEL.** A series of attached, semi-attached or detached sleeping or living units, for the accommodation of automobile transient guests, said units having convenient access to off-street parking spaces, for the exclusive use of the guests or occupants.

**NONCONFORMING USE.** Subject to the terms of KRS 100.253, as amended, a dwelling, building or structure or any land or premises legally existing and/or used at the time of adoption of this chapter, or any amendment thereto, which does not conform to the use regulations of the district in which located. Any such building, structure, or premises, confirming in respect to use, but not in respect to height, area, yards or courts, or distance requirements from more restricted districts or uses, shall not be considered a nonconforming use.

**PARKING SPACE.** A permanent area not less than 160 square feet either within a structure or in the open, exclusive or driveways or access drives, for the parking of a motor vehicle.



**PATIO HOME.** A detached single family dwelling unit situated on a typically reduced width lot, with a reduced or no side yard setback on one side of the lot to facilitate better overall use of the lot, and to incorporate some aspects of cluster style developments within subdivisions.

**PLANNED DEVELOPMENT PROJECT.**

(1) Any development of land for residential purposes other than a single residential structure and accessory use or structure that is regulated by zoning district regulations shall be defined as a **PLANNED DEVELOPMENT PROJECT**.

(2) Any development of land for industrial purposes other than a single industrial structure and accessory use or structure, to be occupied and used by one industrial firm, that is regulated by zoning district regulations shall be defined as a **PLANNED DEVELOPMENT PROJECT**.

(3) Any development of land for commercial purposes other than a single commercial structure and accessory use or structure, to be occupied and used by one commercial establishment, that is regulated by zoning district regulations shall be defined as a **PLANNED DEVELOPMENT PROJECT**.

**QUALIFIED MANUFACTURED HOME.** A manufactured home that meets all the following criteria:

(1) Is manufactured on or after July 15, 2002;

(2) Is affixed to a permanent foundation and is connected to the appropriate facilities and is installed in compliance with KRS 227.550;

(3) Has a width of at least 20 feet at its smallest width measurement or is two stories in height and oriented on the lot or parcel so that its main entrance door faces the street;

(4) Has a minimum total living area of 900 square feet; and

(5) Is not located in a manufactured home land-lease community.

**RECREATIONAL VEHICLE.** A vehicular-type portable structure without permanent foundation that can be towed, hauled, or driven and is primarily designed as a temporary living accommodation for recreational and camping purposes. **RECREATIONAL VEHICLES** include, but are not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

**SENIOR CITIZEN OR RETIREMENT HOME.** An establishment which provides full-time shelter, comfort, and day-to-day non-medical necessities for three or more individuals who are not related by blood or marriage to the operator and who by reason of old age, require or desire aid in day-to-day activities. This establishment is distinguished from a convalescent or nursing home or

long-term care facility as the Senior Citizen or Retirement Home does not provide full-time convalescent or chronic care for its inhabitants. A **SENIOR CITIZEN OR RETIREMENT HOME** is also distinguished from an assisted living community in that it is not governed by KRS 194A.0501(1) and 910 K.A.R. 1:240, as now in effect or hereinafter amended.

**SPOT ZONING.** A free standing zoning classification of a tax parcel in which no directly adjoining tax parcel or tax parcel across a street is of the same zoning classification.

**STORAGE SHED or OUTBUILDING.** An accessory structure or building used primarily for storage purposes. See § 155.035(F)(1) through (13) for regulatory treatment.

**STREET.** A public right-of-way which provides a public means of access to abutting property. The term **STREET** shall include avenue, drive, circle, road, parkway, boulevard, highway, thoroughfare or any other similar term.

**VARIANCE, DIMENSIONAL.** A departure from the terms of the zoning regulations pertaining to height or width of structures and size of yards and open spaces, where such departures will not be contrary to the public interest, and where, owing to conditions peculiar to the property because of its size, shape, or topography and not as a result of actions of the applicant, the literal enforcement of the zoning regulations would result in unnecessary and undue hardship.

**WIRELESS COMMUNICATIONS FACILITY.** See § 155.064.

**YARD.** An open space or lot other than a court, unoccupied and unobstructed from the ground upward as otherwise provided in this chapter.

(1) **YARD, FRONT.** That portion of the yard extending the full width of the lot and extending between the front lot line and the nearest part of the principal building.

(2) **YARD, REAR.** That portion of the lot extending the full width of the lot and extending between the rear lot line and the nearest part of the principal building.

(3) **YARD, SIDE.** That portion of the yard extending from the nearest part of the principal building to the side lot line.

**ZONING MAP.** The Official Zoning Map of the City of Benton indicating zoning districts which shall be maintained in the Benton City Hall. The **ZONING MAP** is a hard copy in Benton City Hall in the custody of the Benton Zoning Administrator. Electronic, web-site, or soft copies do not constitute the Official **ZONING MAP**.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 24-08-02, passed 8-5-24)

***ESTABLISHMENT OF ZONING DISTRICTS*****§ 155.020 ESTABLISHMENT AND DESIGNATION.**

The City of Benton is divided into the following districts as shown on the Zoning Map of Benton, Kentucky, and these districts are designed as follows:

R-1	Residential District
R-2	Residential District
R-3	Residential District
R-4	Small Dwelling Residential District
ZLL	Zero Lot Line Residential District
C-1	Central Business Commercial District
C-2	Neighborhood Commercial District
MU	Mixed Use Overlay District
I-1	Light Industrial District
I-2	Heavy Industrial District
A	Agricultural District
F	Floodway District

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 21-12-01, passed 12-20-21)

**§ 155.021 INTERPRETATION OF ZONING DISTRICT BOUNDARIES.**

The following rules shall be used to interpret the exact location of the zoning-district boundaries shown on the zoning map:

(A) Where a zoning-district boundary follows a street or railroad, the centerline of the street or railroad right-of-way is the boundary of the district.

(B) Where a zoning-district boundary approximately follows a lot or property line, that line is the boundary of the district.

(C) Where a zoning-district boundary follows a stream or the shore of a body of water, that stream or shoreline is the boundary of the 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 map scale.

(Ord. 12-11-1, passed 11-19-12)

**§ 155.022 LOT DIVIDED; EXTENSION OF DISTRICT.**

Where a district boundary line, established on the zoning map, divides a lot of single ownership which was recorded at the time of enactment of this chapter, then the least restricted district requirements under which the lot has been divided shall be applied to the entire lot.  
(Ord. 12-11-1, passed 11-19-12)

**§ 155.023 VACATED STREET OR ALLEY.**

Whenever any street, alley or other public way is vacated through legal action, the zoning districts shall be extended, depending on the side or sides to which such lands revert.  
(Ord. 12-11-1, passed 11-19-12)

**§ 155.024 ANNEXED LANDS.**

In every case where land becomes a part of the city through annexation such newly annexed land shall be automatically zoned R-1, subject to any applicable exemption for certain public utility and governmental properties set forth in KRS 100.324 as now in effect or hereinafter amended. Such districting shall remain in effect unless or until the City Council, upon the recommendation of the Planning Commission, enacts a zoning change.  
(Ord. 12-11-1, passed 11-19-12)

***ALL DISTRICT REGULATIONS*****§ 155.035 PROVISIONS APPLICABLE TO ALL DISTRICTS.**

Except as herein specified, the following provisions in this subchapter shall be applied within all zoning districts.

(A) *Activities affected; conformance required.*

(1) Zoning affects every building and use. No building or land shall hereafter be used, and no building or part thereof shall be erected, moved or altered unless for use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located.

(2) No excavation, cut or fill of earth or debris shall hereafter be undertaken unless a permit is issued by the Administrative Official for such excavation, cut or fill.

(B) *Access control.*

(1) There shall be no more than two points of access to one public street on a lot of less than 400 feet, but more than 100 feet in width. Lots in excess of 400 feet may have two points of access to any one public street for each 400 feet of frontage. Lots less than 100 feet in width shall have no more than one point of access to any one public street.

(2) No point of access shall be allowed within ten feet of the intersection of the right-of-way lines of intersecting streets.

(3) No curbs on city streets or rights-of-way shall be cut or altered without written approval of the Administrative Officer.

(4) A point of access shall not exceed 20 feet in width for one way and/or one land ingress or egress. Two-way access points shall not exceed thirty-five (40) feet in width.

(C) *Continuance of nonconforming uses; exceptions.* The lawful use of a building or premises, existing at the time of enactment or subsequent amendment of this chapter, but not in conformity with its provisions, may be continued with the following limitations:

(1) A nonconforming use shall not be extended, enlarged or moved to occupy any portion of land or structure except in conformity with this chapter.

(2) A nonconforming use shall not be re-established after discontinuation for a period of one year.

(3) A nonconforming use may be changed only to a conforming use, unless the Board of Adjustment finds that a new nonconforming use is in the same or a more restricted classification.

(D) *Height limitations; exceptions.* The height limitations of this chapter shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy; monument, water towers, observation towers, transmission towers, windmills, chimneys, smokestacks, derricks, conveyers, flag poles, masts and aerals.

(E) *Lot of record.* The owner of a lot of official record, which lot at the time of adoption of this chapter does not include sufficient land to conform to the yard or other requirements of this chapter, may submit an application to the Board of Adjustment for a variance from the terms of this chapter. Such lot may be used as a building site to conform with the district in which it is located, provided; however, that the yard and other requirements of the district are complied with as closely as is possible in the opinion of the Board.

(F) *Accessory uses, accessory buildings, accessory structures, storage sheds, and outbuildings.*

(1) Unless expressly stated otherwise, accessory uses, accessory buildings, and accessory structures are subject to the same regulations as the principal use. Accessory buildings and structures must be constructed in conjunction with or after the principal building. Accessory uses, accessory buildings, or accessory structures are subject to this division (F) and any other regulations in this Zoning Ordinance which regulate accessory uses or structures.

(2) Accessory buildings shall be permitted in rear yards only and must be at least seven and one-half feet from any other buildings on the same lot and seven and one-half feet from all adjoining lots or utility easements.

(3) No accessory buildings in the rear of a principal building on the same lot shall be used for residential purposes unless it conforms to the entire yard, open space, and off-street parking requirements of this chapter. The front yard requirements for a rear dwelling shall be measured from the required rear yard line of the principal building. A certificate of occupancy must be obtained before a rear dwelling can be used for residential purposes.

(4) On any corner lot adjoining in the rear another lot that is in a residential zone, accessory buildings or accessory structures shall conform to the side yard requirements for corner lots.

(5) Residential accessory structures shall be permitted in all residential and agricultural districts (except where prohibited by private land use restrictions/covenants) and include, but are not limited to the following: detached garages, storage sheds otherwise in compliance with the Zoning Ordinance, carports, patios, picnic shelters, playhouses, greenhouses, satellite dishes, statuary of less than eight feet in height, arbors, trellises, awnings, canopies, barbecue/grilling equipment, gazebos, flag poles, non-mechanical laundry drying equipment, recreational equipment, fences/walls/hedges otherwise in compliance with this Zoning Ordinance, swimming pools otherwise in compliance with this Zoning Ordinance, heating/air conditioning units, radio/television antennas and towers for private non-commercial use, and basketball goals.

(6) Residential accessory structures may be located in a side yard or rear yard provided they comply with all setback requirements and do not occupy more than 25% of the yard area and are otherwise in compliance with private land use restrictions/covenants.

(7) Detached accessory structures and uses are prohibited in front yards in residential zoning districts, except that basketball goals may adjoin a driveway. Outdoor storage of interior household furnishings including washing machines and dryers in front yards, front porches, and side yards is prohibited.

(8) Outdoor storage of trucks, boats, busses, recreational vehicles, and/or trailers larger than two ton capacity is prohibited in residential zoning districts, except upon receipt of a conditional use permit for good cause shown including evidence of ownership of the trucks and/or trailers by an owner

or resident of the property and that such trucks or trailers shall be inoperable for no more than 30 days in any year during the storage and any other reasonable conditions imposed by the Board of Zoning Adjustments. Storage of trucks, boats, busses, recreational vehicles, and/or trailers in other than residential zoning districts is governed by § 155.052.

(9) Non-residential accessory structures shall be permitted in all non-residential districts and include but are not limited to the following: storage buildings, storage sheds, outbuildings and storage silos; conveyor equipment; heating and mechanical and electrical equipment meeting all applicable building code requirements, trash dumpsters, compactors, incinerators or electric substations, meeting applicable Building Code requirements. Storage containers associated with a permitted commercial or industrial use shall be reasonably screened from adjacent property and shall be located so as not to inhibit fire, police, or other emergency personnel who may access the property. All non-residential accessory structures shall be permitted in all non-residential districts provided they comply with all the district requirements, including but not limited to setback and height requirements.

(10) Accessory structures shall not be placed in premises covered by a recorded easement which specifically describes the easement area, without the recording of an instrument with the Marshall County Clerk documenting the holder of such easements rights having authorized the placement of the accessory structure.

(11) Unless otherwise specifically allowed in this chapter, it shall be prohibited to use any manufactured home, mobile home, or trailer, shipping trailer, shipping container or storage container as an accessory structure for storage purposes in any zoning district, unless a conditional use permit has been issued for such use by the Board of Zoning Adjustments for good cause shown.

(12) Temporary structures which are not customarily incidental to the principal land use or principal building use may be approved by the Administrative Official for a 30 day placement and for good cause shown upon written application. To grant such approval, the Administrative Official must find the temporary structure is not inconsistent with the Comprehensive Plan or the Zoning Ordinance or with the health, safety, and welfare of the citizens and property owners of the city. Such placement of a temporary structure must be in a non-residential district, must be in compliance with setback and height requirements of the zoning district, and must not inhibit fire, police, or other emergency personnel who may access the property. In addition, the temporary structure shall not be located in a recorded easement without the recording of an instrument with the Marshall County Clerk documenting the holder of such easement having authorized the placement of the temporary structure. The Planning Commission, for good cause shown, may extend such authorization for placement of a temporary structure for up to an additional 60 days in its discretion.

(13) *Storage sheds/outbuildings.*

(a) *Governing regulations.* Storage sheds or outbuildings used for storage shall be regulated by both this division (F)(13) and division (F)(1) through (12) of this section governing accessory uses, and the like, as applicable. If there is any conflict between this division (F)(13) and the other provisions of this division (F), the more restrictive of the two shall govern.



(b) *Multiple storage sheds/outbuildings for resale.* Any person operating a retail or wholesale business which involves the ongoing presence of more than five constructed storage sheds or outbuildings on a property for marketing purposes of resale shall request a permit from the Administrative Official to do so and shall submit documentation when making such application that the sheds and/or outbuildings are adequately fenced and/or otherwise secured or stabilized so that they are unlikely to be blown off the property in whole or in part in the case of a high wind event, flood, or tornado. Such sheds or outbuildings are to be locked or otherwise secured after business hours so they will not be an attractive nuisance to children or vagrants. Such person shall also present evidence in connection with the application that he has obtained adequate insurance to cover any reasonable damage that such shed or outbuilding might do to nearby persons or property in a disaster.

(c) *Multiple storage sheds/outbuildings on residential or commercial lots for onsite use.* Installation or construction of more than an aggregate of two storage sheds or outbuildings for more than 90 days in an R-1, R-2, R-3 or ZLL Zoning District or more than an aggregate of three storage sheds or outbuildings in a C-1 or C-2 Zoning District shall require a conditional use permit from the Board of Zoning Adjustments on good cause shown. The Board may specify a form to be used by the applicant for such conditional use permit. A garage for storage of an automobile or other motor vehicle intended for highway use is not considered a storage shed or outbuilding for purposes of this division.

(G) *Storage container homes.* Storage container homes are prohibited in all districts. For the purpose of this chapter, **STORAGE CONTAINER HOMES** is defined as a housing structure made from recycled shipping containers like a storage container or cargo container but may include other type containers.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 21-12-01, passed 12-20-21; Am. Ord. 21-12-03, passed 12-20-21)

### ***SPECIFIC USE REGULATIONS***

#### **§ 155.050 APPLICATION.**

This subchapter applies to specific uses as set forth herein. Any specific use may be undertaken only in compliance with this subchapter and if not prohibited by the zoning district regulations for the relevant property.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.051 QUALIFIED MANUFACTURED HOUSING, MANUFACTURED HOUSING AND MOBILE HOMES.**

For the purpose of this Zoning Ordinance, four basic types of mobile homes development have been defined. They are: (1) mobile home parks; (2) mobile home subdivisions; (3) mobile home camps (or trailer parks); and (4) a mobile home (including qualified manufactured home and/or manufactured



home) on a single lot and solid foundation. All such uses shall conform with all applicable provisions of KRS 219.120 through 219.250, as amended, all provisions of this chapter, and all attached special conditions. Compatibility standards are standards that have been enacted by a local government under the authority of this section for the purpose of protecting and preserving the monetary value of real property located within the local government's jurisdiction. A facade is the main face or front of a building. A permanent foundation is a system of supports that is: (a) capable of transferring, without failure, into soil or bedrock, the maximum design load imposed by or upon the structure; (b) constructed of concrete; and (c) placed at a depth below grade adequate to prevent frost damage.

*(A) Mobile home parks and mobile home subdivisions.*

(1) May be permitted as a conditional use only in R-3 Zoning Districts. All mobile home parks shall be subject to the standards of development established in the Subdivision Regulations. A plat plan shall be submitted to the Administrative Officer who shall review such plan to see that the following information at a minimum is shown:

- (a) Name and address of applicant and/or owner;
- (b) Name, location and size of mobile home park;
- (c) Approximate dimensions and locations of lots (also numbered), roads and pavement, easements, parks, community buildings, existing buildings to remain, and existing buildings within 200 feet of exterior property lines;
- (d) Contour lines at an interval of 10 feet along with existing natural features;
- (e) General location of all utilities and method of sewage disposal;
- (f) Public or community areas;
- (g) Large scale plan of at least one typical mobile home lot showing mobile home location, automobile parking space, minimum yard requirements, and the like;
- (h) Location of planting for landscaping or buffer purposes when necessary;
- (i) Identification of abutting property owners;
- (j) Proposed street right-of-way and pavement type and widths along with curb, gutter and sidewalk proposals; and
- (k) Certificates from the County Health Officer.

(2) When the Administrative Officer has determined the application for a conditional use permit for a mobile home park is complete, including payment of fees, the application is sent to the Board of

Adjustment who shall proceed to consider the application in the same manner as set forth in general provisions of this Zoning Ordinance applicable to conditional uses and as contemplated in KRS 100.217 through 100.263.

(3) The following design standards shall be applicable to a mobile home park or mobile home subdivision:

(a) *Area and density requirements:* no mobile home park shall be permitted on an area of less than one acre in size. The developer may be permitted to develop the park in stages as long as he complies with the overall approved plan for the entire tract and initially has a minimum of five trailer lots developed for use. The number of mobile homes permitted in the park shall not exceed a density of 12 mobile homes a net acre - a net acre being the land to be subdivided into lots after streets and other required improvements have been installed.

(b) *Lot requirements:* individual lots within a mobile home park shall not be less than 3,000 square feet in area and in no instance shall more than one mobile home be permitted on a single lot.

(c) *Screening:* mobile home parks shall be permanently screened from all adjoining property. The screening device shall be a minimum of six feet in height.

(d) *Setback:* no mobile home or structure shall be located closer to any street than the minimum front yard setback for an R-3 zone. No mobile home shall be located closer than 15 feet to any building within the park or to any property line of the park.

(e) All mobile home parks shall front on a public street or road for at least 100 feet.

(f) *Spacing:* no mobile home shall be located with 25 feet of another mobile home except that minimum end-to-end clearance of not less than ten feet shall be permitted, and in instance where the sides opposite the entrance of two mobile homes face each other, the amount of space between the two mobile homes may be reduced to not less than 20 feet.

(g) *Streets:* all mobile home spaces shall abut upon a street. All streets within the trailer park shall have a right-of-way of not less than 25 feet and a pavement of not less than 20 feet. All streets within the park shall be hard-surfaced and well lighted. Each park shall have one street, which gives access to a public street. Such access streets shall not be less than 125 feet from the intersection of two or more public streets.

(h) *Parking:* one paved automobile parking space shall be provided on every mobile home lot. Public parking spaces will be provided for each trailer in the mobile home park allowing one-fourth parking space for each mobile home lot in the mobile home or trailer park. This additional parking may be in a central location.

(i) *Utilities*: all lots within the mobile home park shall be provided with water, sewer and electrical facilities meeting the standard specified by the city and state regulations, and each mobile home shall be properly connected with said utilities.

(j) *Accessory structures*: no accessory structure including patios and pads shall be located within five feet from any trailer lot line. The maximum floor area shall be 100 feet and the maximum height shall be no greater than the ten feet. It shall be built in compliance with the building code (when available).

(k) *Connecting structure*: only porches, stairs, and other open structures may be attached to a trailer.

(4) In the case of mobile home subdivision the applicant is expected to meet all of the requirements for preliminary plat approval in his initial application to the Board. Upon preliminary approval of the mobile home subdivision by the Board the application together with any conditions the Board might attach, the application is forwarded to the Planning Commission for preliminary and final plat consideration. Both bodies must approve the application and act on all variances requested before any site preparation may begin.

(5) Mobile homes are permitted in agricultural districts and in conservation districts on the minimum lot size established for the district.

(6) *Development standards for mobile homes*: the following standards and requirements are minimum standards for the development of mobile home facilities and may be increased at the option of the developer but may be decreased only by approved variances by the Board (and Planning Commission as in the case of subdivisions).

(7) There are no minimum nor maximum numbers of mobile homes that may be permitted in an approved development, other than density requirements, special conditions that may be imposed by the Board (or Commission when subdividing), or self-imposed limitations that the developer presents. Development shall be in strict accordance with the plans approved by the Board or Commission, including any and all staged development.

(8) *Mobile home parks, mobile home subdivisions*: all requirements of the zoning district in which such use is proposed and KRS shall apply.

(B) *Provisions applicable to both mobile home parks and mobile home subdivisions.*

(1) *Issuance of building permit*: the Planning Commission or the Board of Adjustment, if delegated by the Planning Commission, may attach reasonable special conditions to its approval of a mobile home development and may direct the authorized officer to issue a building permit. The appropriate building permit official shall not issue a building permit until he has received written authorization from the Planning Commission or Board of Adjustment, and the applicant shall not start construction until he has also obtained a valid construction permit from the State Department of Health as required by KRS 219.150.

(2) *Issuance of certificate of occupancy:* the Administrative Official shall issue a certificate of occupancy only after he has determined that the mobile home development has been prepared according to all applicable regulations and special conditions. The applicant must also obtain a valid permit to operate from the State Department of Health as required by KRS 219.130.

(3) *Enforcement:* the Administrative Officer shall insure that all mobile home parks, trailer parks, and mobile home camps maintain valid permits to operate and maintain conformance with all applicable regulations of the Zoning Ordinance and all special conditions. Noncompliance may result in enforcement action against the owner and/or operator of such park or camp and/or the owner or lessee of any lot upon which a violation occurs. Enforcement action may be by any means authorized by this Zoning Ordinance.

(4) *Exception:* the Planning Commission or its designee may reject any proposed trailer or mobile home park even though it meets all the above requirements if the Planning Commission determines that existing trailer or mobile home parks are not fully occupied and/or utilized, and the development of more land to this use is not the interest of the public welfare of the community.

(C) *Qualified manufactured housing.*

(1) *Proposal process.*

(a) *Step one: choosing a site for a Qualified Manufactured Home and/or Manufactured Home.* A qualified manufactured house may be placed on residential lots. Manufactured housing may be placed on agricultural lots providing 1 dwelling unit per 5 acres.

(b) *Step two: site selection and design.* Once you have selected your site, you should review this document to fully understand the application process and how the compatibility standards relate to your property. These standards as well as the application process will be explained in the following sections of the document.

(c) *Step three: review.* Formal review of proposals will be in conformance with the process and procedures contained in the Zoning Ordinance.

(d) *Step four: permits and application.* The applicant will be required to obtain a building permit from the appropriate building official. In addition, an application and supplemental materials will be required. The application will include materials such as photographs of surrounding property, site plan, and facade elevation.

(2) *Design and application submittal and review process.*

(a) *Intent:* the purpose of compatibility standards for manufactured housing is to permit local governments to adopt and enforce, as a part of its zoning regulations, compatibility standards governing the placement of qualified manufactured homes in residential zones, within the local government's jurisdiction.

(b) *Guidelines*: the qualified manufactured home shall be reviewed for its compatibility with architectural appearance and similarity with (1) adjacent development or surrounding developments (i.e. either side of the proposed site within the same block face and adjacent to the rear), (2) development within the same zone or general area, or (3) within a one-eighth (1/8) mile radius or less from the proposed location of the qualified manufactured home.

(c) *Architectural compatibility guidelines*.

1. *Facades and exterior material*. Exterior material shall be material customarily used on site-built dwellings, such as board siding, plywood, or press wood siding, non-glossy vinyl siding, stucco, brick, or non-reflective aluminum.

2. *Roof pitch and material*. Roofing material shall be of wood, tile or composition shingles, and must have an eave projection of no less than six inches. The roof of each proposed unit shall have a pitch at least equal to the average of the two residential buildings in the same block face (residential buildings on either side of the lot, or two nearest residences, if the adjacent structures are not residential).

3. *Windows*. Front facing windows must have consistent size, spacing, and proportion to that of the adjacent residences.

4. *Porches*. Roofed front porches must be included on each structure if more than 50% of the structures in the same block face or within 200 feet of the structure of the subject site, whichever is less, include them. Porches shall equal the average size and must resemble the same architectural style, roof pitch, foundation and facade material of the existing porches within the existing block face.

5. *Foundation*. The structure shall be permanently attached to a permanent foundation system and shall be anchored in accordance with the state standards set forth in KRS 227.550 through KRS 227.590.

6. *Size/height*. The first floor elevation of the proposed dwelling shall be no lower than the average floor elevations of the existing adjacent buildings on either side of the infill lot or two nearest residences, if the adjacent structures are non-residential. The building height of the new structure shall be comparable to the building heights within the same block face.

7. *Additions/alterations*. Structural additions or alterations shall be subject to the same building code regulations as apply to additions or alterations to a conventionally built house. Any other alteration or conversion of a manufactured house must be performed in accordance with KRS 227.550 *et seq.*, 815 KAR 25:050, § 2 and 42 USC Chapter 70.

a. *Application instructions for qualified manufactured housing compatibility standards*.

i. *Introduction:* This set of instructions is for compatibility review approval and is intended to provide brief directions for filing an application. It should not be construed as definitive instructions for your application. These instructions are general in nature and the building official, Board of Zoning Adjustment, Planning Commission and/or Administrative Officer reserve the right to request additional information on any specific application. In addition, no guarantee of success is implied if these instructions are followed, nor is denial if they are not.

ii. *Application procedures.* To be an applicant, you must be an owner, lessee or prospective owner with a purchase contract to place a qualified manufactured home on designated residential areas.

b. *Specific instructions for completing application form:*

i. *Applicant:* provide the name, address and telephone number of the applicant. The applicant is the owner, lessee, or purchaser under contract for the property. The telephone number should be where the applicant can be reached during normal business hours.

ii. *Property affected:* provide address for the property to be reviewed. If the property is a newly created lot, an address will be assigned at the time of the building permit.

iii. *Submissions:* the specific submission requirements may vary from application to application. Below are the guidelines for the minimum requirements.

- *Site plan:* a site map should be submitted. This map should be drawn to scale and preferably submitted on an 8 1/2" x 11" sheet, but in no case exceed 11" x 17". The plan should show the property lines, building footprint, building setbacks and significant site features such as fences, sidewalks, driveways, accessory buildings, and trees.

- *Building elevations:* all applications involving compatibility standards to the exterior of the building shall provide an elevation drawing. The drawing must be to scale and should not exceed 11" x 17" in size. The drawing should be produced for every facade that will change, no matter how slight the change.

- The facade elevations should show the proposed changes or designs. Each change or new element should be clearly identified on the elevations. All new materials should be clearly identified.

- *Photographs:* all applications must be accompanied with photographs. You may provide black and white or color photographs, at least 3 1/2 " x 5" in size, or provide digital photography on A CD-R data disk in a form acceptable to the Administrative Officer.

- Provide photos clearly detailing general views of properties immediately adjacent to the project site. The photos may be taken from public spaces such as the

sidewalk and streets. If a camera is not available for use, the applicant may use the Property Valuation cards provided in the P.V.A. office located on the 2nd floor of the County Courthouse.

- *Specifications:* Provide specifications for the construction or the materials to be added to the project on a separate sheet if they cannot be included in facade elevation.

- Examples of compatibility based on architectural design including roof pitch, building height, location of entry, porches and exterior finishes.

*(D) Nonconforming mobile homes and mobile home parks.*

1. All mobile homes within the city which are non-conforming at the time of publication of the within Zoning Ordinance may continue in their present location as long as the mobile home remains stationary in its present location. If the mobile home is removed, the same mobile home, or another mobile home will not be allowed to return unless the property comes into compliance with the Zoning Ordinance.

(2) It is further provided that existing mobile home parks legally operating at the time of publication of this Zoning Ordinance may continue to operate, but shall be required to maintain at least existing lots size per mobile home and comply with other provisions of this Zoning Ordinance. An existing mobile home park may obtain a waiver of application of any requirement of this § 155.051 for up to three years from the publication date of this Zoning Ordinance for good cause shown and absence of adverse effect on the residents of the park, adjoining properties, and on the health, safety, and welfare of the city and its citizens and property owners. Such waiver is not a matter of right, but is in the sound discretion of the Board of Zoning Adjustment with the applicant requesting waiver having the burden of proof. Existing occupants will be allowed to remain so long as the mobile homes remain stationary in their present location. If the mobile home is removed from the non-conforming use, the same mobile home or another mobile home will not be allowed to return without the property being in full compliance with this Zoning Ordinance.

(3) No future mobile home shall be permanently lofted outside of an approved park. However, future mobile homes may be temporarily lofted outside of an approved mobile home park if they comply with the provisions of the Zoning Ordinance for residences, but shall be required to relocate within an approved mobile home park within 60 days after the establishment of such park. After an approved park is installed, this temporary provision shall cease.  
(Ord. 12-11-1, passed 11-19-12)

**§ 155.052 STORAGE OF TRAILERS, MOBILE HOMES, AND/OR RECREATIONAL VEHICLES IN OTHER THAN RESIDENTIAL ZONING DISTRICTS.**

Trailers or mobile homes or similar recreational vehicles used exclusively for the purpose of offsite traveling or camping (and only intermittent onsite residential use) which are not abandoned or inoperable



for more than ninety days may be stored in the rear yard of any lot not in a residential district provided yard requirements as designated in this chapter are maintained. Such authority is subject to any private restrictions in the chain of title for the subject property. Storage of such vehicles in Residential Zoning Districts is governed by Section § 155.035(F)(8).  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.053 OFF-STREET PARKING AND UNLOADING.**

Off-street automobile storage or standing space shall be provided on any lot on which any of the following uses are hereafter established; such space shall be provided with vehicular access to a street or an alley. For purposes of computing the number of parking spaces available in a given area, the ratio of 250 square feet per parking space shall be used. The following are minimum requirements for specific uses:

- (A) *Dwellings*: one space for each family dwelling unit.
- (B) *Boarding houses and rooming houses*: one space for each two rooms occupied or intended to be occupied by boarders or roomers, in addition to the requirements of division (A) above.
- (C) *Tourist accommodations*: one space for each room occupied for tourist accommodations.
- (D) *Theater, auditorium, church, stadium or other place of public assembly*: one space for each ten seats available at maximum capacity.
- (E) *Industrial plant*: one space for each five persons employed on such lot.
- (F) *Commercial or business building in a Commercial District C-2*: there shall be provided one paved off-street parking space for each 200 square feet of retail floor space.
- (G) *Mobile home park or mobile home subdivision*: one space for each trailer or mobile home unit.  
(Ord. 12-11-1, passed 11-19-12; Am. Ord. 17-08-02, passed 8-22-17)

#### **§ 155.054 OUTDOOR ADVERTISING SIGNS AND BILLBOARDS.**

The purpose of this section is to promote and protect the public health, welfare, and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community and/or county, and preserve the scenic and natural beauty of designated areas. It is further intended to reduce sign and advertising distraction and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more open space, and curb the



deterioration of the natural environment and enhance community development. To the extent this section conflicts with any provision on outdoor advertising, billboards or other signs elsewhere in this Zoning Ordinance, the more restrictive provision shall control.

(A) *General sign regulations.*

(1) *Setback.* All signs, unless otherwise specified in these regulations, shall be set back from the established right-of-way of any road or highway a minimum of five feet from the front property line and no closer than three from any side property line. Placement is determined by the closest portion of the sign to the setback minimum.

(2) *Sign permit.* All signs of any type in any zone, other than real estate signs as provided for in this section and others specifically excluded below as exempt, require a sign permit to be obtained from the Administrative Official prior to construction or installation. The Administrative Official may attach reasonable conditions to any sign permit approval. The content of the message or speech displayed on the sign shall not be considered when approving or denying a sign permit. However, the actual content or illustrative content must be submitted to evaluate the sign copy area. The Administrative Official may require a completed application form, a site plan and/or building elevations showing the location of the proposed sign(s) on the lot and/or building including setbacks. The Administrative Official may require detailed sign information including the type of construction, method of illumination, dimensions, copy, method of mounting and/or erecting and other similar information. The Administrative Official may require the written consent of the owner of the underlying real property or such owner's authorized agent or other evidence of authority to request a sign permit. The Administrative Official may require a permit fee as approved by the Planning Commission.

(a) *Billboard sign permit.* For billboards used for off-premises advertising, the base of which sign exceeds fifteen feet above ground level, the Administrative Official shall process such application and shall refer such sign permit application to the Board of Zoning Adjustment for approval or denial as a conditional use.

(b) *Digital message display permit.* For digital message display signs with moving text and/or changing images and dimensions exceeding three square feet, the Administrative Official shall process such application and shall refer such sign permit application to the Board of Zoning Adjustment for approval or denial as a conditional use.

(c) *Fee penalty.* Installation of a permanent sign prior to the obtaining of the required sign permit shall constitute a violation of these regulations and shall be assessed a penalty of 100% of the scheduled permit fee in addition to the scheduled permit fee.

(d) *Residential zones.* No sign or billboard, other than real estate signs advertising the sale, rental or leasing of the premises or exempt signs listed below or signs otherwise expressly permitted in this Zoning Ordinance for a residential Zoning District, shall be permitted in any residential zone. Said real estate signs shall not exceed two square feet in area and shall be displayed at least five feet from all lot lines and outside of utility easements. Real estate signs shall only be placed on lots which they advertise.

(B) *Other limitations.* Advertising signs, structures, or lights for support and illumination of signs, where permitted, shall in no case be placed in or extend over the street right-of-way. No signs (other than those erected by governmental agencies) may be erected in a public right of way or attached to or painted on any utility poles or trees or dilapidated structure. Flashing signs shall not be permitted in any zone, whether permanent or temporary, on or off premise. Flashing signs shall be defined as a sign, the illumination of which is not kept constant in intensity at all times when in use. Illuminated signs which indicate time, temperature, weather or similar public service information, shall not be considered flashing signs. Signs placed on fences are considered to be and are counted as freestanding signs. No sign may be located or constructed so as to obstruct sight lines for persons using streets, alleyways, pedestrian right of ways and driveways. A sign permit shall become null and void if not installed within six months from the original issue date of the permit.

(C) *Exempt signs.* The following signs are exempt from regulation under this section and are exempt from permitting:

(1) Signs not exceeding four square feet that are normally associated with residential use, such as used those used for property identification, signs on mailboxes, signs related to private parking, trespassing, and the like.

(2) Signs erected by or on behalf of or pursuant to the authorization of a government body, including legal authorization of a government body, which includes legal notices, and informational signs.

(3) Any official informational or directional sign or historic marker erected by a governmental agency.

(4) New copy for off premises signs, attraction boards, marquees, or electronic message display systems.

(5) Church directional signs.

(6) Community identification signs and community beautification project signs.

(7) Temporary construction signs.

(8) Historic markers.

(9) On-site real estate signs, including auction signs.

(10) Public utility warning signs for the safety and welfare of the public.

(D) *Temporary signs.* Temporary signs are signs which are placed, constructed or erected for a limited period of time. The following types of signs are considered temporary and may be erected under

the provisions of this chapter. Temporary signs do not require a permit from the Administrative Officer and under no circumstances shall they be permitted to remain for more than 60 days.

(1) Yard sale signs may be posted no earlier than seven days prior to the start of the yard sale and must be removed no later than two days following the final day of the yard sale. Under no circumstances shall yard sale signs be posted on utility poles.

(2) Temporary signs not exceeding 32 square feet in surface area, announcing or relating to a sales campaign, drive or event of a civic, philanthropic, educational or religious organization, or seasonal agricultural sales or events, provided the sign is posted no earlier than 45 days prior to the event and removed within seven days after the end of the event or season.

(3) Temporary signs relating to the future tenants of the premises where the sign is located. Total display period shall not exceed six months prior to occupancy of the premises under construction.

(4) Temporary signs that relate to construction work in progress or upcoming work on-site where the sign is to be located. This may include identification of persons or businesses involved in the development of the site. Display time for this sign type is 60 days plus the construction period.

(E) *Signs within residential districts.* Signs are permitted in residential zones only in accordance with the following provisions:

(1) Temporary signs pertaining to the lease or sale of a building or land may be erected as provided in Section 14.2 of these regulations. Real estate signs shall not be displayed on and/or over city or public property except by the appropriate public agency.

(2) Temporary signs, for one year, may be erected to advertise a new subdivision of five or more lots, provided that the sign is no larger than 60 square feet in area, is not internally illuminated, advertises only the subdivision in which it is located and is erected only at a dedicated street entrance.

(3) One identifying sign of not more than 30 square feet in area may be erected for churches, libraries, schools, parks, hospitals for human care, and other public facilities of a similar nature. Such sign shall be solely for the purpose of displaying the name of the institution and its activities or services. It may be illuminated or electronic, but shall not be flashing.

(4) Directional signs, not exceeding two square feet in area shall be permitted only on major thoroughfare approaches to institutions listed in division (E)(3) of this section. No such signs shall be permitted on minor residential streets.

(5) One indirectly lighted name plate sign for a dwelling group of four or more dwellings not exceeding six square feet in area. Such signs may indicate only the names of buildings or of occupant of the buildings.

(6) Accessory uses for professional offices or home occupations shall be permitted one indirectly lighted name plate (sign) not over two square feet in area.

(7) One indirectly illuminated sign which advertises a bed and breakfast establishment not exceeding 12 square feet in size. Placement on premises shall be regulated by the Board of Adjustments and Appeals.

(F) *Signs within business districts.* In all business districts, each business shall be permitted to have permanent outside signs. Signs permitted under this section shall be limited to those as described below.

(1) Each business shall be entitled to have one sign which is mounted flush against a building (wall-mount) for each building face that fronts a public street. The depth of such a sign from a face to the building shall not exceed two feet. The area of such a flush mount sign shall be limited to a total surface area equivalent to two square feet of sign area for each linear foot of building width occupied by such enterprise. In the event that the area shall exceed 80 square feet, then a variance application must be made to and approved by the Board of Adjustments and Appeals.

(2) Additionally, one free-standing sign structure shall be permitted for each lot of 100 foot frontage or less and one additional freestanding sign structure for each additional 100 feet of lot frontage on a separate road frontage. In the instance where multiple businesses cohabitate a site parcel (as in a development plan), each business shall be entitled to free standing sign which shall be co-located upon a single pylon or marquee type sign and are limited to 72 square feet in size. Placement of the pylon or marquee sign shall be reviewed and approved by the Planning Commission during the development approval process. All such freestanding signs shall be set back five feet, or more, from the front property line.

(3) Free standing signs shall not exceed a height of 25 feet from ground level.

(4) No illuminated business signs within a business zone shall be located closer than 30 feet to a residential zone.

(5) Signs, awnings, marquees and outdoor advertising structures under the following conditions:

(a) Such awnings shall extend no further than four and one-half feet from the front of a building or to within one foot of the curb of the street to which the awning fronts.

(b) Awnings and marquees shall have a clearance of eight feet above the sidewalk and shall not be supported from the sidewalk.

(G) *Signs within industrial districts.*

(1) All signs permitted in business districts are also permitted in industrial districts and subject to the requirements thereof.

(2) One sign structure for identification and direction purposes may be erected at access points to public streets provided that such signs are no larger than 72 square feet in area. Applicants who desire a sign larger than the foregoing area may obtain a permit with increased setbacks on a 2 to 1 ratio. For each two square feet of signage in excess of the maximum, the setback shall be increased one foot from the minimum five feet setback requirement.

(3) No illuminated business signs within an industrial zone shall be located closer than 30 feet to a residential zone.

(H) *Prohibited signs.* The regulations contained in this section apply to all zoning districts and include permanent and temporary signs. The following signs are prohibited.

(1) Off-premise signs, including billboards which do not have a permit from the Administrative Official or a conditional use permit from the Board of Zoning Adjustment in the case of a billboard used for off-premises advertising which is more than 15 feet above ground level at the base of the billboard.

(2) Any non-governmental sign located within a right of way.

(3) Signs which constitute a traffic hazard or which can be construed as a hindrance to public safety.

(4) Signs which may be confused as traffic control devices or signs which imitate emergency or road equipment vehicles.

(5) Signs which block or obstruct the sight distance of oncoming or turning vehicles.

(6) Mobile or portable signs which remain on a property for more than ten days and which are not reasonably secured to prevent becoming projectiles during wind events or from rolling into or otherwise entering a public street and becoming a safety hazard.

(7) Flashing, blinking or intermittent lighted signs.

(8) Signs including moving digital text or images which do not have a permit from the Administrative Official.

(9) Any sign or banner that is attached to any utility pole without approval of the relevant utility.

(10) Abandoned signs.

(11) Any sign which emits noise or visible matter (steam, smoke, gas, and the like) for the purpose of attracting attention to the sign.

(12) Vehicle or trailer signs, when attached to a vehicle not normally driven daily and placed in a location visible from a nearby street or highway.

(13) Rotating or moving signs.

(I) *Sign maintenance.*

(1) Should any sign become insecure or in danger of falling or otherwise unsafe in the opinion of the Administrative Official, the owner thereof, or the person or firm maintaining the same, shall upon written notice from the Administrative Official, in the case of immediate danger forthwith and in any case within ten days, secure the same in a manner to be approved by the Administrative Official or remove such sign. If such order is not complied with within ten days, the Administrative Official shall remove or cause removal of such sign at the expense of the owner or lessee thereof.

(2) All signs for which a permit is required, together with all their supports, braces, guys, and anchors, shall be United Laboratories, Inc. ("UL") labeled and meet any applicable law or code provision or UL standard as to electrical installation, identify the installer, and further be kept in good repair. The Administrative Official shall order the removal of any sign that is not maintained in accordance with the provisions of this section. Such removal shall be at the expense of the owner or lessee.

(3) Any sign now or hereafter existing which no longer advertises a bona fide business shall be taken down and removed by the owner, his agent, or person having the beneficial use of the building, structure, or lot. Upon failure to comply with such notice within the time specified in such order, the Administrative Official is hereby authorized to cause the removal of such sign, and any expense incidental thereto shall be paid by the owner of the building, structure, or lot to which the sign is attached. The Board of Zoning Adjustment may waive this requirement only for historic preservation purposes and when the owner can prove the need for the waiver to qualify for funding or tax credits.

(J) *Violations.* In any case any sign shall be installed, erected, constructed, or maintained in violation of any of the terms of these Regulations, the Enforcement or Administrative Official shall notify by certified mail, return receipt requested, or written notice served personally to the owner or lessee thereof to alter such sign as to comply with these Zoning Regulations and to secure the necessary permit, therefore, or to remove the sign. If such order is not complied with within 14 days, the Administrative Official shall inform the Planning Commission and then the Commission may take any enforcement action authorized by this Zoning Ordinance.

(Ord. 12-11-1, passed 11-19-12)

**§ 155.055 PLANNED DEVELOPMENT PROJECT: REQUIRED IN EVERY MULTIPLE DEVELOPMENT.**

In every case where development of land is defined as a planned development project, the development shall be subject to the appropriate planned development project regulations as well as the

regulations of the zoning district in which it is located. In every case where it is not clear whether the proposed development is defined as a planned development project, the Planning Commission shall determine the question by simple majority vote to total membership.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.056 PLANNED RESIDENTIAL DEVELOPMENT PROJECT.**

The owner or owners of land located in any residential zone (R-1), (R-2) or (R-3) may develop a planned residential development project provided that the following requirements are met.

(A) *Plat plan*: a plat shall be presented for Planning Commission review and shall show the following:

(1) Kind, location, bulk and capacity of structures and uses;

(2) General floor plans of buildings;

(3) Location and identification of open spaces, streets and all other means of pedestrian and vehicular circulation, parks, recreational areas and other non-building sites;

(4) Provisions for automobile parking; and

(5) General nature and location of public and private utilities and other community facilities and services.

(B) That the requirements of the residential zone in which the planned residential development is located are satisfied in every respect.

(C) The Planning Commission may require proper preparation and dedication to the city of an open space or active recreation area not to exceed one-tenth acre per residential unit.

(D) No sign or billboard, other than real estate signs advertising the sale, rental or leasing of the premises, shall be permitted in any residential zone. Said real estate signs shall not exceed two square feet in area and shall be displayed at least five feet from all lot lines and outside of utility easements.

(E) Advertising signs, structures, or lights for support and illumination of signs, where permitted, shall in no case be placed in or extend over the street right-of-way.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.057 PLANNED COMMERCIAL DEVELOPMENT PROJECT.**

The owner or owners of land located in any commercial zone (C-1) or (C-2) may develop a planned commercial project provided that the following requirements are met.



(A) *Plat plan*: a plat shall be presented for Planning Commission review and shall show the following:

(1) Kind, location, bulk and capacity of structures and uses;

(2) General floor plans of buildings;

(3) Location and identification of open spaces, street, and all other means for pedestrian and vehicular circulation, parks, recreational areas and other non-building sites;

(4) Provisions for automobile parking; and

(5) General nature and location of public and private utilities and other community facilities and services, including sidewalks as set forth below.

(B) That the Planning Commission has ascertained that the proposed location and plan comply with the following conditions:

(1) The project is at a location where traffic congestion does not exist at present on the streets to be utilized for access to the project and where such congestion will not likely be created by the project;

(2) That the plan provides for a project consisting of one or more groups of establishments in a building or buildings of unified and harmonious design, together with adequate and properly arranged traffic and parking facilities, landscaping, and advertising, and will have no adverse effects upon the adjoining or surrounding developments; and

(3) The uses permitted in the project shall be those retail businesses authorized for C-1 or C-2 commercial districts. No residential uses shall be permitted or any other uses which is not necessary or desirable to supply goods or services to the surrounding neighborhood.

(C) The following regulations shall also apply to a planned commercial development project.

(1) *Building heights*: no building shall exceed two stories or 25 feet in height.

(2) *Screening*: the project shall be permanently screened from all adjoining properties located in any residential zone. Other screening may be required when, in the opinion of the Planning Commission, conditions warrant.

(3) *Tract coverage*: the ground area occupied by all the buildings shall not exceed in the aggregate 25 % of the lot or tract.

(4) *Customer parking space*: notwithstanding any other requirements of this chapter, there shall be provided one paved, off-street parking space for each 200 square feet of retail floor space.



(5) *Loading space:* notwithstanding any other requirements of this chapter, there shall be provided one off-street loading or unloading space for each 10,000 square feet, or fraction thereof, of aggregate floor space of all buildings in the center. At least one third of the spaces required shall be significant in area and vertical clearance to accommodate trucks of the tractor-trailer type.

(6) *Signs:* signs and other forms of outdoor advertisements shall be permitted only as permitted in commercial zones C-1 or C-2, except that the project may be permitted two freestanding signs, each having a maximum total area of 100 square feet.

(7) If a commercial development project involves new construction of a building in excess of 20,000 square feet, or the increase of the square footage of an existing building to more than 20,000 square feet, then both this § 155.057 and § 155.065, Retail and Commercial Service Buildings in Excess of 20,000 Square Feet, of this Zoning Ordinance shall be applicable to the development. If there is a conflict between the sections, the more restrictive shall be applicable.

(8) The Planning Commission shall attach reasonable special conditions to insure that there shall be no departure from the intent of this chapter. The project shall comply with all such conditions.

(9) A planned commercial development must have, and the plat plan must show, a sidewalk extending along the road frontage of a property from one boundary line to the other. The sidewalk must match any existing sidewalk to which it connects with respect to location and width, and otherwise must be two linear feet from the gutterline or edge of the pavement, whichever is furthest from the road, and must be five feet wide, and must be made out of concrete or other suitable material approved by the Planning and Zoning Commission.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 19-06-07, passed 6-18-19)

#### **§ 155.058 PLANNED INDUSTRIAL DEVELOPMENT PROJECT.**

(A) The owner or owners of land located in any industrial zone (I-1) or (I-2) may develop a planned industrial development project provided that the following requirements are met:

(1) *Plat plan:* a plat shall be presented for planning commission review and shall show the following:

- (a) Kind, location, bulk, and capacity of structures and uses;
- (b) General floor plan of buildings;
- (c) Location and identification of open spaces, streets and all other means of pedestrian and vehicular circulation;
- (d) Provision for automobile parking; and

(e) General nature and location of public and private utilities and other community facilities and services.

(2) (a) In accepting such plan for review, the Planning Commission must be satisfied that the proponents of the planned industrial park are financially able to carry out the proposed project and that construction will be started within one year after approval of said plan.

(b) It shall be the duty of the Commission to investigate and ascertain whether the proposed location and plan comply with the following conditions.

1. The proposed industrial park is at a location where traffic congestion does not exist at present on the streets to be utilized for access to the proposed industrial park and where such congestion will not likely be created by the proposed park.

2. That the plan provides for an industrial park consisting of one or more buildings of unified and harmonious design, together with required parking facilities and landscaping and will have no adverse affects upon the adjoining or surrounding development.

3. The uses permitted in a planned industrial park shall be those industries authorized for I-1 or I-2 districts. No residential and/or commercial uses shall be permitted nor any other use which is not necessary or desirable for an industrial park.

(3) The following regulations shall apply to a planned industrial park:

(a) *Building heights*: no building shall exceed six stories or 75 feet in height.

(b) *Fumes and odors*: no noxious or offensive trade or activity shall be carried on, nor shall anything be done thereon which maybe or become an annoyance or nuisance to said industrial park by reason on unsightliness or the excessive emission of odors, dust, fumes, smoke or noise.

(c) *Landscaping*: the area between the building lines and the property lines is to be used either for open landscaped and green area or for off-street surfaced parking areas. Any landscaped areas shall be properly maintained thereafter in a sightly and well-kept condition. Parking areas shall likewise be maintained in good condition.

(d) *Building setbacks*: no building which may be erected within an industrial park shall be nearer than 100 feet of the street right-of-way upon which it faces nor nearer than 25 feet of the right of way of any other existing or proposed streets, nor shall any buildings be erected nearer than 25 feet to the side or rear property lines.

(e) *Loading docks*: no loading dock shall be constructed fronting on any public street or roadway.

(f) *Parking facilities:* for each manufacturing, jobbing, warehousing, wholesaling, or other use permitted within the industrial park, there shall be provided off-street parking at the minimum rate of one parking space for each five persons employed or intended to be employed on the premises.

(g) *Storage facilities:* no materials or supplies shall be stored or permitted to remain on any part of the property outside the buildings constructed thereon without proper screening and adequate distances from adjoining properties.

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(h) *Billboards and signs*: no billboards or advertising signs other than those identifying the name, business and products of the firm occupying the premises shall be permitted, except that two freestanding signs not over 40 feet in height and having a maximum total area of no more than 150 square feet may be permitted for advertisement of the industrial park.

(i) *Fences, walls, and screening*: permanent screening on all property lines may be required when an industrial park adjoins residential districts.

(j) *Waste disposal*: no waste material or refuse shall be dumped upon or permitted to remain upon any part of an industrial park area outside of buildings constructed thereon. In addition, the property shall not be used by an industry whose primary business requires industrial sewerage, unless the governing municipal body authorizes the use of its sewage disposal facilities or said industry constructions its own sewage disposal plant.

(B) The Planning Commission shall attach reasonable special conditions to insure that there shall be no departure from the intent of this chapter. The proposed industrial park plan shall comply to all such conditions.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.059 SETBACK LINES, EXCEPTIONS.**

Front yard setback lines may be varied where the average depth of principal buildings on adjoining properties is less or greater than the depth prescribed elsewhere in this chapter. In such case, the front yard in question shall not be less than the average depth of existing front yards on the two lots immediately adjoining.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.060 STREET FRONTAGE REQUIRED.**

Except as permitted by other provisions of this chapter, no lot shall contain any building used in whole or part for residential purposes unless such lot abuts for at least 40 feet on a street.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.061 SUBDIVISION COORDINATION REQUIRED.**

In all cases where the ownership of land is divided for the purpose of eventual development of lots, the provisions of subdivision regulations shall apply (if adopted) in addition to the provisions of this chapter.

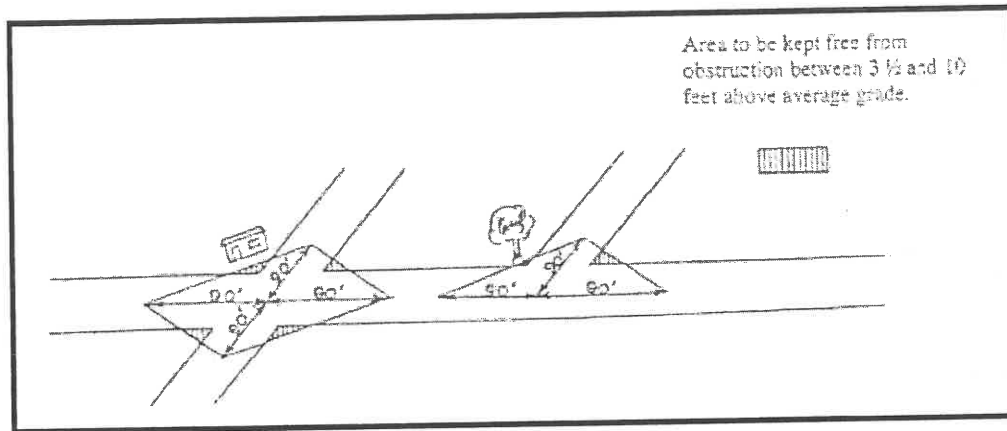
(Ord. 12-11-1, passed 11-19-12)

### § 155.062 TRAFFIC VISIBILITY ACROSS CORNER LOTS.

(A) On a corner lot, within the area formed by the center line of intersecting streets and a line joining points on such center lines at a distance of 90 feet, there shall be no obstruction to vision between a height of three and one-half feet and height of ten feet above the average elevation of the existing surfaces of each street at the center line thereof.

(B) The provisions of this section do not apply to the Central Business District nor shall the requirements of this section be deemed to prohibit any necessary retaining wall.

(C) The Board of Adjustment may either reduce or increase the requirements of the section for the interest of safety where unusual or special conditions warrant considerations.



(Ord. 12-11-1, passed 11-19-12)

### § 155.063 WATER SUPPLY AND SEWAGE DISPOSAL APPROVED.

It shall be unlawful to construct any building or dwelling without water supply and sewage disposal facilities which have been approved by the County Health Officer. Wherever water and sewer mains are accessible, buildings shall be connected to such mains. In every case, individual water supply and sewage disposal must meet the requirements set by the County Health Officer. A certificate approving proposed and/or completed water and sewerage facilities must accompany applications for building permits and certificate of occupancy.

(Ord. 12-11-1, passed 11-19-12)

### § 155.064 WIRELESS COMMUNICATIONS FACILITIES IN ANY DISTRICT.

(A) *Intention.* It is the intention of the City of Benton, Kentucky to regulate wireless telecommunications facilities in accordance with KRS 100.985 through 100.987, as now in effect or hereinafter amended.

(B) *Definitions.* For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ANTENNAS OR RELATED EQUIPMENT.** Transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include a cellular antenna tower.

**CELLULAR ANTENNA TOWER.** A tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services.

**CELLULAR TELECOMMUNICATIONS SERVICE.** A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

**CO-LOCATION.** Locating two or more transmission antennas or related equipment on the same cellular antenna tower.

**PERSONAL COMMUNICATION SERVICE.** Has the meaning as defined in 47 U.S.C. § 332(c).

**UNIFORM APPLICATION.** An application to construct a cellular antenna tower submitted to a planning commission in conformity with KRS 100.9865 and 100.987.

**UTILITY.** Has the meaning as defined in KRS 278.010(3).

**WIRELESS COMMUNICATIONS FACILITY.** A cellular antenna tower and antennas or related equipment which provides cellular telecommunications service.

(C) Prohibited actions of planning commission in regulating placement of cellular antenna towers. In regulating the placement of cellular antenna towers in compliance with KRS 100.986, the planning commission shall not:

(1) Regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that these facilities comply with the regulations of the Federal Communications Commission concerning radio frequency emissions;

(2) Institute a moratorium upon the siting of cellular antenna towers;

(3) Charge an application fee that exceeds an amount that is reasonably related to expenses associated with processing an application to construct a cellular antenna tower, and to issue any necessary permits including any required building permit, up to a maximum of \$2,500 or the maximum amount allowed by Kentucky law at the time of the filing of a uniform application;

(4) Regulate the placement of antennas or related equipment on an existing structure; or

(5) Require the submission of application materials in addition to those required by KRS 100.9865 and 100.987, unless agreed by both parties.

(D) *Procedure upon receipt of a uniform application.* After an applicant's submission of the uniform application to construct a cellular antenna tower, the planning commission shall:

(1) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;

(2) Conduct a public hearing on the application and make its final decision to approve or disapprove the uniform application; and

(3) Advise the applicant in writing of its final decision within 60 days commencing from the date that the uniform application is submitted to the planning commission or within a date certain specified in a written agreement between the local planning commission and the applicant. If the planning commission fails to issue a final decision within 60 days and if there is no written agreement between the local planning commission and the applicant to a specific date for the planning commission to issue a decision, the uniform application shall be deemed approved. The final decision of the planning commission shall be provided to the applicant via U.S. Postal Service Certified Mail, return receipt requested or other form of delivery as expressly approved by the planning commission, at an address provided in the uniform application in correspondence separate from the minutes of the planning commission meeting and shall state any findings and/or conclusions made supporting approval or denial of the application and any conditions of approval. The Administrative Officer is authorized to send such correspondence to the applicant unless the planning commission designates another official to send the correspondence at the time of making its decision. The separate correspondence may include excerpts from the approved meeting minutes of the planning commission.

(4) If the Planning Commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the planning commission approves the uniform application or the 60 day time period has expired, whichever occurs first.

(5) The Planning Commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. A planning commission may provide the location of existing cellular antenna towers on which the commission deems the applicant can successfully co-locate its transmitting and related equipment. If the local planning commission requires the applicant to attempt co-location, the applicant shall provide the local planning unit with a statement indicating that the applicant has:



(a) Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities, and that identifies the location of the tower or suitable structure on which the applicant will co-locate its transmission and related facilities; or

(b) Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:

1. Identifies the location of the towers or other structures on which the applicant attempted to co-locate; and

2. Lists the reasons why the co-location was unsuccessful in each instance.

(6) The local planning commission may deny a uniform application to construct a cellular antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers or other structures.

(7) In the event of co-location, a utility shall be considered the primary user of the tower, if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.

(8) Upon the approval of an application for the construction of a cellular antenna tower by a planning commission, the applicant shall notify the Kentucky Public Service Commission within ten working days of the approval.

(E) *Co-location and new wireless communications facility site selection preference.* It is the intent of the planning commission to encourage co-location whenever feasible. However when this is not possible, new sites for wireless telecommunications facilities should be considered in zoning districts in the following order: Industrial zoning districts first. If no suitable site are available then Commercial zoning districts, and then residential zoning districts.

(F) Within each zoning district, governmental properties shall be preferred for location of cellular antenna towers over privately owned properties. This preference is based on the generally higher degree of regulatory standards applicable to governmental properties and the general greater degree of continuity of ownership of governmental properties. The location of cellular antenna towers on such properties is presumed to be more consistent with the general welfare and safety of the City of Benton and its citizens than location on private properties.

(Ord. 12-11-1, passed 11-19-12)

**§ 155.065 BIG BOX SERVICE BUILDINGS (NEW RETAIL AND COMMERCIAL SERVICE BUILDINGS IN EXCESS OF 20,000 SQUARE FEET AND EXISTING SERVICE BUILDINGS EXPANDED ABOVE 20,000 GROSS SQUARE FEET).**

(A) *Square footage trigger.* The following requirements are applicable to all new retail and commercial service buildings in excess of 20,000 gross square feet in any nonresidential Zoning District. The City finds buildings of this size to merit additional review and development standards not usually appropriate for smaller structures. All additions to existing retail and commercial service buildings built either before or after the adoption of this chapter in any Zoning District, which bring the total building size to over 20,000 gross square feet shall also be required to comply with the provisions of this section.

(B) *Intent.* The following standards are intended to ensure that large retail and commercial service buildings are properly located in compliance with the Comprehensive Plan, KRS Chapter 100, this Zoning Ordinance, and the health, safety, and welfare of the city, its residents, and property owners. They are also intended to ensure that such buildings are compatible with the surrounding area and the overall community character of the city.

(C) *Compatibility with city plans.* The applicant shall provide, through a written compatibility report submitted with site plan application for the subject property, adequate evidence that the proposed building and overall development project shall be compatible with the city's Comprehensive Plan. The application for site plan approval shall demonstrate compliance with this section. The Compatibility Report shall specifically address the following items:

(1) A description of how the proposed development is compatible with adopted city plans, including the Comprehensive Plan, and other plans officially adopted by the city;

(2) A completed Planning Commission large development questionnaire form;

(3) For development totaling over 20,000 square feet of gross floor area, a completed Transportation and Traffic Impact Analysis in a format acceptable to the Kentucky Transportation Cabinet, if specifically required by the Planning Commission as discussed below;

(4) A detailed economic and fiscal impact analysis: Prior to development approval of developments over 20,000 square feet, the applicant shall provide adequate funding to the Planning Commission up to an amount of \$5,000 to hire a consultant of the Planning Commission's choice with appropriate experience to complete and present an economic and fiscal impact analysis. The Planning Commission may waive the requirement of the economic and fiscal impact analysis in whole or in part in its discretion if it concludes sufficient information may be compiled by its staff or from other sources.

(D) *Building location.* Where buildings are proposed to be distant from a public street, as determined by the Planning Commission, the overall development design shall include smaller buildings on out parcels or out lots closer to the street. Placement and orientation must facilitate appropriate land

use transitions and appropriate traffic flow to adjoining roads and neighboring commercial areas, and neighborhoods, and must forward community character objectives as described in the City's Comprehensive Plan.

(E) *Building materials.* Exterior building materials shall be of comparable aesthetic quality on all sides. Building materials such as glass, brick, tinted and decorative concrete block, wood, and stucco shall be used, as determined appropriate by the Planning Commission. Exterior insulation and finish systems (EIFS) shall not be considered and are prohibited. Decorative architectural metal with concealed fasteners or decorative tilt-up concrete panels may be approved if incorporated into the overall design of the building.

(F) *Building design.* The building exterior shall complement other buildings in the vicinity, and shall be of a design determined appropriate by the Plan Commission:

(1) The building shall employ varying setbacks, heights, roof treatments, doorways, window openings, and other structural or decorative elements to reduce apparent size and scale of the building.

(2) Roofs with particular slopes may be required by the Planning Commission to complement existing buildings or otherwise establish a particular aesthetic objective.

(3) Ground floor facades that face public streets shall have arcades (a series of outdoor spaces located under a roof or overhang and supported by columns or arches), display windows, entry areas, awnings, or other such features along no less than 50% of their horizontal length.

(4) Building facades shall include a repeating pattern that includes no less than two of the following elements: (i) color change, (ii) texture change, (iii) material modular change, and/or (iv) expression of architectural or structural bay through a change in plane no less than 24 inches in width, such as an offset, reveal or projecting rib.

(G) *Building entrances.* Public building entryways shall be clearly defined and highly visible on the building's exterior design, and shall be emphasized by on-site traffic flow patterns. Two or more of the following design features shall be incorporated into all public building entryways: canopies or porticos, overhangs, projections, arcades, peaked roof forms, arches, outdoor patios, display windows, distinct architectural details. Where additional stores will be located in the principal building, each such store shall have at least one exterior customer entrance that shall conform to the above requirements.

(H) *Building color.* Building facade colors shall be non-reflective, subtle, neutral, or earth tone. The use of high intensity colors, metallic colors, fluorescent colors or black on facades shall be prohibited. Building trim and architectural accent elements may feature bright colors or black, but such colors shall be muted, not metallic, not fluorescent, and not specific to particular uses or tenants.

(I) *Screening.*

(1) All ground-mounted and wall-mounted mechanical equipment, refuse containers and any permitted outdoor storage shall be fully concealed from on-site and off-site ground level views, with materials substantially similar to those used on the building exterior.

(2) All rooftop mechanical equipment shall be screened so as to not be visible from ground level building entrances.

(3) Loading docks shall be completely screened from surrounding roads and properties. Said screening may be accomplished through loading areas internal to buildings, screen walls, which match the building exterior in materials and design, fully opaque landscaping at time of planting, or combinations of the above.

(J) *Impact.*

(1) All projects shall have direct access to an arterial street, or to a collector level street deemed appropriate by the Planning Commission. Vehicle access shall be designed to accommodate peak; on-site traffic volumes without disrupting traffic on public streets or impairing pedestrian safety. This shall be accomplished through adequate parking lot design and capacity; access drive entry throat length, width, design, location, and number; and traffic control devices; and sidewalks.

(2) The site design shall provide direct connections to adjacent land uses if required by the city. Prior to development approval of developments over 20,000 square feet, if requested in writing to do so by the Planning Commission, the applicant shall provide up to \$5,000 of funding to the Planning Commission to hire a traffic engineer of the Commissions choice to complete and present a traffic impact analysis following Kentucky Department of Transportation guidelines applied in the district in which the City of Benton is located. The traffic impact analysis shall consider the parking lot 100% full for level of service analysis. Where the project will cause off-site public roads, intersections, or interchanges to function below level of service C, as defined by the Institute of Transportation Engineers, the Planning Commission may deny the application, require a size reduction in the proposed development, or require that the developer construct and/or pay for required off-site improvements.

(K) *Parking.*

(1) Parking lots in which the number of spaces significantly exceeds the minimum number of parking spaces otherwise required by this Zoning Ordinance shall be allowed on the Planning Commission's written approval only with specific and reasonable justification.

(2) Parking lot design shall employ interior, curbed landscaped islands at all parking aisle ends. In addition, the project shall provide landscaped islands within each parking aisle spaced at intervals no greater than one island per every 30 spaces in that aisle. Islands at the ends of aisles shall count toward meeting this requirement. Each required landscaped island shall be a minimum of 360 square feet in

landscaped area. The Planning Commission may waive or reduce the number of or size of islands required upon good cause shown based on topography, geology, shape of parcel or structure or other objective reasons.

(L) *Cart returns.* A minimum of one 200 square foot cart return area shall be provided for every 100 parking spaces. Cart corrals shall be of durable, non-rusting, all season construction, and shall be designed and colored to be compatible with the building and parking lot light standards. There shall be no exterior cart return or cart storage areas located within 25 feet of the building.

(M) *Outdoor display areas.* Exterior display areas shall be permitted only where clearly depicted on the approved site plan. All exterior display areas shall be separated from motor vehicle routes by a physical barrier visible to drivers and pedestrians, and by a minimum of ten feet. Display areas on building aprons must maintain a minimum walkway width of ten feet between the display items and any vehicle drives.

(N) *Outdoor storage uses and areas.* Exterior storage structures or uses, including the parking or storage of service vehicles, trailers, equipment, containers, crates, pallets, merchandise, materials, forklifts, trash, recyclables, and all other items shall be permitted only where clearly depicted and labeled on the approved site plan, such outdoor storage uses and areas shall be appropriately screened as required by division (I)(1) of this section.

(O) *Landscaping.* On-site landscaping shall be provided at time of building occupancy and maintained per following landscaping requirements:

(1) Landscaping plan shall be submitted to the Planning Commission for approval, as part of the site plan. Building foundation landscaping is required for all building frontages in order to provide visual breaks in the mass of the building. Such foundation landscaping shall be placed along 30% of the building's total perimeter, predominately near and along customer facades and entrances facing public streets.

(P) *Lighting.* On-site exterior lighting shall meet all the following standards as set forth in Article 15 of this chapter.

(Q) *Signage.* The plan for exterior signage shall provide for modest, coordinated, and complimentary exterior sign locations, configurations, and color throughout the development, including out parcels. All freestanding signage within the development shall complement wall-mounted signage. Monument style ground signs are required, and shall not exceed a height of eight feet. Consolidated signs for multiple users shall be required instead of multiple individual signs, in which case Marquee signs shall be required in the event the proposed site plan shows the possibility of multiple simultaneous occupants. The use of logos, slogans, symbols, patterns, striping and other markings, and colors associated with a franchise or chain is permitted, and shall be considered as contributing to the number and area of permitted signs. Signage shall also be in compliance with § 155.054 Outdoor Advertising Signs and Billboards.

(R) *Noise.* Noise associated with activities at the site shall not create a nuisance to nearby properties, and shall comply with any applicable city noise requirements.

(S) *Natural resources protection.* Each project shall meet any storm water management standards and erosion control measures set forth in the subdivision regulations or in other applicable law. In addition, post development runoff rates shall not exceed pre-development rates, unless a waiver is granted by the Planning Commission for good cause shown. Owner/developer efforts as to on site retention to alleviate drainage problems and to limit street runoff is encouraged and may be considered by the Planning Commission in any related decision or recommendation. Maintenance of any storm water retention or conveyance features are solely borne by the developer/owner unless dedicated and accepted by the city.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.066 BED AND BREAKFAST/INN ESTABLISHMENTS.**

Bed and breakfast/inn establishments may be allowed only as a conditional use in all residential, commercial and agricultural zoning districts upon application to the Board of Adjustment, only if all of the following conditions are met for all applications:

(A) The Bed and Breakfast/Inn must be in a dwelling or structure located on land which is occupied by the owner, lessee or owner's agent, and will supply temporary accommodations to overnight guests for a fee. Temporary accommodations are deemed to be for a period of less than 30 days.

(B) The proposed use of the property will not adversely affect the immediate neighborhood. Such determination shall be made by the Board of Adjustment in an objective manner based upon adjudicative facts of record.

(C) The proposed use of the property will not create noise, light or traffic conditions detrimental to the neighboring residents.

(D) Service shall be limited to the rental of rooms for sleeping for overnight guests and for special events such as Tater Day and/or recognized festivals or fairs or parades which involve more than the immediately adjoining properties.

(E) Only food preparation for overnight guests and for otherwise permitted special events shall be conducted by the owner, lessee, owner's agent or licensed and inspected caterer. All food preparation must take place in a kitchen inspected, approved, and licensed by a County Health Department. In no case may food be prepared on-site at the establishment and catered to an off-site location.

(F) The bed and breakfast/inn, whether located in the dwelling or other structure location on the land, shall be an incidental and secondary use of the dwelling.



(G) The resident owner, lessee, or owner's agent shall keep a current guest register including names, addresses and dates of occupancy of all guests.

(H) The resident owner, lessee, or owner's agent shall comply with all business license and revenue collections ordinances of the city and Marshal County.

(I) The bed and breakfast/Inn shall comply with the Kentucky Building Code and other applicable local and state laws.

(J) In addition to the zoning districts' parking requirements, one off-street parking space will be provided for each guest room rented. In no instance will parking be allowed for any guest or special event on public roads or rights-of-way. Upon approval by the Board of Zoning Adjustment, guest parking in an official parking lane or lot adjoining the property may per permitted.

(K) The principal use of any such structure or structures shall be residential.

(L) Signs shall be limited to one externally illuminated on-premise sign not to exceed four (4) square feet in area.

(M) The bed and breakfast/inn shall be operated by the owner, owner's agent, or lessee who shall reside on the property and shall be present at all special events occurring in or at the establishment.

(N) If the bed and breakfast operations are at any time terminated for one year the conditional use permit shall be revoked.

(O) Any and all existing bed and breakfast establishments shall be deemed to be grandfathered in if the establishment owners notify the Zoning Office Administrator of their desire to be grandfathered in within 30 days of the publication date of the Zoning Ordinance. To qualify for the grandfathering, any and all establishment owners may be required by the Administrative Officer to document the fact of their being in operation prior to aforesaid date.

(P) The Board of Adjustment may apply or impose other reasonable conditions as each situation warrants, but must be at least as restrictive as all of the above.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.067 PRIVATE SWIMMING POOLS IN ANY DISTRICT.**

All private swimming pools, which are below ground or above-ground with a potential water depth exceeding 24 inches, shall be regulated according to the following requirements:

(A) Swimming pools shall be permitted to be located only to the rear of the principal dwelling or dwellings.

(B) Except as herein provided, no swimming pool, including the apparatus and equipment pertaining to the operation of the swimming pool shall be permitted within any required yards of the lot and shall be a minimum of three feet from any side yard or lot line no within the limits of any public right of way easement.

C) The swimming pool or the property on which the pool is located shall be surrounded by a fence or wall at least four feet in height with the bottom of such fence being no more than four inches above ground and no open space in such fence exceeding four inches in diameter, and of such construction that a small child may not reach the pool from the street or from any adjacent property without opening a door or gate or scaling a wall or fence.

(D) All swimming pools including the apparatus and equipment pertaining to the operation of the swimming pool shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the City of Benton and other applicable law.

(E) This section is not applicable to outdoor hot tubs or jacuzzis which are intended to be filled with water only when in use in that they are not swimming pools.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.068 RESIDENTIAL CARE FACILITIES AND OTHER GROUP TREATMENT RESIDENCES.**

(A) *Statutory "residential care facilities".* The Zoning Ordinance is subject to KRS 100.982 and KRS 100.984 as now in effect or hereinafter amended as to residential care facilities. Kentucky Revised Statutes 100.982(2) defines a **RESIDENTIAL CARE FACILITY** means a residence operated and maintained by a sponsoring private or governmental agency to provide services in a homelike setting for persons with disabilities. Kentucky Revised Statutes 100.982(1) defines a **PERSON WITH A DISABILITY** as a person with a physical, emotional, or mental disability, including but not limited to, mental retardation, cerebral palsy, epilepsy, autism, deafness or hard of hearing, sight impairments, and orthopedic impairments, but not including convicted felons or misdemeanants on probation or parole or receiving supervision or 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. Kentucky Revised Statutes 100.982(1) states a **PERSON WITH A DISABILITY** does not include persons with current, illegal use of or addiction to alcohol or any controlled substance as regulated under KRS Chapter 218A.

(B) *Other forms of group treatment residence.* To the extent of its authority pursuant to any applicable state and/or federal law, any group treatment residence not included in the above definition of residential care facility which is owned or operated by a private person or entity or governmental agency to provide services in a homelike setting to convicted felons or misdemeanants on probation or parole or receiving supervision or 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



or to persons with current, illegal use of or addition to alcohol or any controlled substance as regulated under KRS Chapter 218A, shall require a conditional use permit in order to operate in any zoning district in the city. A group treatment residence is a facility intended for occupancy by two or more persons receiving services plus any paid staff. The following standards shall be complied with in connection with the issuance of any conditional use permit for such group treatment residence:

- (1) Such Group Treatment Residence shall have obtained all necessary local, state, and/or federal permits for provision of services on such property, or the property owner and/or any lessee or operator of such Group Treatment Residence will have executed a binding stipulation that such services will not be provided on the property until all such permits have been obtained. Upon request, the property owner, lessee, or operator of such Group Treatment Residence shall provide documentations of such permits to the Board of Zoning Adjustment or its staff. "Services" means, but is not limited to, supervision, shelter, protection, rehabilitation, personal development, and attendant care.
- (2) The applicant and property owner shall stipulate the proposed group treatment residence shall meet any existing parking requirements for the zoning district in which the property is located.
- (3) The applicant and property owner shall stipulate that noise arising from the subject property shall be modulated to ensure no unreasonable disturbance of adjacent residents.
- (4) The applicant and property owner shall stipulate that any existing residential character of the building and property are maintained, including the exterior facade, landscaping fences, walls, lawn areas, and driveways, unless the Board of Zoning Adjustment approves alternations in connection with the issuance of a conditional use permit.
- (5) The applicant and property owner shall stipulate that the group treatment residence will not create an unreasonable level of disruption or interference with the peaceful enjoyment of adjoining and neighboring properties.
- (6) The applicant and property owner shall stipulate that total occupancy of the proposed group treatment residence does not exceed two residents for every bedroom or guest room, unless the Board of Zoning Adjustment approves otherwise.
- (7) The applicant and property owner shall notify the Board of Zoning Adjustment in writing within ten days if any permit for the operation of the proposed group treatment residence is suspended, revoked or denied by any governmental agency.
- (8) Any reasonable conditions required by the Board of Zoning Adjustments in connection with approval of a conditional use permit which are consistent with KRS Chapter 100, this Zoning Ordinance, and the health, safety and welfare of the City, its residents, and property owners.  
(Ord. 12-11-1, passed 11-19-12)

**§ 155.069 ASSISTED LIVING FACILITIES.**

It is the intent of this zoning ordinance to permit assisted living facilities as conditional use approvals by the Board of Adjustment in any zoning district except for Light Industrial (I-1) or Heavy Industrial (I-2). Assisted living facilities are preferred to be in Multi-Family Residential Districts (R-2 or R-3) based on a higher level of compatibility with such districts. Subject to final development plan approval by the Planning Commission, assisted living facilities may also be allowed as part of a planned unit development within the respective districts. Any conditional use permit granted shall be conditioned on applicant's continued compliance with certification requirements of KRS 194A.700 through 194A.729 and 910 KAR1:240 as now in effect or hereafter amended.

(A) No certification of occupancy shall be issued prior to certification of compliance with the certification of assisted living residences standards per Kentucky Revised Statutes. This requirement can be met by written notice from the Cabinet for Families and Children or a statement of intended compliance signed by the owner, engineer/architect, and management group addressing each of the requirements of the voluntary certification program.

(B) No certificate of occupancy shall be issued prior to the issuance of required permits and certificates by federal, state, and local agencies and all required conditions of approval by the Board of Adjustment and the Planning Commission.

(C) Development shall be located on an arterial street, collector street, or local street.

(D) The location, design, and operating characteristics of the use shall be compatible with and not adversely affect adjacent properties and the surrounding area. The proposed development shall be harmonious with surrounding buildings with respect to scale, architectural design, and building placement. The street network shall be capable of accommodating the traffic generated by the proposed uses.

(E) An Assisted Living Facility shall comply with the following Site Standards:

- (1) Minimum lot size shall be one acre.
- (2) The maximum allowable density for such developments shall be 12 units per gross acre for R-3.
- (3) These facilities should be designed so as to cluster the residential units and associated buildings based on the net density and provide sufficient open space and amenities areas.
- (4) Three parking spaces shall be provided for every four residential units. Ten percent (10%) of the total number of parking spaces shall be designated as handicap accessible.
- (5) Each unit shall contain at least 400 square feet of gross floor area.

(F) *Area regulations.* All buildings shall be set back from the street right-of-way and from all property lines as required by the zoning district within which the development is located except where adjacent to a state highway, the minimum setback from that highway right-of-way shall be 50 feet.

(G) *Administrative procedures for assisted living facilities:*

(1) An application for Conditional Use approval shall be filed with the Board of Adjustment office for their regular scheduled meeting, unless otherwise noted.

(2) Each application for Conditional Use approved shall be accompanied by a development plan drawn to scale and prepared by a licensed engineer, architect or landscape architect. The following information shall be also provided:

(3) The location and legal description, including the appropriate tax map and parcel identification, of the proposed assisted living facility.

(4) Plans and specifications of all buildings, improvements and facilities constructed or to be constructed within the development, including buildings, elevations and floor plans.

(5) A table attached on the plan or as an addendum, identifying the number of residential units, by bedroom size and the gross square foot area of each unit size.

(6) A description of common and specialized services to be provided to the residents.

(7) A landscaping plan, including all required screening and buffering.

(8) The location, height, focal direction, and lighting levels (intensity), in foot candles, of all external lightening structures.

(9) A non-binding preliminary project development and construction schedule prepared in good faith. The schedule shall demonstrate the applicant's readiness and ability to provide facilities and services.

(10) Conditional use permit approval shall be contingent upon issuance of all required permits and approvals from federal, state, and local authorities.

(11) Drainage and erosion control plan.

(12) Such other architectural and engineering data as may be required by the Board to determine compliance with the provisions of the Zoning Ordinance and subdivision regulations.  
(Ord. 12-11-1, passed 11-19-12)

**§ 155.070 EXTENDED STAY HOTEL REGULATIONS.**

(A) An extended stay hotel is any hotel or motel in which 40% or greater of all guest rooms have facilities for both the storage, refrigeration, and preparation of food, and/or which are advertised, designed, or utilized for weekly, monthly, or longer occupancy. Extended Stay Hotels may be located in the C-1 Central Business Commercial District, C-2 Neighborhood Commercial District, and R-3 District upon approval of a conditional use permit pursuant to this section and KRS 100.237. Extended stay hotels may be consistent with the Comprehensive Plan and KRS Chapter 100, but only pursuant to appropriate conditions as approved by the Board of Zoning Adjustment in granting a conditional use permit.

(B) Any conditional use permit approved for either the owner and operator of an extended stay hotel shall:

(1) Authorize at least annual inspection by the Administrative Official and/or his or her designee for compliance with the conditional use permit at the cost of the property owner, with acknowledgment by the property owner that failure to maintain ongoing compliance with such permit may result in public hearing and possible revocation of the conditional use permit pursuant to KRS 100.237.

(2) Require the property owner upon ten days of receiving any building permit, revocation of permit, or notice of building, electrical, or fire code violation or any adverse governmental agency allegation or determination as to the subject property to notify the Administrative Official of receipt of any such document by providing him or her a copy via U.S. Postal Service First Class Mail, return receipt requested, or via hand delivery. Failure to timely provide such documentation shall be a violation of the conditional use permit.

(3) Shall require the property owner to obtain and maintain reasonable property, fire and liability insurance and that employees of the owner or operator of the facility or their contractors working on site be covered by Workmans' Compensation Insurance under any applicable Kentucky law.

(4) Shall require compliance with all applicable fire safety codes and that reasonable fire escape routes be maintained and identified by appropriate signage.

(5) Shall require the property owner or operator to maintain an occupancy roll, available for inspection on the property by the Administrative Official or law enforcement officials of the City of Benton, Kentucky, identifying the guests occupying each room, their period of occupancy, and the guests' motor vehicles on the property.

(6) Shall prohibit animals in the rented rooms, except for certified service animals providing assistance to disabled persons or other types of animals as approved for good cause shown by the Board of Zoning Adjustment.

(7) Require that all guest rooms which have facilities for both the storage and preparation of food and have less than 300 square feet of floor area are limited to a maximum of two persons per such room; however for all such guest rooms greater than 300 square feet, one additional person shall be allowable per each additional 75 square feet of floor area up to and including a maximum of four persons.

(8) Require a minimum lot size for the extended stay hotel of 1.5 acres.

(9) Require that no more than 25% of individual guests shall resister, reside in, or occupy any room or rooms within the same extended stay hotel facility for more than a 90 day period.

(10) Require an indoor or fenced outdoor recreation facility of a size and with features as approved by the Board of Zoning Adjustment.

(11) Require that no permanent business license shall be issued for the conduct of any business from any guest room of the extended stay hotel.

(12) Require that a landscape plan for the extended stay hotel be approved by the Board of Zoning Adjustment.

(13) Require that 20% of the lot area of the extended stay hotel be devoted to active or passive open space.

(14) Require that each guest room must be protected by a sprinkler system approved by the fire marshal and otherwise in compliance with all applicable fire codes.

(15) Require each guest room having a stove-top unit or other type burner unit shall be required to also include a maximum 60 minute automatic power off timer for each such unit or that any stricter building code provision on such timers be complied with.

(16) Require a hard-wired smoke detector be provided and installed in each guest room.

(17) Require that there be no outside storage or permanent parking of equipment or vehicles.

(18) Require that the extended stay hotel provide a 40 foot undisturbed buffer from any property zoned R-2, and/or a 80 foot undisturbed buffer from any property zoned R-1, unless the Board of Zoning Adjustment approved a lesser buffer on good cause shown and upon requirement of appropriate fencing, landscaping, or other barriers to mitigate any impact on adjoining property. No building which is part of an extended stay hotel may be placed within 200 feet of any R-1 or R-2 property or within 100 feet of any single family or multi-family building on an adjoining lot in the R-3 district, unless the Board of Zoning Adjustment approves a lesser spacing on good cause shown and upon requirement of appropriate fencing, landscaping, or other barriers to mitigate any impact on the adjoining property.

(19) Require that the extended stay hotel have a maximum density of 60 guest units per gross acre of development, unless a greater density is approved by the Board of Zoning Adjustment on good cause shown based on building design, transportation access, topography, and demonstrated ability to provide sufficient parking, amenities, and services to guests at a higher density level.

(C) Any conditional use permit issued for an extended stay hotel may include conditions other than those listed above in the sound discretion of the Board of Zoning Adjustment as consistent with the Comprehensive Plan, the Zoning Ordinance, KRS Chapter 100, other applicable law and in protection of the health, safety, and welfare of the citizens and property owners of the City of Benton, Kentucky. (Ord. 12-11-1, passed 11-19-12)

#### **§ 155.071 MIXED USE OVERLAY DISTRICT REGULATIONS.**

See § 155.101.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.072 FENCE, WALL, AND OBSTRUCTION TO VIEW REGULATIONS.**

(A) The intent of this section is to improve the appearance and safety of property by ensuring that fences, walls, and similar obstructions are erected in a manner so that they do not become a visual nuisance or safety hazard and to promote public health and safety.

(B) No fence, wall, hedge, or other obstruction, above a height of 36 inches, as measured above the curb level, shall be erected, placed, maintained, or continued in an zone, within that triangular portion of a corner lot formed by measuring 30 feet from the intersection of the right-of-way lines of two streets and joining these points with a straight line.

(C) No fence or wall that obstructs sight along any public way shall be erected, whether the lot is a corner lot or adjoins only one public way. The public health, safety, and welfare require that persons using public ways be able to see vehicles exiting properties adjoining the public ways sufficiently in advance to allow for safety of all persons and vehicles.

(D) Walls and fences shall not be permitted any closer to the street than the yard setback as established by the record subdivision restrictions or any closer than the house/principal structure when no private subdivision restrictions are recorded in a residential or commercial zoning district, except for permitted schools, cemeteries, day care centers, and government buildings.

(E) Maximum fence height shall not exceed six feet in any residential zoning district or eight foot along any separation line between a residential and commercial zoning district without a conditional use permit for good cause shown.



(F) Walls and fences shall be permitted in any yard in an industrial or agricultural zone. There shall be no height restriction placed on any wall or fence in an industrial zone or agricultural zone, and any barbed wire construction shall be not less than six feet above ground level.

(G) Where a lot abuts a publicly dedicated alley, a wall or fence shall be permitted to be located on the property line in the yard that abuts the alley, provided any gate swings in toward the property.

(H) Barbed wire or electric fences shall not be permitted in any residential zone or adjacent to any residential zone.

(I) If one-third or more of a fence is gone or in substantial disrepair, the entire fence must be removed or repaired within 30 days of written notice from the Zoning Administrator to the property owner by certified mail-return receipt requested.

(J) Fences shall be constructed so that all structural members shall be located on the inside of the fence. The inside shall be the side which faces the property owned by the person building the fence.

(K) A double frontage lot shall be considered to have two front yards, unless such classification is waived by the Planning Commission upon good cause shown.

(L) New fence or free-standing wall erection requires a permit from the Administrative Official in residential or commercial zones. Applicant property owners shall submit information on the type of fence or free-standing wall and its location and means of construction to the Zoning Administrator on a form as provided by the Administrative Official. A permit fee as set by the City Council shall be payable to the city and is due on application for the permit.

(M) Fences shall preserve appropriate access for utility service or installation consistent with instruments recorded in the chain of title in the form of deed, easement, plat or other appropriate instrument.

(Ord. 12-11-1, passed 11-19-12)

### **§ 155.073 RELIGIOUS LAND USE.**

All persons are on notice that this Zoning Ordinance is subject to the federal Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. § 2000cc(a)(1)) as now in effect or hereinafter amended. Such Act prevents local government from imposing or implementing land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates the imposition of the burden is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. All persons are on notice that in regulation of any property on which religious exercise is conducted that the city and its agencies and staff shall consider traffic, access, parking, drainage, setback, lighting, fencing, adjoining property impact, utility, and other health, safety,

and welfare issues whether detailed in this Zoning Ordinance or not and which arise to a compelling governmental interest, in connection with making any decision or interpretation within the city's jurisdiction as to such property. The city and its agencies and officials may request information and documentation on such compelling governmental interest issues when making any such decision or interpretation and the property owner shall timely comply with such requests.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.074 CHILD DAY CARE FACILITIES.**

(A) For the purpose of this section, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

***CHILD DAY CARE.*** The provision of supplemental parental care and supervision:

(a) On a regular basis;

(b) For less than 24 hours a day; and

(c) For two or more children who are not related to the caregiver and not occupants of the home and/or in any circumstances when such care and supervision is required to be under license by the Commonwealth of Kentucky.

As used in this chapter, the term is not intended to include babysitting services of a casual, non-recurring nature or in the child's own home or recurring babysitting services involving three children or less who are relatives of the caregiver and/or not occupants of the home and in circumstances where such facility is not required to be licensed by the Commonwealth of Kentucky. Likewise, the term is not intended to include cooperative reciprocal child care by a group of parents in their respective homes; summer programs offered by a religious organization which a child attends no longer than two weeks; facilities operated by a religious organization while religious services are being conducted, and child care provided while one or more parents are on the premises, other than at the employment site of one or more parents. Owners or operators of any form of day care facility are on notice that a copy of any required state permit will be required to be filed upon request for business license or other approval required pursuant to this Zoning Ordinance.

***CHILD DAY CARE FACILITY.*** A building or structure in which an agency, person, or persons regularly provide care for a group of two or more children unrelated to the caregiver for periods of less than 24 hours in a day. ***CHILD DAY CARE FACILITIES*** include family day care homes, out-of-home child mini-day care centers and state-licensed child care centers regulated by the Commonwealth of Kentucky, as presently defined in the Kentucky Revised Statutes and regulations adopted pursuant thereto and hereafter amended, including 922 K.A.R. 2:090. The owner or operator of any ***CHILD DAY CARE FACILITY*** shall maintain originals or accurate copies of all governmental licenses or permits of any kind which it holds in relation to activities on the subject property in the city,



as well as notices of violation from any governmental body or official in regard to activities on the subject property and have such documentation available forthwith for inspection by the Administrative Official upon request.

***CHILD MINI DAY CARE CENTER.*** A child day care facility not located in the residence of the care provider or other individual, required to be licensed or certified by the Commonwealth of Kentucky that provides child care:

- (a) On a regular basis;
- (b) For less than 24 hours a day; and
- (c) For six or fewer children who are not related to the caregiver.

***CHILD MINI DAY CARE HOME.*** A child day care facility located in the residence of the care provider or other individuals, not required to be certified by the Commonwealth of Kentucky that provides child care:

- (a) On a regular basis;
- (b) For less than 24 hours a day; and
- (c) For three or fewer children who are not related to the caregiver and not occupants of the home.

***FAMILY CHILD CARE HOME.*** A child day care facility located in the residence of the care provider or other individuals, required to be certified by the Commonwealth of Kentucky that provides child care:

- (a) On a regular basis;
- (b) For less than 24 hours a day; and
- (c) For three to six children who are not related to the caregiver.

***STATE-LICENSED CHILD CARE CENTER.*** A child day care facility not located in the residence of the provider or other individuals, required to be certified by the Commonwealth of Kentucky that provides child day care:

- (a) On a regular basis;
- (b) For less than 24 hours a day; and
- (c) For six or more children.

(B) As used in this chapter, the above terms are not intended to include babysitting services of a casual, non-recurring nature or in the child's own home or recurring babysitting services involving three children or less who are relatives of the caregiver and/or not occupants of the home and in circumstances where such facility is not required to be certified or licensed by the Commonwealth of Kentucky. Likewise, the term is not intended to include cooperative reciprocal care by a group of parents in their respective homes; summer programs offered by a religious organization which a child attends no longer than two weeks; facilities operated by a religious organization while religious services are being conducted, and child care provided while one or more parents are on the premises, other than at the employment site of one or more parents.

(C) Owners or operators of any form of a child day care facility are on notice that a copy of any required state permit, certificate or license will be required to be filed upon request for business license or other approval required pursuant to this chapter.

(D) A child mini day care home shall be permitted in all districts permitting residences and shall be subject to the following requirements:

- (1) Comply with all building, fire safety, health code, and business licensing requirements;
- (2) Lot size, building size, setbacks, and lot coverage conform to the standards of the zoning district except if the structure is a legal nonconforming structure;
- (3) A safe passenger loading area must be provided;
- (4) Signage, if any, will conform to this Zoning Ordinance;
- (5) Filing of a child day care registration form with the city;
- (6) No structural or decorative alteration which will alter the single-family character of an existing or proposed residential structure or be incompatible with surrounding residences is permitted.

(E) A family child care home may be permitted by the Board of Adjustments as a conditional use in all districts permitting residences. Any approved family day care facility must comply with the conditional use requirements set forth below and any additional requirements the Board of Adjustments may require.

(F) *Child mini-day care center.* A child mini-day care center or state-licensed child care center may be permitted in any zoning district by the city Board of Adjustments as a conditional use and are subject to the conditional use requirements set forth below and the following requirements:

- (1) *Notice.* Notice of the proposal shall be given as provided below:
  - (a) Notices shall be posted on site at least 15 calendar days prior to final action on the application for conditional use;

(b) The notice shall include a description of the proposal, site location, deadline for submitting written comments, and the address and phone number of the Planning and Zoning Administrator where comments may be sent.

(c) The Planning and Zoning Administrator shall be provided with a list of adjoining property owners and their addresses by the applicant at the time of application. The applicant may obtain the addresses of adjoining owners from the records of the Property Valuation Administrator in the same manner as for a zoning map amendment according to KRS 100.212(2).

(2) *Board of Adjustment review requirements.* The Board of Adjustment shall review applications for a child mini-day care center and state-licensed child care center in any zoning district, shall consider any written comments made regarding the proposed day care center, and may approve, modify, or deny the application subject to the following requirements:

(a) Comply with all building, fire safety, health code, and business licensing requirements;

(b) Signage, if any, will conform to the requirements of this chapter;

(c) Filing of a child day care registration form with the Planning and Zoning Administrator;

(d) Parking requirements shall conform to the parking requirements of the zoning district in which the property is located and also include a safe passenger loading area;

(e) The site must be landscaped and/or buffered in a manner compatible with adjacent residences;

(f) A fence at least four feet high must be installed around the play yard or yard where all outdoor play activities shall be conducted and the play yard shall meet any other conditions as to size based on the particulars of the property and surrounding structures as approved by the Board of Adjustments and such play yard shall not be in any required front yard;

(g) No structural or decorative alteration which will alter the residential character of an existing residential structure used for a child mini-day care center is permitted. Any new or remodeled structure must be designed to be compatible with the residential character of the surrounding neighborhood;

(h) Neither child day care center shall be located within 200 feet of another child day care;

(G) *Conditional use permit requirements.*

(1) Meet Commonwealth of Kentucky child day care licensing requirements;

(2) Comply with all building, fire safety, health code, and business licensing requirements;

(3) Lot size, building size, setbacks and lot coverage and other dimensions conform to those applicable to the zoning district and are to be shown on site plan to be submitted with application;

(4) Signage, if any, will conform to the requirements for the applicable zoning district;

(5) Filing of a child day care registration form with the city as provided for in this chapter;

(6) Parking requirements shall conform to this chapter for the zoning district in which the property is located and include a designated pickup and delivery area and further be designed to enhance child safety;

(7) A fence at least four feet high must be installed around the play yard or yard where all outdoor play activities shall be conducted and the play yard shall meet any applicable minimum size requirements of the Commonwealth of Kentucky and any other conditions as to size based on the particulars of the property and surrounding structures as approved as a condition in the conditional use permit process and such play yard shall not be in any required front yard;

(8) The site must be landscaped in a manner compatible with any adjacent residences and/or buffered as required as a condition of the conditional use permit process;

(9) No structural or decorative alteration which will alter the residential character of an existing residential structure used for a state-licensed child care center is permitted. Any new or remodeled structure must be designed to be compatible with the residential character of the any surrounding residential neighborhood.

(10) The child day care center shall not be located within 200 feet of another child day care center.

(11) The state-licensed child care center shall not conduct outdoor play activities before 7:30 a.m. or after 9:00 p.m. local time if located in or adjoining a residential zoning district.

(H) *Accessory use.* A child day care center, if sited on the premises of an operating community service facility, school, or church, shall be considered accessory to the principal use of the property concerned. However, any such child day care center shall remain subject to the regulations of this section.

(I) *Registration.* Each child day care service provider for any of the above categories must register with the city by completing a child day care registration form as provided by the department prior to initiation of the use. Upon registration, the child day care provide must be able to demonstrate compliance with the applicable conditions of this chapter.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 22-07-03, passed 7-18-22)

**§ 155.075 ADULT DAY CARE.**

Any adult day care center which provides part-time care, day or night, but less than 24 hours, to at least four adults not related to the operator of the adult care facility by blood, marriage or adoption shall be subject to conditional use permit review. In making its decision on the conditional use permit and appropriate conditions, the Board may take into account health, safety, and welfare considerations and similar site specific considerations to those set forth in § 155.074. An adult day care center shall be subject to the dimensional and parking requirements of the Zoning Classification of the property. The issuance of a conditional use permit for an adult day care center shall be conditioned on the owner or operator of the property and center having received all certifications, permits, and/or licenses required by KRS Chapter 205, as now in effect or subsequently amended, for such adult day care center. An adult day care center may be permitted by conditional use permit in any zoning district.  
(Ord. 12-11-1, passed 11-19-12)



**§ 155.076 HOME OCCUPATIONS.**

(A) The purpose of this home occupation provision is to allow for certain types of restricted occupations uses within residential districts that are compatible with the neighborhood in which they are located. Any person seeking to undertake a home occupation pursuant to this section shall apply to the Administrative Official who shall present the request to the Board of Zoning Adjustment for public hearing and ruling on a Conditional Use Permit for the home occupation. The Board of Adjustment may attach conditions to its approval which are necessary to preserve the character of the Zoning District in which the proposed use will be located. Prior to ruling on a request for Conditional Use Permit, the Board of Zoning Adjustment may request certified copies of any licenses necessary to conduct the desired home occupation and evidence of reasonable liability insurance and other appropriate documentation and may condition its approval on no revocation or suspension of such license and that required liability insurance remain in continuous effect. A conditional use permit may be granted for a term of one or more years and the Board of Adjustment is not required to grant such Permit with an indefinite term.

(B) In addition to the limitation applicable in the Zoning District in which located, all home occupations shall be subject to the following use limitations:

(1) A home occupation must be conducted within a dwelling which is the bona fide residence of the principal practitioner, or in an accessory building thereto which is normally associated with a residential use.

(2) Except for articles produced on the premises, no physical stock in trade shall be displayed so as to be visible from the street or sold on the premises.

(3) No alteration to the exterior of the principal residential building shall be made which changes the character thereof as a dwelling.

(4) No outdoor display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.

(5) No more than two persons who are other than members of the immediate family occupying such a dwelling shall be employed and working on the premises at any given time.

(6) No more than one third of the gross area of one floor of said residence shall be used for such purposes.

(7) No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.

(C) The following are prohibited as home occupations: ambulance service; automobile repair, detailing parts sales, upholstery, detailing, painting, washing service; beauty salons, barber shops; dance and exercise studios; gift shop; antique shop; mortician; hearse service; private club; restaurant; retail sales from site; veterinary uses (including care, grooming, and boarding); welding shop; adult-oriented businesses; trailer rental; stable or kennel; flea market or permanent yard sales; and any substantially similar type of service as determined by the Board of Adjustments.

(D) Home occupations may include the office or studio in the residence of the following: medical doctor, dentist, chiropractor, nurse-practitioner, artist, lawyer, accountant, engineer, surveyor, financial services consultant, stock broker, teacher or tutor (with musical instruction limited to two pupils at a time), realtor or real estate broker, insurance agent, dressmaker, seamstress, tailor, computer software or hardware consultant or other similar uses as found consistent with this section by the Board of Zoning Adjustments.

(E) Only one unlighted sign not over two square feet in area identifying home occupations shall be permitted on the dwelling premises for a home occupations.

(F) Persons with demonstrated physical disabilities protected by the Federal American with Disabilities Act of 1990 (42 U.S.C. § 12101) as now in effect or hereinafter amended may be permitted special consideration by the Board of Zoning Adjustments in ruling on and establishing conditions for their home occupation.

(G) A home occupation conditional use permit does not run with the land and is personal to the individual it is issued to and is not transferable to another person or property.

(H) An applicant may request waiver of a portion or all of the requirements of this section for good cause shown. However, the Board of Adjustments retains discretion on a substantial evidence standard as to whether to grant any such request.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.077 IMPACT FEE FOR INFRASTRUCTURE COSTS.**

(A) *Authorization.* This section is enacted pursuant to the general police power, the authority granted to municipal corporations by the Kentucky State Constitution and KRS 82.082 and pursuant to KRS Chapter 100.

(B) *Purpose and intent.* This section is for the purpose of implementing the city's Comprehensive Plan (KRS 100.183 through 100.197) by requiring that new development pay for its fair share of public facilities through the imposition of an impact fee for infrastructure costs ("IFIC") that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the city for public facilities that serve such development.



(C) *Applicability.* Unless expressly expected or exempted, this chapter applies to all fees imposed by the city to finance capital facilities, the need for which is created by new development, including, but not limited to:

- (1) Sewer development charges;
- (2) Water development charges;
- (3) Electric, natural gas, and other utility development charges;
- (4) Park and recreation expenses;
- (5) Drainage expenses;
- (6) Police and fire expenses; and
- (7) Transportation improvement expenses.

(D) *Exemptions.* This section does not apply to:

- (1) Taxes and special assessments;
- (2) Fees for processing development applications;
- (3) Fees for enforcement of or inspections pursuant to regulatory ordinances;
- (4) Fees collected under development agreements;

(5) Fees imposed pursuant to a reimbursement agreement between the City and a property owner for that portion of the cost of a public facility paid for by the property owner which exceeds the need for the public facility attributable to, reasonably related to, and roughly proportional to the development;

(6) Fees to mitigate impacts on the environment; or

(7) Fees imposed, levied, or collected by other governmental agencies including subdivisions of the state and federal government.

(E) *Definitions.* When used in this section, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

**BENEFIT AREA.** The geographic area within which IFICs are collected and expended for a particular type of capital improvement serving development projects within such area.

**CALCULATE.** To determine the amount of IFICs to be imposed on a particular development project and includes an individualized determination showing a reasonable, and roughly proportional, relationship between:

- (a) The fee's use and the type of development project on which the fee is imposed;
- (b) Need for the public facility and the type of development project on which the fee is imposed; and
- (c) The amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

**CAPITAL IMPROVEMENT.** Land or facilities for the storage, treatment or distribution of water; for the collection, treatment, reclamation or disposal of sewage; for the collection and disposal of stormwaters; for flood-control purposes; for purposes of transportation and transit, including without limitation, streets, street lighting and traffic-control devices and supporting improvements, roads, overpasses, bridges, airports, and related facilities; for parks and recreational improvements; for public safety, including police and fire facilities; for public buildings of all kinds for the generation, transmission, and distribution of electricity and natural gas; and for any other capital project identified in the city capital improvements plan. **CAPITAL IMPROVEMENT** also includes design, engineering, inspection, testing, planning, legal, land acquisition, and all other costs associated with construction of a public facility.

**CAPITAL IMPROVEMENTS PLAN.** The five-year plan for capital improvements adopted annually by the City council, and/or the sewer commission, describing the approximate location, size, time or availability and estimated cost of capital improvement projects and identifying sources of funding for capital improvements projects.

**CAPITAL IMPROVEMENTS PROJECT LIST.** The list attached to the annual council resolution setting the base fee amount for each specific IFIC. The list shall describe the approximate location, size, time of availability and estimated cost of each capital improvement to be funded from a particular IFIC account.

**COLLECTION.** The point at which the IFIC is actually paid to city.

**COMMITMENT.** Earmarking IFICs to fund or partially fund capital improvements serving new development projects.

**NEW DEVELOPMENT or DEVELOPMENT PROJECT.** Any project undertaken for the purpose of development, including without limitation, a project involving the issuance of a permit for construction, reconstruction, or change of use, but not a project involving the issuance of a permit to operate or to remodel, rehabilitate, or improve an existing structure, which does not change the density or intensity of use, nor the rebuilding of a structure destroyed or damaged by an act of God.

**DWELLING UNIT.** One or more rooms in a building or a portion of a room, designed or intended to be used, or actually used, for occupancy by one family for living and sleeping quarters and containing one kitchen only, including a mobile home, but not hotel or motel units.

**IFIC.** A monetary exaction imposed by the city pursuant to this chapter as a condition of or in connection with approval of a development project for the purpose of defraying all or some of the city's cost or repaying costs previously expended from other city funds for capital improvements.

**IMPOSE.** To determine that a particular development project is subject to the collection of IFICs as a condition of development approval.

**NONRESIDENTIAL DEVELOPMENT PROJECT.** All development other than residential development projects.

**RESIDENTIAL DEVELOPMENT PROJECT.** Any development undertaken to create a new dwelling unit.

(F) Notice and hearing required for establishing or increasing an IFIC.

(1) Prior to establishing or increasing any IFIC, the City council shall hold a public hearing.

(2) Notice of the time and place of the public hearing, including a general explanation of the matter to be considered, shall be published pursuant to KRS 424.130.

(3) At least ten days prior to the public hearing, the city shall make available to the public the following:

(a) A description of the benefit area;

(b) Data showing the amount or the estimated amount of IFIC; and

(c) A summary of the basis for the calculation of the IFIC amount.

(4) City council action to establish or increase any IFIC shall be taken only by ordinance or resolution containing findings which demonstrate the basis for calculating the fee.

(5) Any costs incurred by the City in preparing for and conducting the public hearing may be recovered as a part of the IFICs which are the subject of the hearing.

(G) Imposition, calculation and collection of IFICs.

(1) Except as limited by this chapter and any amendment to this chapter, the city may impose IFICs as a condition of approval of all new development projects. In the case of any new development

project in which the Administrative Official, the Board of Zoning Adjustment, or Planning Commission, has final authority of approval or denial, it is a precondition to the city's exercise of authority, that the approval designate the new development project as being subject to any IFIC imposed pursuant to this section. Upon any such designation, the Administrative Official shall notify the City Clerk in writing within five business days of such designation arising from the Administrator's action in writing or vote of the Commission or Board. In other circumstances in which the city's legislative body has final authority of approval or denial of a development project through its power to approve or deny a zoning map amendment or otherwise, the city may act independently of the Administrative Official, the Board of Zoning Adjustment, and the Planning Commission, to require an IFIC pursuant to this section.

(2) The base fee amount of each public facility IFIC for each type of development project may be calculated annually and adopted by city council resolution with the capital improvements project list.

(3) After an individualized determination that each fee has been calculated as provided in this chapter, IFICs shall be imposed prior to approval of any development permit or issuance of any building permit or certificate of occupancy, whichever is earlier.

(4) IFICs shall be collected by the code enforcement officer at the time and as a condition for issuance of a building permit, except that IFICs for sewer development charges shall be collected by the utility at the time the new development connects to the utility system.

(5) The City council may require that developers provide security acceptable to the corporation counsel to guarantee payment of any IFIC imposed hereby.

(H) *Independent impact analysis.*

(1) A developer may choose to use an independent impact analysis to compute the IFIC due as a result of a development, solely at its own expense.

(2) The developer shall be responsible for the preparation of the draft independent impact analysis and the city may accept, reject, or modify the draft analysis.

(3) The City Engineer shall approve the person or company which prepares the draft independent impact analysis on the basis of the person's or company's professional training and experience in preparing development impact analysis. The independent impact analysis shall follow standard methodologies and format and be approved by the City Engineer. The City Engineer may publish acceptable methodologies and formats for impact analysis. Prior to submission of the draft independent impact analysis, the developer shall meet with the City Engineer to review the requirements for preparing drafting independent impact analysis. In the event that the City Engineer is unable or unwilling to act as set out in this section, then the City Administrator shall act in the place and stead of the City Engineer.

(I) *IFIC accounts.*

(1) For each benefit area designated by the city, the city shall establish an IFIC account for each type of capital improvement for which an IFIC is imposed. The IFICs collected shall be deposited in each such account according to type of improvement and benefit area. The funds of the account shall not be commingled with other funds of the city. Any account previously established for the deposit of funds which would have been developer IFICs under this chapter shall be deemed an IFIC account for the purposes of this chapter.

(2) Each IFIC account shall be interest bearing, and the accumulated interest shall become part of the account.

(J) *Use of IFIC proceeds.* IFICs may be expended only for the type of capital improvements for which they were imposed, calculated, and collected, and according to the time limits and procedures established in this chapter. IFICs may be used to pay the principal, interest, and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the city to finance such improvements.

(K) *Refunds.*

(1) Upon application of the property owner, the city shall refund that portion of any IFIC which has been on deposit over five years and which is unexpended and uncommitted, except as described in division (K)(2) of this section. The refund shall be made to the then-current owner or owners of lots or units of the development project or projects.

(2) If fees in any IFIC account are unexpended or uncommitted during the 50 year, the fees are exempt from division (K)(1) of this section, if the City Council makes the following findings.

(a) A need for the capital improvement still exists;

(b) The fees will be used for an identified purpose; and

(c) The purpose for which the fees will be used is substantially similar to the purpose for which the fees were collected.

(3) The City may refund by direct payment, by offsetting the refund against other IFICs due for development projects by the owner on the same or other property, or otherwise by agreement with the owner.

(L) *Audits.*

(1) A developer may request any audit to determine whether the IFIC imposed exceeds the amount reasonably necessary to finance capital improvements attributable to the development project.

(2) The City Council shall then retain a qualified, independent auditor who shall determine whether the fee is appropriate. The city may require as a condition of the audit that the property owner deposit with the city a sum equal to the reasonable estimated cost of the audit, and that the property owner pay for the actual cost of the audit. The decision of the independent auditor is final unless appealed to the City Council by the property owner as provided by this chapter.

(M) *Appeals.*

(1) Within ten days following mailing of notice of the auditor's decision to the appellant, a person may challenge the imposition of a fee imposed pursuant to this chapter by filing with the City Clerk a written notice of appeal with a full statement of the grounds and an appeal fee of \$200 or such other amount as may be fixed from time to time by the City Council. The city may continue processing the development application if the notice of appeal is accompanied with a bond or other security in an amount equal to the IFIC.

(2) The appellant bears the burden of demonstrating that the amount of the fee was not calculated according to the procedures established in this chapter.

(3) At a regular meeting following the filing of the appeal, the City Council shall fix a time and place for hearing the appeal, and the City Clerk shall mail notice of hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in the notice, and the determination of the City Council shall be announced at the conclusion of the hearing or at the next regular meeting of the City Council. The determination of the City Council shall be final.

(N) *Judicial review.* Any person or entity claiming to be injured or aggrieved by final action of the city pursuant to § 155.077 may appeal to the Marshall County Circuit Court pursuant to the provisions of KRS 100.347.

(O) *Variances and exceptions.* Petitions for variances and exceptions to the application of this chapter shall be made in accordance with the provisions of KRS 100.243.

(P) *Amendment procedures.* Prior to the City Council's adoption of the budget and revisions to the capital improvements project list, the Mayor or his or her designee, shall report at least once each year to the City Council with:

- (1) Any recommendations for amendments to this chapter;
- (2) Any proposals for changes to the capital improvements project list, identifying capital improvements to be funded in whole or in part by IFICs;
- (3) Any proposals for changes in the boundaries of benefit areas; and
- (4) Any proposals for changes to IFIC rates and schedules.

(Q) *Credits.*

(1) A property owner who dedicates land or agrees to participate in an assessment district or otherwise contributes funds for capital improvements as defined in this chapter may be eligible for a credit for such contribution against the IFIC otherwise due.

(2) The City Engineer shall determine: (1) the value of the developer contribution; (2) whether the contribution meets capital improvement needs for which the particular IFIC has been imposed; and (3) whether the contribution will substitute or otherwise reduce the need for capital improvements anticipated to be provided with IFIC finds. In no event, however, shall the credit exceed the amount of the otherwise applicable IFIC.

(3) Any application for credit must be submitted on forms provided by the city before development project approval. The application shall contain a declaration under oath of those facts which qualify the property owner for the credit, accompanied by the relevant documentary evidence.

(R) *Conflicts.* In the event of a conflict between the provisions of this section and the provisions of any other ordinance or resolution establishing or amending IFICs, the provisions of this chapter shall govern.

(Ord. 12-11-1, passed 11-19-12)

**§ 155.078 CANNABIS DISPENSARY.**

A cannabis dispensary must meet all of the following conditions:

(A) Shall not be located within 1,000 feet of all existing elementary or secondary school(s) or daycare center(s) as defined by the applicable KAR;

(B) Shall not be located within one mile of another cannabis dispensary as measured from the property line;

(C) Shall not be next to a residential structure;

(D) Exterior signage may only, at most, include text that is the licensee's (i) business or trade name; (ii) location and contact number; and (iii) business type. Exterior signage cannot include a licensee's logo, symbol, branded colors or any images, including, but not limited to, depicting cannabis/cannabis products or the imagery or action of smoking/vaping. Exterior signs also cannot include mottos, selling messages, or any other non-essential text. Exterior signs must be on the same parcel as the store affixed to a building or permanent structure (e.g. signpost). Exterior signs cannot be larger than necessary to reasonably display the information on the sign to individuals within or near the licensed premises and cannot be illuminated by neon lights.

(Ord. 24-08-02, passed 8-5-24)

***ZONING DISTRICT REGULATIONS*****§ 155.090 APPLICATION.**

This subchapter identifies the zoning districts in effect in the city. The zoning map of the city as available for review in City Hall shall indicate a zoning district for each property. Permissible land uses on a property may be impacted by the specific zoning district, conditional use permits, variances, any nonconforming use rights, recorded real estate covenants and restrictions in the chain of title, subdivision plats and restrictions, statutes, ordinances, other governmental actions and other applicable law. (Ord. 12-11-1, passed 11-19-12)

**§ 155.091 SINGLE-FAMILY RESIDENTIAL DISTRICT (R-1).**

(A) *Principal permitted uses.* Single-family dwellings and planned residential development projects as permitted in § 155.056. More than one principal structure per lot or parcel of land shall not be permitted. When new construction is undertaken or additions are made to an existing structure, the structure or addition may be located on the lot with setbacks the same or greater than other similar residential structures on adjoining properties. The front facade of any principal structure should face the primary street frontage. No building shall be erected the R-1 District for residential purposes having a ground floor area of less than 1,100 square feet, exclusive of porches, breezeways, terraces, garages and exterior and secondary stairways, without a variance or being part of an approved planned residential development project pursuant to § 155.056. Trailers, campers, motorhomes, and boats shall not be allowed in any front yard in the R-1 District. Commercial vehicles, equipment, and trucks with axle weights greater than one ton shall not be parked in the R-1 District.

(B) *Conditionally permitted uses requiring Board of Adjustment authorization.* The following uses are special exceptions and require written approval of the Board of Adjustment: churches and other places of worship, parish houses; public libraries; schools offering general education courses; public parks; and noncommercial public recreational facilities; public facilities; funeral homes, cemeteries; nurses' homes; nursing homes; hospitals for human care; philanthropic institutions and clubs, except a club which the chief activity is customarily carried on as a business. The Board of Adjustment may attach certain conditions to its approval, which it feels are necessary to preserve and protect the character of the district in which the proposed use would locate.

(C) *Accessory uses.* Accessory buildings and uses shall be permitted only as customarily incidental to any of the permitted and conditionally permitted uses listed above and in further compliance with § 155.035(F) on Accessory Uses, etc., including, but not limited to, provisions on storage sheds and outbuildings.

(D) *Height regulations.* No principal structure shall exceed three stories or 36 feet in height.



(E) *Lot area, frontage and yard requirements.*

(1) Minimum required lot area within an R-1 district should be 12,000 square feet.

(2) Minimum required lot width at building line should be 100 feet.

(3) All buildings, except unattached buildings of accessory use, shall have the following minimum yard space:

Rear Depth - 25 feet  
Side Width - 15 feet (each side)  
Front Depth - 25 feet

(4) The minimum width of side along intersecting streets shall be the same as the front yard setback required for the residential zone on such side street.

(5) The minimum lot frontage on a public street shall be at least forty (40) feet.  
(Ord. 12-11-1, passed 11-19-12)

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**Benton - Land Usage**

**§ 155.092 MULTI-FAMILY RESIDENTIAL DISTRICT (R-2).**

(A) *Principal permitted uses.* Single and multi-family dwellings and planned residential development projects as permitted in § 155.056. No building shall be erected in the R-2 District for residential purposes having a ground floor area of less than 850 square feet, exclusive of porches, breezeways, terraces, garages and exterior and secondary stairways, without a Variance or being part of an approved planned residential development project pursuant to § 155.056. Trailers, campers, motorhomes, and boats shall not be allowed in any front yard in the R-1 District. Commercial vehicles, equipment, and trucks with axle weights greater than one ton shall not be parked in the R-1 District, without a conditional use permit designating an area of a property for such parking.

(B) *Conditionally permitted uses requiring Board of Adjustment authorization.*

(1) The following uses are special exceptions and require written approval of the Board of Adjustment: churches and other places of worship, parish houses; public libraries; schools offering general education courses; public parks, and noncommercial public recreational facilities; public utilities; funeral homes, cemeteries; nurses' homes; nursing homes; hospitals for human care; philanthropic institutions and clubs, except a club which the chief activity is customarily carried on as a business.

(2) Other uses within an R-2 district may include the office or studio in the residence of a physician, dentist, artist, lawyer, engineer, teacher (with musical instruction limited to one pupil at a time), architect, realtor and insurance agent, provided that not more than one-half of the area of one floor of the dwelling is devoted to such accessory use, and that not more than one person not a resident on the premises is employed, and that no such use shall require structural alterations or involve construction features not customary in dwellings. An indirectly lighted nameplate, not over one square foot in area, attached flat against the building shall be permitted.

(3) Other uses may include customary home occupations of handicrafts, dressmaking, and laundering; provided that such occupations shall be conducted exclusively by resident occupants in their place of residence and provided further that not more than one quarter of the area of one floor of said residence shall be used for such purpose and that such use shall not involve alterations or construction involving features not customarily found in dwellings are required. An indirectly lighted sign of not over one square foot in area and attached flat against the building shall be permitted.

(4) The Board of Adjustment may attach certain conditions to its approval, which it feels are necessary to preserve and protect the character of the district in which the proposed use would locate.

(C) *Accessory uses.* Accessory buildings and uses shall be permitted only as customarily incidental to any of the permitted and conditionally permitted uses listed above and in further compliance with § 155.035(F) on accessory uses, and the like, including, but not limited to, provisions on storage sheds and outbuildings.

(D) *Height requirements.* No principal structure shall exceed three stories or 36 feet in height.

(E) *Lot area, frontage and yard requirements.*

(1) Minimum required lot area within a R-2 district shall be 10,000 square feet for single-family dwellings, and 10,000 square feet for the first family when dwelling is for multi-family use plus 4,000 square feet for each additional family.

(2) Minimum required lot width at building lines shall be as follows:

Single-Family Dwellings - 85 feet  
Multi-Family Dwellings - 100 feet

(3) All buildings, except unattached buildings of accessory use, shall have the following minimum yard space:

Rear depth - 25 feet  
Side width - 10 feet (each side)  
Front depth - 25 feet

(4) The minimum width of side yards along intersecting streets shall be the same as the front yard setback required for the residential zone on such side street.

(5) The minimum lot frontage on a public street shall be at least 40 feet.  
(Ord. 12-11-1, passed 11-19-12)

### **§ 155.093 MULTI-FAMILY RESIDENTIAL DISTRICT (R-3).**

(A) *Principal permitted uses.* Single- and multi-family dwellings, planned residential development projects as permitted in § 155.056, mobile home parks provided the mobile home parks meet the requirements of § 155.051. No building shall be erected in an R-3 District, for residential purposes, having a ground floor area of less than 650 square feet, exclusive of porches, breezeways, terraces, garages and exterior and secondary stairways, without a variance or being part of an approved planned residential development project pursuant to § 155.056.

(B) *Conditionally permitted uses requiring Board of Adjustment authorization.* The following uses are special exceptions and require written approval of the Board of Adjustment: churches and other places of worship, parish houses; public libraries; schools offering general education courses; public parks; and noncommercial public recreational facilities; public utilities; funeral homes; cemeteries; nurses' homes, nursing homes; clinics, hospitals for human care, philanthropic institutions and clubs, except a club which the chief activity is customarily carried on as a business. The Board of Adjustment may attach certain conditions to its approval which it feels are necessary to preserve and protect the character of this district in which the proposed use would locate.

(C) *Accessory uses.*

(1) Accessory buildings and uses shall be permitted only as customarily incidental to any of the permitted and conditionally permitted uses listed above and in further compliance with § 155.035(F) on accessory uses, and the like, including, but not limited to, provisions on storage sheds and outbuildings.

(2) Other accessory uses within an R-3 district may include the office or studio in the residence of a physician, dentist, artist, lawyer, engineer, teacher (with musical instruction limited on one pupil at a time), architect, realtor and insurance agent, provided that not more than one-half of the area of one floor of the dwelling is devoted to such a accessory use, and that not more than one such use shall require structural alterations or construction involving features not customarily found in dwellings are required. An indirectly lighted sign of not over one square foot in area and attached flat against the building shall be permitted.

(D) *Height requirements.* No principal structure shall exceed three stories or 36 feet in height.

(E) *Lot area, frontage and yard requirements.*

(1) Minimum required lot area within a R-3 district shall be 7,500 square feet for single-family dwellings, and 7,500 square feet for the first family when dwelling is for multi-family use plus 4,000 square feet for each additional family.

(2) Minimum required lot width at building lines shall be as follows:

Single-Family Dwellings	-	70 feet
Multi-Family Dwellings	-	85 feet

(3) All buildings, except unattached buildings of accessory use, shall have the following minimum yard space:

Rear depth	-	20 feet
Side width	-	10 feet (each side)
Front depth	-	25 feet

(4) The minimum width of side yards along intersecting streets shall be the same as the front yard setback required for the residential zone on such side street. The minimum lot frontage on a public street shall be at least 40 feet.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 19-06-05, passed 6-18-19)

**§ 155.0931 SMALL DWELLING RESIDENTIAL DISTRICT (R-4).**

(A) *Principal permitted uses.* Single-family dwellings, planned residential development projects as permitted in §155.056. No building shall be erected in an R-4 District, for residential purposes, having a ground floor area of less than 400 square feet, exclusive of porches, breezeways, terraces, garages and exterior and secondary stairways, without a variance or being part of an approved planned residential development project pursuant to § 155.056.

(B) *Conditionally permitted uses.*

(1) The following uses are special exceptions and require written approval of the Board of Adjustment: churches and other places of worship; parish houses; public libraries; schools offering general education services; public parks; noncommercial public recreational facilities; public utilities; funeral homes; cemeteries; nursing homes; clinics; hospitals for human care; philanthropic institutions and clubs, except a club whose the chief activity is customarily carried on as a business. The Board of Adjustment may attach certain conditions to its approval that it feels are necessary to preserve and protect the character of this district in which the proposed use would locate.

(2) Multi-family housing is a special exception and requires written approval of the Board of Adjustment. A proposed multi-family residential dwelling must have a ground floor area of less than 850 square feet, exclusive of porches, breezeways, terraces, garages and exterior and secondary stairways, without a variance or being part of an approved planned residential development project pursuant to § 155.056. The Board of Adjustment shall not allow a variance on this minimum square footage requirement for multi-family housing.

(3) The Board of Adjustment may attach certain conditions to its approval, which it feels are necessary to preserve and protect the character of the district in which the proposed use would locate.

(C) *Accessory uses.*

(1) Accessory buildings and uses shall be permitted only as customarily incidental to any of the permitted and conditionally permitted uses listed above and in further compliance with § 155.035(F) on accessory uses, and the like, including, but not limited to, provisions on storage sheds and outbuildings.

(2) Other accessory uses within an R-4 District may include the office or studio in the residence of a physician, dentist, artist, lawyer, engineer, teacher (with musical instruction limited to one pupil at a time), architect, realtor and insurance agent, provided that not more than one half of the area of one floor of the dwelling is devoted to the accessory use, and that not more than one such use shall require structural alterations or construction involving features not customarily found in dwellings are required. An indirectly lighted sign of not over one square foot in area, and attached flat against the building, shall be permitted.

(3) Other accessory uses may include customary home occupations of handicrafts, dressmaking, and laundering, provided that such occupations shall be conducted exclusively by resident occupants in their place of residence, and provided further that not more than one quarter of the area of one floor of the residence shall be used for such purposes, and that the use shall not involve alterations or construction involving features not customarily found in dwellings are required. An indirectly lighted nameplate, not over one square foot in area, attached flat against the building, shall be permitted.

(D) *Limitation on other and accessory uses.* Any of the other uses or accessory uses, as set forth above, shall only be allowed if the residential area of the dwelling (that is the area not used for another use) is at least 400 square feet.

(E) *Height requirements.* No principal structure shall exceed three stories or 36 feet in height.

(F) *Lot area, frontage and yard requirements.*

(1) Minimum required lot area within a R-4 District shall be 5,000 square feet for single-family dwellings, and 5,000 square feet for the first family when the dwelling is for a multi-family use, plus 4,000 square feet for each additional family.

(2) Minimum required lot width at building lines shall be as follows:

Single-Family Dwellings	-	50 feet
Multi-Family Dwellings	-	75 feet

(3) All buildings, except unattached buildings of accessory use, shall have the following minimum yard space:

Rear Depth	-	15 feet
Side Width	-	10 feet (each side)
Front Depth	-	15 feet

(4) The minimum width of side yards along intersecting streets shall be the same as the front yard setback required for the residential zone on such side street. The minimum lot frontage on a public street shall be 30 feet.

(G) Any property or properties that shall be designated as R-4 shall only be designated as such pursuant to the process for a map amendment as set forth in this chapter and KRS Chapter 100.  
(Ord. 19-06-05, passed 6-18-19)

**§ 155.094 ZERO LOT LINE (A/K/A PATIO HOME) DISTRICT (ZLL).**

(A) *Statement of purpose.* The principal purposes of the zero lot line concept are:

(1) The more efficient use of land, as compared with the typical single-family development, making available needed housing at a more affordable cost;

(2) The design of dwellings that integrate and relate internal-external living areas resulting in more pleasant and enjoyable living facilities; and

(3) By placing the dwelling against one of the property lines, permitting the outdoor space to be grouped and utilized to its maximum benefit.

(B) *Permitted districts.*

(1) A zero lot line development for single-family attached and single-family detached dwellings are permitted by right in an R-2 and R-3 Zoning District, in accordance with the provisions of this section. Alternatively, a property may be zoned into the Zero Lot Line zoning District and then the property may only be used as permitted by this section and not for other uses as permitted in an R-2 or R-3 Zoning District.

(2) A zero lot line development for single-family attached or single-family detached dwellings is permitted in an R-1 Zoning District upon the issuance of a conditional use permit by the Board of Zoning Adjustment.

(C) *Permitted uses.* The following uses are permitted:

(1) Single-family detached and attached dwellings;

(2) Two-family or duplexes; and

(3) Accessory buildings and structures provided no such building or structure shall be designed or used for dwelling purposes.

(D) *Standards.*

(1) *Building site area.* Each lot shall have an area not less than 3,500 square feet.

(2) *Building site width.* The minimum building site width at the building setback line shall be 20 feet.

(3) *Building site coverage.* The total lot coverage permitted for all buildings on the site shall not exceed 50% of the lot area.



(4) *Building height limit.* The maximum building height shall not exceed two stories or 35 feet in height.

(5) *Setback requirements.*

(a) *Interior side yard.* The detached dwelling unit shall be placed on one interior side property line with a zero setback and the dwelling unit setback on the other interior side property line shall be a minimum of ten feet, excluding the connecting elements such as fences, walls and trellises. Patios, pools, garden features and other similar elements shall be permitted within the ten-foot setback area; provided, however, no structure, with the exception of fences or walls, shall be placed within easements required by this section.

(b) *Interior side yard.* The attached dwelling unit shall be placed on the interior side property line with a zero setback and the dwelling unit setback on the other interior side property line can also be placed on the property line with a zero setback.

(c) *Exterior side yard.* The dwelling unit shall be placed ten feet from all exterior property lines.

(d) *Front setback.* All dwelling structures shall be set back a minimum of 25 feet from the front property line.

(e) *Rear setback.* The required rear setback is ten feet.

(f) *Side street setback.* The dwelling setback shall be a minimum of 15 feet from the side street property line.

(E) *General requirements.*

(1) *Platting requirements.* Each dwelling shall be located on its own individual platted lot. If areas for common use of occupants of the developments are shown on the plat, satisfactory arrangements shall be made for the maintenance of the common open space and facilities as provided in division (E)(8) below. The plat shall indicate the zero lot lines and easements appurtenant thereto.

(2) *Openings prohibited on the zero lot line side.* The wall of the dwelling located on the lot line shall have no windows, doors, air conditioning units or any other type of openings, provided however, that atriums or courts shall be permitted on the zero lot line side when the court or atrium is enclosed by three walls of the dwelling unit and a solid wall of at least eight feet in height is provided on the zero lot line. The wall shall be constructed of the same material as exterior walls of the unit.

(3) *Maintenance and drainage easements.* A perpetual four-foot wall-maintenance easement, for detached dwellings, shall be provided on the lot adjacent to the zero lot line property line, which, with the exception of walls or fences, shall be kept clear of structures. This easement shall be shown on

the plat and incorporated into each deed transferring title to the property. The wall shall be maintained in its original color and treatment unless otherwise agreed to in writing by the two affected lot owners. Roof overhangs may penetrate the easement on the adjacent lot a maximum of 24 inches, but the roof shall be so designed that water runoff from the dwelling placed on the lot lines is limited to the easement area.

(4) *Separation between dwellings on adjacent lots.* There shall be a separation between dwellings on adjacent lots of not less than ten feet.

(5) *Off-street parking.* Each dwelling shall have not less than two off-street parking spaces. Enclosed garages or carports are not required, but if carports or garages are built they must be attached. If carports or garages are to be incorporated in the future the site plan must show the placement of the structures prior to approval by the Zoning Inspector or Planning Commission.

(6) *Trees.*

(a) Trees shall be provided on the basis of two trees for each platted lot. In addition, street shade trees shall be provided along the side of the roadway at a minimum spacing of 20 feet on center for private roads.

(b) In case of development with public roads, the trees may be placed on private lots in lieu of the public right-of-way provided that 20-foot spacing and the rowing of trees are maintained. This shall be in addition to the three trees required for each platted lot.

(7) *Accessory buildings and structures.* Accessory buildings and structures shall be subject to the following requirements.

(a) No such building or structure shall be located within a required front or street-abutting side yard.

(b) No such building or structure shall be located within five feet of a dwelling or another accessory building or structure nor within two feet of any interior property line.

(c) No such building or structure shall exceed ten feet in height without a conditional use permit.

(d) Be in further compliance with § 155.035(F) on accessory uses, and the like, including, but not limited to, provisions on storage sheds and outbuildings.

(8) *Common open space and maintenance of facilities.* Common open space is not required but may be permitted. If common open space is provided, provisions satisfactory to the City Council shall be made to assure that nonpublic areas and facilities for the common use of occupants of zero lot line development shall be maintained in a satisfactory manner, without expense to the general taxpayers of the city.

(9) *Open space.* There shall be an open space on each lot of not less than 300 square feet with no dimension less than 15 feet. The open space area shall be exclusive of required front and street-abutting side yards and vehicular driveways and further shall be subject to the following.

- (a) The required open space may include side or rear yards.
- (b) Pools and paved recreational areas may be developed in the required open space.
- (c) The gradient or slope of any required open space shall not exceed 12%. The open space may be provided on a deck.
- (d) The open space shall be fully open to the sky.
- (e) An accessory building may not occupy any part of the required open space.

(F) *Site plan review.* A site plan review is required to encourage communication between the applicant and the Planning Commission staff. A site plan review will promote a greater degree of logic, imagination, innovation and variety in the design process. The site plan is required to be approved by the Planning Commission prior to construction.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.095 CENTRAL BUSINESS COMMERCIAL DISTRICT (C-1).**

##### **(A) *Principal permitted uses.***

(1) Any consumer and personal service establishment such as follows: shoe repair shops, drug stores, cannabis dispensary, hardware stores, barber and beauty shops, clothing stores, banks and other financial institutions, hotels, office buildings, walk-in restaurants, poolrooms, gift shops and variety stores, printing shops, jewelry stores, mail-order houses, radio and television studios, health centers and public buildings.

(2) Dry cleaning establishments are permitted, provided that establishments meet all fire code requirements; have installed venting which assures dispersion of all obnoxious fumes and odors at least 25 feet above the street level or five feet above the roof level of the highest adjoining building, whichever is the higher; use only nonflammable solvents as specified by the Underwriters Laboratory, Incorporated, receive and disburse merchandise for processing on the premises; and provide at least two parking spaces for customers.

(3) Planned commercial development projects are permitted when the requirements of § 155.057 are satisfied.

(4) In no case shall the following uses be permitted within the Central Business District: farm implement sales, trailer sales, drive-in theaters, drive-in restaurants, or any other similar uses which the

Board of Adjustment determines to be detrimental to the district as a pedestrian-oriented retail consumer service center.

(B) *Conditionally permitted uses requiring board of adjustment authorization.* The following uses are special exceptions and require written approval of the Board of Adjustment: churches and places of worship, parish houses; public libraries, passive recreation and/or park areas; funeral homes; and clinics. The board may attach certain conditions to its approval, which it feels are necessary to preserve and protect the character of the district.

(C) *Accessory uses.* Any accessory use or building customarily incidental to the above permitted uses.

(D) *Required conditions.* All permitted and conditionally permitted uses within the Central Business District shall be conducted wholly within an enclosed building except for off-street parking and unloading facilities.

(E) *Height regulations.* No buildings shall exceed five stories or 60 feet in height.

(F) *Lot area, frontage and yard requirements.* None.

(G) *Sign regulations.* Advertising signs, structures or lights for illuminating signs or buildings are permitted. Signs, structures or lights shall not be placed within, on and/or over the street right-of-way. (Ord. 12-11-1, passed 11-19-12; Am. Ord. 24-08-02, passed 8-5-24)

#### **§ 155.096 NEIGHBORHOOD COMMERCIAL DISTRICT (C-2).**

(A) *Principal permitted uses.* Any convenience-type retail business or service establishment such as follows:

(1) Groceries, drug stores, cannabis dispensary, shoe repair shops, hardware store, barber and beauty shops, clothing shops, automobile sales and services, banks and finance companies, garages for motor vehicle repair within an enclosed building, motels, restaurants, self-service laundries, filling stations, theaters, places of amusement and assembly, car washes and antique shops. Any other retail business or service establishment which is determined by the Board of Adjustment to be of same general character as the above mentioned uses. Planned commercial development projects are permitted when requirements of § 155.057 are satisfied.

(2) Any retail or wholesale business or service (except warehouses), including the making of articles to be sold at retail on the premises; manufacturing incidental to a retail business or service where the products are sold principally on the premises by the producer to the consumer and where not more than five persons are employed in such manufacture; provided further; however, that the following uses shall not be permitted; auto wrecking, coal or lumber yards, dairy, electric welding, gasoline, oil or

alcohol storage above the ground in excess of 500 gallons, grist or flour mill, junk, scrap paper or rag storage, bailing, laundry or bakery employing more than five persons, machine shop, slaughter houses or stock yard, tinsmith shop, or sheet metal works, or any other use which in the opinion of the Board of Adjustment would be injurious because of offensive fumes, odors, noises, dust, vibrations or other objectionable features or hazardous to the community on account of danger of fire or explosion, even when conducted under safeguards.

(B) *Conditionally permitted uses requiring board of adjustment authorization.* The following uses are special exceptions and require written approval of the Board of Adjustment: churches and other places of worship, parish houses; public libraries; schools offering general education courses; public parks; and noncommercial public recreational facilities; public utilities; funeral homes; cemeteries, nurses' homes; nursing homes; hospitals for human care, philanthropic institutions and clubs, except a club which the chief activity is customarily carried on as a business. The Board of Adjustment may attach certain conditions to its approval, which it feels are necessary to preserve and protect the character of the district in which the proposed use would locate.

(C) *Accessory uses.* Any accessory use or building customarily incidental to the above permitted uses is permitted.

(D) *Required conditions.*

(1) *Screening:* where a side lot line is shared with an adjoining residential lot, a well-maintained compact hedge, a solid fence or similar solid screening device at least six feet in height shall be installed to screen the business use from the adjoining lot in the residential district. The screen shall begin at the front building line and extend along the common side lot line to the real property line.

(2) *Access to highways and streets:* in all commercial zones, points of access to highways and streets shall be controlled by the Planning Commission. Before any building permit for any structure in a C-2 zone may be issued, the prospective builder or operator of the proposed C-2 activity shall submit a sketch of the layout and design of the proposed structure and/or use and its access points to the highway and/or street to the Planning Commission. The Planning Commission shall require that when two or more consumer commercial establishments adjoin along one side of any street or highway that they share access points to the street. When more than four consumer commercial establishments adjoin along any highway or street, a road parallel to the highway or street shall be built, at the expense of all adjoining consumer commercial establishments to provide service to all consumer commercial establishments on the same side of the street or highway. This road shall have access to the highway or street at no more than two points for every four consumer commercial establishments.

(E) *Height requirements.* No buildings shall exceed three stories or 35 feet in height.

(F) *Lot area, frontage and yard requirements.*

(1) The following minimum required lot area, frontage and yard area shall apply within a neighborhood business zone:

<i>Rear Yard</i>			<i>Front Yard Width - Ft.</i>	<i>Side Yard Depth</i>
<i>Lot Area</i>	<i>Frontage</i>	<i>Depth</i>		
None	15 feet	None	None, except when adjoining a residential district-then all buildings shall be so located as to comply with the requirements of the adjoining residential district for lot coverage, lot width and yards.	25 feet

(2) All buildings on corner lots adjoining a residential district shall be located so as to conform with corner lot side yard requirements of said residential district.

(G) *Sign and/or billboard regulations.* No more than one advertising sign shall be constructed or erected on a lot of record. All advertising signs and/or billboards shall be located no closer to the street right-of-way than the required front yard depth for a principal building - 25 feet.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 24-08-02, passed 8-5-24)

#### § 155.097 LIGHT INDUSTRIAL DISTRICT (I-1).

(A) *Principal permitted uses.* Adding machine manufacture; artificial flower manufacture; automobile assembly; automobile rental agency; automobile, trailer and farm implement dealers; animal hospitals, veterinary clinic and associated kennels; baggage transfer; storage and warehouse; bakery; bottling works and beverage manufacture; bicycle and motorcycle repair; blacksmith; book publishing; boot and show manufacture; broom manufacture; building materials yard; cabinet maker; candy manufacture; carpenter shop; carpet cleaning; car wash; chicken hatchery; cigar and cigarette manufacture; coal yard; coffin and concrete burial vault manufacture; cold storage warehouses; condensed milk manufacture; contractors storage yard; cosmetic manufacture; creamery; dairy, dental laboratory, drug manufacture; cannabis cultivator, cannabis processor, cannabis producer; dry goods, wholesale or storage; dyeing and cleaning; electrical power plant, electrical sign manufacture; electrical supply manufacture; enameling and painting; engraving plant; envelope manufacture; express storage and delivery station; feed, wholesale; flour and grain storage and elevators; food products manufacture; fruit and vegetable drying; fuel distributing station; fuel gas storage; fur warehouses; furniture warehouse or storage; garage, repair garment factory; grocery store; wholesale; ice manufacture; laundry; lumber yard; not including sawmill; moving company and storage facilities; paper box, can, tube and sack manufacture; radio and television manufacture; screw and bolt manufacture; tinsmith shop; tire manufacture, including recapping plants; warehouses; welding shop; and wood products manufacture; and public water and sewer treatment facilities.

(B) *Conditionally permitted uses requiring board of adjustment authorization.* Any industrial, manufacturing, fabrication or processing uses which the Board of Adjustment determines would not emit obnoxious noise, vibration, smoke, odor, or dust beyond the confines of its property, and any professional commercial activity that is reasonably related to the industrial use of the property.

(C) *Accessory uses.* Any accessory use or building customarily incidental to the above permitted and conditionally permitted uses.

(D) *Required condition.*

(1) On lots adjacent to a residential zone, all building shall be located so as to provide a minimum side yard of 50 feet.

(2) *Loading docks:* no loading dock shall be constructed fronting on any public street or roadway.

(3) *Storage facilities:* no materials or supplies shall be stored or permitted to remain on any part of the property outside the buildings constructed thereon without proper screening and adequate distances from adjoining properties.

(4) *Waste disposal:* no waste material or refuse shall be dumped upon or permitted to remain upon any part of an industrial park outside of buildings constructed thereon. In addition, the property shall not be used by an industry whose primary business requires industrial sewerage, unless the governing municipal body authorizes the use of its sewage disposal facilities or said industry constructs its own sewage disposal plant.

(E) *Height requirements.* No building shall exceed three stories or 36 feet in height.

(F) *Lot area, frontage and yard requirements.*

(1) The following minimum required lot area, frontage and yards shall apply within a light industrial zone:

<i>Lot Area</i>	<i>Frontage Depth</i>	<i>Front Yard Width-Ft.</i>	<i>Side Yard Depth</i>	<i>Rear Yard</i>
None	None	40 feet	25 feet (each side)	25 feet

(2) No yard will be required for that part of a lot which abuts a railroad siding. All buildings on corner lots adjoining a residential district shall be located so as to conform with corner lot side yard requirements of said residential districts.

(G) *Sign and/or billboard regulations.* No more than one advertising sign and/or billboard shall be permitted on a lot of record unless said signs are attached flat against the principal building. A free standing sign or billboard shall be no more than 150 square feet in total area and said sign or billboard shall be located no closer to the street right-of-way than the required front yard depth, 40 feet.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 18-04-02, passed 4-16-18; Am. Ord. 24-08-02, passed 8-5-24)



**§ 155.098 HEAVY INDUSTRIAL DISTRICT (I-2).**

(A) *Principal permitted uses.* Any use permitted in the I-1 light industrial district. Agricultural implement manufacture; airplane repair and manufacture; aluminum manufacture; bank equipment manufacture; barrel manufacture; bicycle manufacture; boat manufacture, can manufacture; candle manufacture; cast iron pipe manufacture; casting foundry; celluloid manufacture; concrete plant; corrugated metal manufacture; culvert pipe manufacture; engine manufacture; fixture manufacture; furnace manufacture; furniture manufacture; hardware manufacture; iron (ornamental) works; linoleum manufacture; locomotive manufacture; machine shop; metal products manufacture; motorcycle manufacture; shoe manufacture; structural iron and steel manufacture; tobacco manufacture; tool manufacture; wire manufacture; and public water and sewer treatment facilities.

(B) *Conditionally permitted uses requiring board of adjustment authorization.*

(1) The following uses are special exceptions and require written approval of the Board of Adjustment: abattoirs, acid manufacture, acetylene gas manufacture; ammonia manufacture; asphalt manufacture; refining or storage; blast furnace, brick kiln; charcoal manufacture and pulverizing; chemical manufacture; creosote treatment and manufacture; exterminator or insect poison manufacture; fat rendering; fertilizer manufacture; flour and grain milling; gasoline storage, wholesale; junk yards; leather curing and tanning; lime manufacture; monument works, plaster of Paris manufacture; quarry works; refuse dump; rock crushing; salvage storage yard; sawmill; scrap iron; storage yard; stock yards; sulfur; sulfuric acid, or derivatives manufacture; tar distillation or manufacture; terra cotta manufacture; wrecking material yard; coal washing; and storage and transfer yards and facilities.

(2) Any other industrial, manufacturing, fabrication or processing uses which the Board of Adjustment determines to be non-detrimental to surrounding properties or possess other characteristics that would not be a nuisance to the residents of the city, and any professional, commercial activity that is reasonably related to the industrial use of the property.

(C) *Accessory uses.* Any accessory use or building customarily incidental to the above permitted and conditionally permitted uses.

(D) *Required conditions.* Junk yards, salvage and scrap iron yards shall be enclosed by an acceptable fence, wall or other screening not less than six feet in height. The Board of Adjustment shall determine the acceptability of said screening.

(E) *Height requirements.* No building shall exceed three stories or 36 feet in height.

(F) *Lot area, frontage and yard requirements.*

(1) The following minimum required lot area, frontage and yard area shall apply within a heavy industrial zone:



Lot Area:	None.
Frontage Depth:	None.
Front Yard Width:	40 feet.
Side Yard Depth:	25 feet (each side)
Rear Yard:	25 feet.

- (2) No yard will be required for the part of a lot which abuts a railroad siding.

(G) *Sign and/or billboard regulations.* Signs and/or billboards may be erected within a heavy industrial district. However, no sign or billboard shall be located closer to the street right-of-way than the required front yard depth - 50 feet.  
(Ord. 12-11-1, passed 11-19-12; Am. Ord. 18-04-02, passed 4-16-18)

#### § 155.099 AGRICULTURAL DISTRICT (A).

(A) *Future classification.* Upon adoption of this updated Zoning Ordinance in 2012, the City of Benton does not include any property in the Agricultural Classification. However, this classification is included to be available for property which may be annexed in the future or for other property now in the City which may be proposed for rezoning to this classification in the future.

(B) *Principal permitted uses.*

- (1) Agricultural activities including agricultural crops, dairying, cannabis cultivator, and the raising of farm animals and feeding lots.
- (2) Single-family dwellings occupied by the owner or operator of the farm and such additional single-family dwellings as are necessary for occupancy by employees of the farm operation.
- (3) Sale on the premises of agricultural products produced on the premises.
- (4) Public, semi-public and private lands for open space reserves that may be for permanent open spaces or for future development in accord with this chapter.
- (5) Public and parochial schools and colleges, and private schools and colleges for academic instruction.
- (6) Country club or golf courses, libraries, public parks, playgrounds and community centers, churches, public and private noncommercial recreation areas, public utilities, public transportation, and any city or county-owned public buildings and/or uses.

(C) *Conditionally permitted uses requiring Board of Adjustment authorization.* Airports and/or landing strips, cemeteries, public or private sewage disposal plants, hospitals, sanitariums.

(D) *Accessory uses permitted.* Accessory buildings which are not a part of the main buildings, including barns, sheds, and other farm buildings, private garages and accessory buildings, which are part of the main buildings, shall be permitted.

(E) *Dimensional and area regulations.* Agricultural structures shall be set back from the center line of any public transportation route at least 35 feet. Other principal permitted uses in A-1 shall meet whatever regulations are set forth in this chapter for their use in any district. Conditionally permitted uses when approved by the Board of Adjustment for this district shall meet the conditions set forth by the Board and also the regulations of this chapter for their use in any district.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 24-08-02, passed 8-5-24)

#### § 155.100 FLOODPLAIN DISTRICT (F).

The floodplain district shall be subject to the following regulations:

(A) *Elevations.* For the purpose of this chapter land subject to flood shall be defined as follows: along East Fork Clarks River, land lying below the level of the Regional Flood (Regulated). The elevation of the Regional Flood (Regulated) shall be determined from the chart, "Natural and Regulated High Water Profiles, East Fork Clarks River, Vicinity of Benton, Kentucky" (Tennessee Valley Authority, April 1963). Said chart is made a part of these regulations. Along Johns River-Watch Creek, land lying below the level of the Regional Flood. The elevation of the Regional Flood shall be determined from the chart, "High Water Profiles, Johns River-Watch Creek, Vicinity of Benton, Kentucky" (Tennessee Valley Authority, April 1963). Said chart is made a part of these regulations.

(B) *Floodway.*

(1) A floodway, as shown on the Zoning Map of Benton, Kentucky, is established to meet the needs of the East Fork Clarks River and Johns River-Watch Creek to carry abnormal flows of water in time of flood; to prevent encroachments into the floodway which will unduly increase flood heights and damage; and to prevent the loss of life and excessive damage to property in the area of greatest flood hazard.

(2) *Uses permitted:* the following uses are permitted within the floodway subject to the approval of the Planning Commission and to such conditions as the Planning Commission may specify to protect the public interest, and which do not conflict with uses permitted in adjoining zoning districts.

(a) Open-type uses, such as loading and unloading area, parking lots, used car lots, signs and gardens auxiliary to uses permitted in any adjoining district.

(b) Storage yards for equipment and material not subject to major damage by floods, provided such uses is auxiliary to uses permitted in adjoining zoning district and materials do not include inflammables such as gasoline.

(c) Open-type public and private recreation facilities such as public parks, golf courses, and driving ranges, drive-in theatres, fishing lakes, and boat docks.

(d) Circus, carnival and similar transient amusement enterprises.

(e) Agricultural uses, including farming, grazing and livestock raising.

(f) Utilities, road and railroad bridges, electric and other transmission lines.

(g) Any other uses customarily accessory of incidental to the above uses.

(C) *Floodway fringe areas.* Areas lying outside the floodway but subject to flooding as defined by this chapter shall be subject to the following regulations:

(1) No building or structure shall be erected, and no existing building or structure shall be extended or moved, unless the main floor is placed above the elevation of the Regional Flood or the Regional Flood (Regulated), whichever is applicable. No basement floor or other floor shall be constructed below or at a lower elevation than the main floor.

(2) Foundations of all structures shall be designed to withstand flood conditions at the site.

(3) Land may be filled within the Floodway Fringe Areas provided such fill extends 25 feet beyond the limits of any structures erected thereon.

(4) Any structure proposed to be located outside the Floodplain District but within 100 feet of any main drainage channel or stream within the City of Benton must be approved by the Planning Commission. The Planning Commission may require an applicant to submit proof, prepared by a competent engineer, that the proposed structure or use will not unduly increase the flood damage potential. The engineer shall determine, on the basis of the area of the watershed and the probable runoff, the opening needed for the stream or how close a structure may be built to the stream in order to assure adequate space for the flow of floodwater.

(D) *Approval of Planning Commission.* No permit shall be issued for the construction of any building or for any use within the Floodway until the plans for such construction or use have been submitted to the Planning Commission and approval is given in writing for such construction or use. The Planning Commission may make its approval subject to such conditions necessary to carry out the purpose of the Floodplain District. In its review of plans submitted, the Planning Commission shall be guided by the following standards, keeping in mind that one of the purposes of the Floodplain District is to prevent encroachment into the Floodway which will unduly increase flood heights and endanger life and property,

(1) Any use permitted shall be a type not appreciably damaged by the floodwaters, provided no structures for human habitation shall be permitted.

(2) No filling of land shall be permitted, except where express permission is granted by the Planning Commission.

(3) Any structure permitted shall be designed, constructed and placed on the lot so as to offer the minimum obstruction to the flow of water.

(4) Any structure permitted shall be firmly anchored to prevent the structure from floating away and thus threatening to further restrict bridge openings and other restricted sections of the stream.

(5) Where in the opinion of the Planning Commission topographic data, engineering, and other studies are needed to determine the effects of flooding on a proposed structure and/or the effect of the structure on the flow of water, the Planning Commission may require the applicant to submit such data or other studies prepared by competent engineers or other technical people.

(6) The granting of approval of any structure use shall not constitute a representation, guarantee or warranty of any kind nor nature by the City of Benton or the Benton Planning Commission, or by any officer or employee of either thereof, of the practicality or safety of any structure or use proposed and shall create no liability upon or cause action against such public body, officer, or employee for any damage that may result pursuant thereto.

(E) *Other applicable ordinances.* Other ordinances of the City of Benton may be applicable to flood-related issues including, but not limited to, the Flood Damage Prevention Ordinance passed on second reading on March 21, 2011.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.101 MIXED USE OVERLAY DISTRICT REGULATIONS.**

(A) The Mixed Use Overlay District ("MU District") Includes both C-1 Central Business Commercial District and C-2 Neighborhood Commercial District and any other property specifically placed in this zoning district by zoning map amendment. The Mixed Use Zoning Overlay District is the only district in which mixed commercial and residential use of a building with a commercial use on the majority square footage of the first floor and residential use on the second or any higher floor may be approved by conditional use permit pursuant to this Zoning Ordinance and KRS 100.237. Mixed uses of property may be consistent with the Comprehensive Plan and KRS Chapter 100, but only pursuant to appropriate conditions as approved by the Board of Zoning Adjustment in granting a conditional use permit. Two types of mixed use are contemplated within the MU District: owner/operator mixed use; and unrelated mixed use.

(1) Owner/operator mixed use include circumstances where all of the persons residing on the property are either the owner or close family members of the owner of the real property and the owner or a close family member is operating the business on the first floor of the property. Owner/operator mixed use also includes circumstances where there is an employee of the property owner or tenant or

manager of a tenant entity leasing from the property owner and operating the business on the first floor of the property while such person and/or their close family members also reside on the property pursuant to a lease from the property owner. Close family members of an owner or operator are defined to include spouses, natural children, adopted children, stepchildren, grandchildren and/or grandparents of the property individual owner or operator or the individual owning the largest percentage equity interest in any relevant owner or operator entity.

(2) Unrelated mixed use includes circumstances where the owner of the subject property may or may not reside or operate a business on the subject property and may elect to rent either the commercial use area or the residential area of the building to different persons or entities. Any unrelated mixed use property must include business use in the building by the owner's tenant.

(B) Any conditional use permit approved for either owner/operator mixed use or unrelated mixed use shall:

(1) Authorize at least annual inspection by the Administrative Official and/or his or her designee for compliance with the conditional use permit at the cost of the property owner, with acknowledgment by the property owner that failure to maintain ongoing compliance with such permit may result in revocation of the conditional use permit.

(2) Require the property owner upon ten days of receiving any building permit, revocation or permit, or notice of building, electrical, or fire code violation or any adverse governmental agency allegation or determination as to the subject property to notify the Administrative Official of receipt of any such document by providing him or her a copy via U.S. Postal Service First Class Mail, return receipt requested, or via hand delivery. Failure to timely provide such documentation shall be a violation of the conditional use permit.

(3) Shall require the property owner to obtain and maintain reasonable property, fire and liability insurance to protect both the commercial and residential uses of the property.

(4) Shall require the property owner to maintain adequate safeguards to protect the safety of minor children and adults residing on the property from proximate commercial use of the property.

(5) Shall require separate metering of the utilities for the residential and commercial sections of the building unless the property owner is also the resident of the residential section of the building.

(6) Shall require adequate delineation of the commercial and residential sections of the building by sufficient walls or lockable doors.

(7) Shall require thermostat controls for heating and/or air conditioning in residential and commercial sections of the building.

(8) Shall require at least one restroom with operational toilet, sink, and either bathtub or shower in each residential section in the building. At least one restroom with operational toilet and sink is required in each commercial section of the building.

(9) Shall require compliance with all applicable fire safety codes and that reasonable fire escape routes be maintained and identified by appropriate signage.

(10) Shall require, if available or if new construction of a building is involved, that at least one automobile parking space on the property be dedicated to use of each residential unit and be identified by appropriate signage or markings on the parking lot. If no new construction of a building is involved and no dedicated on-site resident parking is available, an applicant for a conditional use permit shall address parking of any resident and the commission may impose reasonable conditions to insure the property owner will make sure such parking is available off-site.

(11) May require a report by a Kentucky-licensed engineer indicating that the subject property is structurally safe for a residential section to be on its second or higher floor to be filed with the Administrative Official prior to any residential occupancy of the building. The cost of such report shall be paid by the applicant property owner.

(12) Shall prohibit animals in the residential section of the building, except for fish in aquariums or birds in cages or certified service animals providing assistance to disabled persons.

(13) Shall prohibit use of fire places in the residential or commercial sections of the building.

(14) Shall require that in any circumstances where the user of the residential or commercial section of the building is not the owner of the property that there be a written lease between the property owner and the tenant for a period of at least 90 days and that such lease expressly state that it is subject to the Zoning Ordinance of the City of Benton and to a conditional use permit, a copy of which will be provided by the property owner and which is otherwise available from the Administrative Official for a normal copy charge.

(C) Any conditional use permit issued for an owner/operator mixed use or for an unrelated mixed use may include conditions other than those listed above in the sound discretion of the Board of Zoning Adjustment as consistent with the Comprehensive Plan, the Zoning Ordinance, KRS Chapter 100, other applicable law and in protection of the health, safety, and welfare of the citizens and property owners of the City of Benton, Kentucky.

(D) Home occupation uses in residential zones are governed by separate sections of this Zoning Ordinance and are not required to be undertaken in a Mixed Use Overlay District. Mixed uses in the C-1 District, which include both commercial and residential uses are required to comply with this section.

(E) *Single purpose use of property in a mixed use zone.*



(1) The owner of any property located within a mixed use overlay district can apply to the Zoning Administrator for a permit to use that property for a single purpose (residential or commercial) and that application shall be submitted to the Board of Adjustment for determination. The utilization of any property within a mixed use zone solely as a residential or a commercial use will prevent some properties located within a mixed use district from remaining vacant and unused.

(2) Application for a single purpose use of property in a mixed use zone shall be made to the Planning and Zoning Administrator on a form to be provided by the zoning official and shall be accompanied by a fee of \$25. The zoning official will then present the request to the Board of Adjustment for its action within 30 days.

(3) The Zoning Administration may revoke any permit issued for a single purpose use for non-compliance with any of the conditions of use that may be established by the Board of Adjustment. If the permit is revoked, it shall become null and void and any single purpose use permit issued to the property owner shall terminate.

(4) The decision of the Planning and Zoning Administration concerning the revocation of a single purpose use permit will be final unless a written appeal is filed with the Board of Adjustment by the property owner within 30 days of the property owner's receipt of notice of revocation.

(5) If any tenant of an owner of property located in a mixed use zone moves or vacates premises subject to an existing single use permit, that permit shall automatically terminate, and the owner of the property shall notify the zoning official of the tenants vacating the permitted premises.

(6) No single purpose use permit will be issued for any property for which the city has a claim for any unpaid utility services or for which there is unpaid ad valorem tax claims.

(F) After a conditional use permit is issued for an owner/operator mixed use or for an unrelated mixed use, the property owner may continue to use the property under the terms and conditions of the permit even if tenants change. Upon a change of occupant/tenant, the owner shall notify the administrative official, in writing, of the name(s) of all tenants and provide a copy of the written lease required under division (B)(14) above, to the administrative official within 14 days of a change of occupant. Failure to notify the administrative official of a change in occupant may be ground for immediate revocation of the conditional use permit.

(G) Upon providing notice that there has been a change in occupant. The owner shall also certify that there have been no changes to the character of the property or commercial or residential character of the property since the conditional use permit was issued, or, if there have been changes to the commercial or residential character of the property since the conditional use permit was issued, the changes shall be described, in detail, and submitted to the administrative official for Board of Adjustment consideration as to whether or not the conditional use permit is still appropriate, needs to be modified, or should be revoked. The property owner may continue to use the property or allow the property to be used in compliance with this section, and under the same terms and conditions of the conditional use permit until a decision of the Board of Adjustments to the contrary.

(H) A conditional use permit shall terminate upon a property being unoccupied for a period of 90 days or more, or upon a substantial change to the character of the property or structures on the property occurring during any period that the property is not occupied under a conditional use permit, regardless of the length of the period the property is not occupied under such a permit.  
(Ord. 12-11-1, passed 11-19-12; Am. Ord. 16-04-01, passed 4-18-16; Am. Ord. 18-04-01, passed 4-16-18)

### ***LEGAL STATUS, VALIDITY, EFFECT DATE, RECORDING, ENFORCEMENT***

#### **§ 155.115 LEGAL STATUS.**

Provisions of this chapter shall be held as minimum requirements for the promotion of public health, safety, morals and general welfare. Whenever the regulations of this chapter require a more restrictive use of land, or impose other higher standards that are required in other ordinances or regulations, private deed restrictions, or private covenants, this chapter will govern. However, if the requirements of the other ordinances and/or covenants are more restrictive than established in this chapter, then those requirements shall govern.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.116 VALIDITY; SEVERABILITY; NON-REPEALER.**

If any section, clause, provision or portion of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, it shall not affect or prejudice in any way the validity of this chapter which is not of itself invalidated. This chapter does not repeal other Ordinances of the City of Benton, Kentucky, whether adopted pursuant to KRS Chapter 100 or other applicable law. Unless expressly stated otherwise, any amendment to this chapter is only to the Zoning Ordinance for Benton, Kentucky, and to no other ordinance.  
(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.117 EFFECTIVE DATE.**

This chapter shall take effect and be in force immediately after its legal adoption, the public welfare demanding it.  
(Ord. 12-11-1, passed 11-19-12)



**§ 155.118 RECORDING.**

A copy of this chapter shall be filed in the Office of the County Court Clerk.  
(Ord. 12-11-1, passed 11-19-12)

**§ 155.119 MEETINGS AND PUBLIC HEARINGS.**

The Planning Commission and Board of Zoning Adjustment reserve all authority to conduct meetings in a manner authorized by KRS Chapter 100 and in compliance with this Zoning Ordinance and their respective bylaws. From time to time, either the Commission or Board, may, by resolution, adopt reasonable rules and procedures applicable to public meetings and public hearings, copies of which shall be available from the Administrative Officer. Persons appearing at public hearings are on notice that the Commission or Board may limit speaking time to avoid duplicative testimony and to complete a hearing while maintaining compliance with due process requirements. Persons appearing at public hearings are also on notice that Kentucky-licensed attorneys representing an opposing party have a due process right to cross-examine them at a public hearing. However, no person has a right to cross-examine members of the presiding body at a public hearing. Persons offering exhibits during public hearings shall use their best efforts provide sufficient copies for members of the presiding body, the body's secretary, its legal counsel, the Administrative Officer, and for any other interested person present at the public hearing. Persons offering testimony at the public hearing may be required to do so under oath or affirmation.  
(Ord. 12-11-1, passed 11-19-12)

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## Benton - Land Usage

**§ 155.120 PLANNING COMMISSION.**

*(A) Membership; appointment; terms; vacancies; oath; removal; officers.*

(1) A City of Benton Planning Commission ("Commission") shall be established before the Zoning Ordinance shall be legally enforced.

(2) The Commission shall consist of nine voting members, all of whom must be citizen members, and not more than two of whom may be citizen members of the Board of Adjustment. A "citizen member" means any member of the Planning Commission or Commission of Adjustment who is not an elected or appointed official or employee of the City. The City Attorney and Administrative Officer, if members of the Planning Commission, are each counted as non-voting members for purposes of this paragraph and are not counted in the above limit of nine voting members. Such non-voting members are not counted for purposes of establishing a quorum at any meeting notwithstanding any other provision of this Zoning Ordinance or bylaws which might be interpreted to the contrary.

(3) The Mayor shall be the appointing authority, subject to the approval of his legislative body. The term of a non-voting member of the Commission is the shorter of four years or the period the person holds the position of either City Attorney or Administrative Officer.

(4) The term of office for voting members of the Commission shall be four years.

(5) Vacancies on the Commission shall be filled within 60 days by the Mayor. If the Mayor 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 that term.

(6) All members of the Commission 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 a judge, notary public, clerk of a court, or justice of the peace and otherwise comply with KRS 100.151 as now in effect or hereinafter amended.

(7) All voting members of the city Planning and Zoning Commission shall be compensated \$50 per meeting attended not to exceed a total compensation of \$600 per calendar year. Reasonable expenses lawfully incurred by the members of the Commission in the performance of their duties may be reimbursed by the city.

(8) Any member of the Commission may be removed by the appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest or otherwise pursuant to authority of KRS 100.157 as now in effect or hereinafter amended. The appointing authority who exercises the power to remove a Commission member shall submit a written statement to the Planning Commission setting forth the reasons for removal and the statement shall be read at the next meeting of the Commission. The member so removed shall have the right of appeal to the Circuit Court of Marshall County.

(9) The Commission shall annually elect a chairman, vice-chairman, and a secretary and any other officer it deems necessary. The secretary shall prepare and maintain minutes of all Commission

meetings which shall be approved by the Commission. The Zoning Administrator or City Attorney may be elected Secretary, although not a voting Commission member. Any officer shall be eligible for re-election at the expiration of his or her term.

(B) *Meetings of Commission; quorum; minutes; bylaws.*

(1) The Commission shall conduct meetings at the call of the chairman who shall give written or oral notice to all members of the Commission at least seven days prior to the meeting which notice shall contain the date, time and place for the meeting and the subject or subjects which will be discussed. The chairman may vote on all matters before the Commission, but may not make or second motions.

(2) A simple majority of the total voting membership, as established by regulation or agreement, shall constitute a quorum. Any member of the Commission 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 from voting on the question. A member who disqualifies himself from voting shall not otherwise participate in the public hearing or deliberations on the matter in question.

(3) The Commission shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings, and determinations and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the face, all of which shall immediately after adoption, be filed in the office of the Commission. If the Commission has no office, such records may be kept in custody of an officer of the Commission and shall be available to the general public. A transcript of the minutes of the Commission shall be available to the general public. A transcript of the minutes of the Commission shall be provided if requested by a party, at the expense of the requesting party. The transcript and associated documentary exhibits, filings into the administrative record, findings, and minutes shall collectively constitute the administrative record of the matter before the Commission.

(C) *Employing planners or other persons.* The Commission may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties pursuant to KRS 100.223, as now in effect or hereinafter amended. Such authority includes the authority to contract with attorneys and/or expert witnesses to assist the Commission.

(D) *Finances.* The Commission shall have the right to receive, hold, and spend funds, which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying out its duties pursuant to KRS 100.223 as now in effect or hereinafter amended.

(E) *Administration of oaths.* The Chairman of the Commission shall have the power to administer an oath to witnesses prior to their testifying before the Commission on any issue.  
(Ord. 12-11-1, passed 11-19-12; Am. Ord. 21-06-05, passed 6-21-21)

**§ 155.121 ENFORCEMENT.**

Pursuant to KRS 100.337, as now in effect or hereinafter amended, the City of Benton, Kentucky Planning Commission shall have a cause of action for all appropriate relief including injunctions against any governmental bodies or any aggrieved person who violates KRS Chapter 100, as it may be amended, or regulations adopted by the City of Benton hereunder, including, but not limited to, this chapter and the City of Benton Subdivision Regulations as now in effect or hereinafter amended. The City of Benton, Kentucky Planning Commission may exercise the foregoing authority to seek injunctive or other relief, or may, in its discretion, refrain from exercise of such jurisdiction to the extent any foregoing violation is subject to the concurrent enforcement jurisdiction of another City of Benton governmental body or official pursuant to a Code Enforcement Ordinance or similar enactment.  
(Ord. 12-11-1, passed 11-19-12)

**ZONING ADMINISTRATION****§ 155.135 AMENDMENT TO ZONING MAP AND/OR TEXT; HEARING.**

(A) All applications for a zoning map amendment shall be governed by KRS 100.211, as now in effect or hereinafter amended. A proposal for amendment to the Zoning Map shall be referred to the Benton Planning Commission before adoption. The Commission may adopt one or more forms for applicants to complete in connection with filing an application for a zoning map amendment. Notice of the Commission's public hearing shall be in compliance with KRS 100.212 and KRS Chapter 424, as now in effect or hereinafter amended. The Commission shall review the application, and shall, within 60 days from the date of its receipt, advise the City Council as to whether it approves or disapproves of the proposed change, and if it disapproves, state the reasons for disapproval. Before the Planning Commission makes its recommendations to the City Council, said Commission shall hold at least one public hearing after notice as required by KRS Chapter 424. The findings of fact and recommendation shall include a summary of the evidence and testimony presented by the proponents and opponents of the proposed amendment. A majority of the entire membership of the City Council shall be required to override the Planning Commission's disapproval.

(B) Notice of a public hearing on a zoning map amendment shall be made pursuant to KRS Chapter 100 in general and KRS 100.212 in particular. Applicants are placed on notice that KRS 100.212(2) provides it shall be the duty of the person or persons proposing the map amendment to furnish to the planning commission the names and addresses of the owners of all adjoining property. Kentucky Revised Statutes 100.212(2) also provides that records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of the owner.

(C) Before any map amendment is granted, the Planning Commission and the City Council must find that the map amendment is in agreement with the community's comprehensive plan, or, in the

absence of such a finding, that one or more of the following apply and such finding shall be recorded in the minutes and records of the Planning Commission and the City Council.

(1) That the original zoning classification given to the property was inappropriate or improper.

(2) That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the community's comprehensive plan and which have substantially altered the basic character of such neighborhood.

(D) Findings in support of the approval of a zoning map amendment application shall be made subject to KRS 100.213, as now in effect or hereinafter amended. Any person or entity appearing at the public hearing may submit proposed findings of fact and/or conclusions of law before the conclusion of the public hearing for consideration by the Commission or Legislative Body. Applicants or other persons seeking to submit such proposed findings or conclusions may file them with the Administrative Officer for inclusion in the Administrative Record of the application prior any public hearing. Any proposed findings or conclusions submitted by applicants or other persons should be reasonably specific to the relevant property or vicinity and should not merely parrot the statutory language of KRS 100.213.

(E) Pursuant to KRS 100.213(2), as now in effect or hereinafter amended, reconsideration of a denied zoning map amendment or consideration of a zoning map amendment identical to a denied zoning map amendment may not be requested for a period of two years from the original zoning map amendment application.

(F) Spot zoning as defined in this Zoning Ordinance is currently disfavored by published precedent of Kentucky's appellate courts. Notwithstanding anything to the contrary in this Zoning Ordinance, any applicant proposing a "spot zoning" shall include a compelling written legal argument by a Kentucky-licensed attorney in favor of such "spot zoning" with its application as well as be prepared to present clear and convincing evidence in the administrative record of the application or at a public hearing as to the justification for the spot zoning based on the particulars of the property in questions and the zoning classifications and uses of adjoining properties and of the area. Any applicant submitting a request for "spot zoning" shall show by clear and convincing evidence that the request is reasonably compatible with land uses on adjoining properties and in the area. The Planning Commission and the City Council retain all discretion to deny a request for "spot zoning" allowed by KRS Chapter 100 and other Kentucky law.

(G) Applications for amendment of the text of the zoning ordinance shall be governed by KRS 100.211, as now in effect or hereinafter amended. The Commission may adopt one or more Forms for applicants to complete in connection with filing an application for an amendment of the text of the Zoning Ordinance.

(H) The Commission reserves all authority pursuant to applicable law to charge fees for filings of applications for Zoning Map Amendments and/or Amendments to the Text of the Zoning Ordinance.  
(Ord. 12-11-1, passed 11-19-12)

**§ 155.136 ADMINISTRATIVE OFFICER.**

(A) Provisions of the Zoning Ordinance shall be enforced by an administrative officer, designated by the City to administer said Ordinance. The Administrative Officer may deem an application for any approval or recommendation of the Administrative Officer, the Planning Commission, or the Board of Zoning Adjustment complete if in compliance with this Zoning Ordinance or inform the applicant of any deficiency and request it be corrected. Consideration of an application may be postponed to a further meeting if it is incomplete and submission of a deficient application does not guarantee it will be heard on the next available docket of the Commission or Board. Prescreening of applications by the Administrative Officer is in the interest of efficiency and sound use planning for applicants and the City in order to avoid duplicative and continued proceedings before boards in which required information is not available at the relevant public hearing.

(B) Applicants are encouraged to discuss applications with the Administrative Officer prior to filing in that such communications encourages efficiencies mutual understanding, and compliance with the Zoning Ordinance for all involved. Nevertheless, applicants are solely responsible for their ultimate filings and it is not the role of the Zoning Administrator to complete an applicant's application or to predict or provide any assurances as to the relevant body's ultimate decision on an application. Moreover, any administrative interpretation or similar action made by the Zoning Administrator as contemplated by KRS 100.257 or KRS 100.261 shall be made in writing in that verbal statements do not properly allow for any requested review by the Board of Zoning Adjustments.

(C) The Administrative Officer may review any application for signature by a person or entity with appropriate authority based on information in the application. A lessee, licensee, subtenant, or holder of another property interest may be a co-applicant for any application pursuant to this Zoning Ordinance. However, the owner of record of the subject property ("property owner") shall also be an applicant or co-applicant for any application pursuant to this Zoning Ordinance and an authorized representative of the property owner shall sign such application unless such property owner has executed a recordable power of attorney allowing the applicant to sign such application and a copy of such power of attorney is included with the application.

(D) The Administrative Officer may prepare one or more Forms to be completed by an applicant in connection with any application made pursuant to KRS Chapter 100. Upon approval of such form by the appropriate official, board, or commission who is to make the final decision or a recommendation on such application, any applicant is required to complete and file its application on the appropriate approved Form.

(E) The Administrative Officer shall be authorized to issue building permits and/or certificates of occupancy in accordance with the literal terms of the Zoning Ordinance, but may not have the power to permit any construction, or to permit any use or any change of use which does not conform to the literal terms of the Zoning Ordinance.

(F) The Administrative Officer shall keep accurate records in a permanent file for the issuance of building permits, certificates of occupancy, inspections, violations, stop orders and condemnations. If

the Administrative Officer finds any provisions of the ordinance being violated, the person or persons responsible for such violation shall be notified by the Administrative Officer through registered mail. Said notification shall order the discontinuation of any illegal use of land, buildings, and/or structure.

(G) Any permit or certificate of occupancy issued in conflict with the provisions of the Zoning Ordinance shall be null and void. Notwithstanding the foregoing, as an alternative to such notice from the Administrative Officer to the alleged violator, the Administrative Officer may notify in writing the appropriate board or city official with jurisdiction to take enforcement action in response to the violation pursuant to the city's Code Enforcement Ordinance, as now in effect or hereinafter amended or similar enactment.

(H) The Administrative Officer shall be required to inform and/or report his or her actions to the Benton Planning Commission. Said report shall be in writing and issued to the Planning Commission on or before each monthly meeting.

(Ord. 12-11-1, passed 11-19-12)

#### **§ 155.137 BUILDING PERMITS.**

(A) *Required prior to construction or alterations:* It shall be unlawful to commence the excavation for the construction of any building, including accessory buildings, or to commence the moving or alteration of any building, including accessory buildings, until the Administrative 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; or
- (2) Installation of required improvements according to an approved subdivision plat.

(C) *Procedure.*

(1) *Application:* in applying to the Administrative 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 to be constructed or altered and all existing structures, the use of structures, yard depths, and any other information necessary for determining conformance with this order. The city or County Health Officer's certificate approving proposed water and sewerage facilities must accompany applications according to § 155.063.

(2) *Issuance:* if the proposed construction or alteration conforms to all applicable ordinances, regulations and codes, the Administrative Officer shall issue a building permit authorizing such construction or alteration. If proposed construction or alteration fails to conform, the Administrative



Officer shall refuse to issue a building permit and shall cause delivery of written notice to the applicant stating the reasons for refusal. The Administrative Officer shall act upon applications for building permits within two weeks from the date of their submission.

(3) *Restraint of construction without permit*: 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.

(4) *Validity*: this issuance of a building permit shall not waive any provisions of this regulation.

(5) *Duration*: a building permit shall become void one year 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 Administrative Officer before it becomes void.

(Ord. 12-11-1, passed 11-19-12)

#### § 155.138 CERTIFICATE OF OCCUPANCY.

No land or buildings or part thereof hereafter erected or altered in its use or structure shall be used until the Administrative 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 regulation. 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 Administrative 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 regulation; 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.

(Ord. 12-11-1, passed 11-19-12)

#### § 155.139 BOARD OF ADJUSTMENT.

(A) *Membership; Appointment; Terms; Vacancies; Oath; Removal; Officers.*

(1) A Board of Adjustment ("Board") shall be established before the Zoning Ordinance shall be legally enforced.

(2) The Board shall consist of five voting members, all of whom must be citizen members, and not more than two of whom may be citizen members of the Planning Commission. A "citizen member" means any member of the Planning Commission or Board of Adjustment who is not an elected or appointed official or employee of the city. The City Attorney and Administrative Officer, if members of the Board, are each counted as non-voting members for purposes of this paragraph and are not counted in the above limit of five voting members. Such non-voting members are not counted

for purposes of establishing a quorum at any meeting, notwithstanding any other provision of this chapter or bylaws which might be interpreted to the contrary.

(3) The Mayor shall be the appointing authority, subject to the approval of his legislative body. The term of a non-voting member of the Board is the shorter of four years or the period the person holds the position of either City Attorney or Administrative Officer.

(4) The Mayor shall be the appointing authority, subject to the approval of his or her legislative body.

(5) The term of office for voting members of the Board shall be four years.

(6) Vacancies on the Board shall be filled within 60 days by the Mayor. If the Mayor 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 that term.

(7) All members of the Board 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 a judge, notary public, clerk of a court, or justice of the peace and otherwise comply with KRS 100.151 as now in effect or hereinafter amended.

(8) All voting members of the Board of Adjustment shall be compensated \$50 per meeting attended not to exceed a total compensation of \$600 per calendar year. In the event a member of the Board of Adjustment serves as a member of the Planning and Zoning Board, said member's compensation is limited to a total of \$50 per meeting attended. Reasonable expenses lawfully incurred by the members of the Commission in the performance of their duties may be reimbursed by the city.

(9) Any member of the Board may be removed by the appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest or otherwise within the authority of KRS 100.217, as now in effect or hereinafter amended. The appointing authority who exercises the power to remove a Board member shall submit a written statement to the Board of Adjustment setting forth the reasons for removal and the statement shall be read at the next meeting of the Board of Adjustment. The member so removed shall have the right of appeal to the Circuit Court of Marshall County.

(10) The Board shall annually elect a chairman, vice-chairman, and a secretary and any other officer it deems necessary. The secretary shall prepare and maintain minutes of all board meetings which shall be approved by the Board. A non-voting member of the Board may be elected and serve as secretary. Any officer shall be eligible for re-election at the expiration of his or her term.

(B) *Meetings of Board; quorum; minutes; bylaws.*

(1) The Board shall conduct meetings at the call of the chairman who shall give written or oral notice to all members of the Board at least seven days prior to the meeting which notice shall contain the date, time and place for the meeting and the subject or subjects which will be discussed. The chairman may vote on all matters before the Board, but may not make or second motions.

(2) A simple majority of the total voting membership, as established by regulation or agreement, shall constitute a quorum. Any member of the Board 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 from voting on the question. A member who disqualifies himself from voting shall not otherwise participate in the public hearing or deliberations on the matter in question.

(3) The Board shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings, and determinations and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the face, all of which shall immediately after adoption, be filed in the office of the Board. If the Board has no office, such records may be kept in custody of an officer of the Board and shall be available to the general public. A transcript of the minutes of the Board shall be available to the general public. A transcript of the minutes of the Board shall be provided if requested by a party, at the expense of the requesting party. The transcript and associated documentary exhibits, filings into the administrative record, findings, and minutes shall collectively constitute the administrative record of the matter before the Board.

(C) *Employing planners or other persons:* The Board of Adjustment may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties pursuant to KRS 100.223, as now in effect or hereinafter amended. Such authority includes the authority to contract with attorneys and/or expert witnesses to assist the Board.

(D) *Finances.* The Board shall have the right to receive, hold, and spend funds, which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying out its duties pursuant to KRS 100.223 as now in effect or hereinafter amended.

(E) *Subpoena power.* Pursuant to KRS 100.231, as now in effect or hereinafter amended, the Board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. Parties intending to appear or appearing in such proceedings who are represented by an attorney licensed in the Commonwealth of Kentucky may reasonably request the Board to issue such subpoenas. Such parties are on notice that failure to do so may constitute a waiver of any right to seek written or deposition discovery in a subsequent appeal of the Board's decision pursuant to KRS 100.347 as now in effect or hereinafter amended. The Chief of Police and/or 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.

(F) *Administration of oaths.* The Chairman of the Board shall have the power to administer an oath to witnesses prior to their testifying before the Board on any issue.

(G) *Conditional use permits.* The Board shall have the power to hear and decide applications for conditional use permits, subject to KRS 100.237 as now in effect or hereinafter amended, to allow the proper integration into the community of uses which are specifically named in the Zoning Ordinance

which may be suitable only in specific locations in the zone only if certain conditions are met. Any land use which is not permitted as a matter of right in any Zoning District and which is not otherwise permitted in any zoning district upon issuance of a conditional use permit, may be permitted in a C-1, C-2, I-2, or Agricultural Zoning District if consistent with the Comprehensive Plan, KRS Chapter 100, and the health, welfare, and safety of residents and property owners of nearby property and of the city as a whole.

(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 Ordinance listing the conditional use under consideration.

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

(4) The Administrative Officer 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 permits, the Administrative Officer 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 that it is furnished to the Chairman of the Board. If the Board finds that the facts alleged in the report of the Administrative Officer 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 Officer 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 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 Officer upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been

satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file with the Court Clerk, as required in KRS 100.344. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

(H) The Board shall have the power to hear and decide on applications for dimensional variances where, by reason of the exceptional narrowness, shallowness, or unusual shape of a site on the effective date of the Zoning Ordinance or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site, the literal enforcement of the dimensional requirements (height or width of building or size of yards, but not population density) of the Zoning Ordinance would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zone. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant.

(I) *Findings necessary for granting variances.* Before any variance is granted, the Board must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance.

(1) The specific conditions in detail which are unique to the applicant's land and which do not exist on any other land in the same zone.

(2) The manner in which the strict application of the provisions of the ordinance would deprive the applicant of a reasonable use of the land in the manner equivalent to the use permitted other landowners in the same zone.

(3) That the unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of the Zoning Ordinance.

(4) Reasons that the variance will preserve, not harm, the public safety and welfare and will not alter the essential character of the neighborhood.

(J) *Variance cannot contradict zoning ordinance.* The Board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the Zoning Ordinance in the zone in question or to alter density requirements in the zone in question.

(K) *Dimensional variance runs with land.* A dimensional variance applies to the property for which it is granted, and not to the individual who applied for it. A variance also 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.

(L) *Recording of variances and conditional use permits.* All variances and conditional use permits approved by the Board of Adjustments shall be recorded at the expense of the applicant in the Office of the County Court Clerk.



(M) *Existing nonconforming use; continuance; change.*

(1) Subject to KRS 100.253, as now in effect or hereinafter amended, the lawful use of a building or premises, existing at the time of the adoption of the Zoning Ordinance affecting it may be continued, although such use does not conform to the provisions of such regulation, except as otherwise provided herein.

(2) The Board of Adjustment shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time of the ordinance, which makes it 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.

(3) As provided in KRS 100.253(3), as now in effect or hereinafter amended, any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten years, and which has not been the subject of any adverse order or other adverse action by the administrative official said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of KRS 100.253(2), as now in effect or hereinafter amended.

(N) *Administrative review.* Pursuant to KRS 100.257, as now in effect or hereinafter amended, the Board shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or refusal made by an Administrative Official in the enforcement of the Zoning Ordinance. Such appeal shall be taken within 30 days. Said appeal deadline is jurisdictional and cannot be extended by the Board.

(O) *Procedure for all appeals to Board.* 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 any zoning enforcement officer pursuant to KRS 100.261, as now in effect or hereinafter amended. 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 appeal deadline is jurisdictional and may not be extended by the Board.) 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. The Board, through its bylaws and one or more appropriate resolutions, may adopt procedures for the reasonable conduct of public hearings consistent with rights of all participants to due process.

(P) *Public notice of appeal hearing/further appeal to Circuit Court.*

(1) 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 60 days. The affected party

may appear at the hearing in person in his or her individual capacity or by attorney if the affected party is an entity. Persons seeking to represent other persons or entities in connection with any such public hearing are advised to consult Kentucky Bar Association Opinion U-43, as it may be amended or superseded, as to the unauthorized practice of law in proceedings before zoning boards and zoning authorities.

(2) Pursuant to KRS 100.347, as now in effect or hereinafter amended, a person or entity claiming to be injured or aggrieved by a final action of a Legislative Body (i.e. Benton City Council), the Planning Commission or Board of Adjustment may appeal from the action to the circuit court of the county in which the land lies.

(3) Subject to KRS 100.347, as now in effect or hereinafter amended, all appeals shall be taken in the circuit court within thirty days after the final action or decision of the Planning Commission or Board of Adjustment and all decisions, which have not been appealed within thirty days, shall become final. The final action shall be deemed to have occurred on the calendar date when the vote is taken to approve or disapprove the matter pending before the Planning Commission or Board for final action. KRS 100.347 requires the owner of the subject property and applicants who initiated the proceeding to be made parties to such appeal to Circuit Court. After the appeal is taken and perfected, the procedure shall be governed by the Kentucky Rules of Civil Procedure, as amended. When an appeal has been filed, the Clerk of the Circuit Court shall issue a summons to all parties, including the Planning Commission in all cases, and shall cause it to be delivered for service as in any other law action. It is not the responsibility of the Board, the Administrative Official, and/or the Planning Commission to advise private persons or entities on how to file an appeal to Circuit Court, and such persons or entities are on notice to seek and rely upon their own legal counsel in filing such appeals.

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 21-06-05, passed 6-21-21; Am. Ord. 21-09-03, passed 9-20-21)

#### **§ 155.140 FEES.**

The Planning Commission may from time to time by resolution adopt fees for applications, permits, determinations, and/or public hearings pursuant to this Zoning Ordinance and also require persons to pay recording fees associated with their requests. Such fees shall be consistent with KRS Chapter 100 and other law. Unless otherwise amended, the following fees are in effect:

[Table begins on next page.]

Zoning map amendment application fee:	
Less than 5 acres	\$250
More than 5 acres and less than 10 acres	\$350
10 or more acres	\$500
Variance application fee:	
In Residential District	\$150
In any other district	\$250
Conditional use permit application fee:	
In Residential District	\$150
In any other district	\$250
Any other application requiring a public hearing not otherwise specifically addressed herein	\$250
Any application or determination to be decided by administrative official not otherwise specifically addressed herein	\$150
Subdivision plat approval	\$150
Wireless facility application and public hearing	\$2,500 or statutory amount, whichever is greater
Fence permit fee	\$0
Sign permit fee	\$50
Actual cost of media notice, cost of signage, cost of certified letters and County Court Clerk recording fees are in addition to above fees and are to be paid by applicant at or before public hearing on application.	

(Ord. 12-11-1, passed 11-19-12; Am. Ord. 22-05-01, passed 5-19-22)