

## ARTICLE IX

### GENERAL REGULATIONS

**SECTION 9.0 PURPOSE:** Except as herein provided, general regulations shall apply to all zones.

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

**SECTION 9.2 INTERFERENCE WITH TRAFFIC CONTROL DEVICES:** No sign, structure, tree, planting, or vegetation, or any portion thereof, shall protrude over or into any street so as to create confusion around, or otherwise interfere with, traffic control devices of any kind.

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

**SECTION 9.4 FRONTAGE ON CORNER LOTS AND DOUBLE FRONTAGE LOTS:** On lots having frontage on more than one street, the minimum front yard depth shall be provided on at least one street frontage, with the other frontage having a minimum of two-thirds of the required minimum front yard depth, except that when such lots abut an arterial street, as herein defined, the minimum front yard depth shall be provided for each street frontage.

**SECTION 9.5 RAILROAD RIGHT-OF-WAY LOCATION:** Railroad rights-of-way, exclusive of such uses as marshaling yards, spur lines, passenger and freight terminals, maintenance shops, fueling facilities, and round houses, may be located in any zone providing said railroad rights-of-way meet the requirements of those sections of the Kentucky Revised Statutes and other pertinent state regulations.

**SECTION 9.6 EXCAVATION, MOVEMENT OF SOIL, TREE REMOVAL, AND EROSION AND SEDIMENTATION CONTROL**

- A. No governmental entity or other person or entity shall strip, excavate, fill, or otherwise move soil, trees, or other vegetation, except for minor changes such as the filling of small depressions, removal of vegetation which is diseased or endangering the public safety, without first insuring that all requirements of the Subdivision Regulations, if applicable, have been fulfilled and then obtaining a permit from the zoning administrator.
- B. The zoning administrator may issue the required permit after determining that the resulting change in grade, or removal of trees and other vegetation, in the affected area will be in conformance with all applicable provisions of this ordinance. The provisions of this section shall not be construed to prohibit normal excavation or grading which is incidental to the construction or alteration of a building on the premises for which a building permit has been granted as required otherwise in this ordinance.
- C. Erosion and Sedimentation Control: Controls for excavation, movement of soil, and tree removal shall be planned and applied according to the following:
  - 1. The smallest practical area of land shall be exposed at any one time during development.
  - 2. When land is exposed during development, the exposure should be kept to the shortest practical period of time.
  - 3. Temporary vegetation and/or mulching shall be used to protect critical areas exposed during development.
  - 4. Sediment basins (debris basins or silt traps) shall be installed and maintained to remove sediment from run-off waters from land undergoing development.
  - 5. Provisions shall be made to accommodate the increased runoff caused by changed soil and surface conditions during and after development.
  - 6. Permanent final vegetation and structures shall be installed as soon as practical in the development.
  - 7. The development shall be fitted to the topography and soils so as to create the least erosion potential.
  - 8. Wherever feasible, natural vegetation should be retained and protected.

**SECTION 9.7 UNSIGHTLY OR UNSANITARY STORAGE:**

- A. No rubbish, salvage materials, junk, motor vehicle tires, or miscellaneous refuse shall be openly stored or kept in the open, and weeds shall not be allowed to go uncut within any zone when the same may be construed to be a menace to public health and safety by the appropriate Health Department, or have a depressing influence upon property values in the neighborhood, in the opinion of the Zoning Administrator. Salvage and junk yards shall be adequately enclosed with a solid fence or wall, as regulated by Article XIII of this ordinance, and an approved permanent planting screen, as regulated by Section 9.15 of this ordinance.
- B. All uses that maintain garbage dumpsters on site shall provide a screened enclosure by means of a class 1, 3, 5, or 6 fence/wall, or a combination thereof, equal in height to the dumpster. Such enclosure may only open to the interior of the site on which it is located. All such garbage collection areas shall be located in the rear yard and set back a minimum of two (2) feet from any property line, unless site limitations such as topography, yard area, or access prevent such placement, as determined by the zoning administrator.

**SECTION 9.8 APPLICATION OF ZONING REGULATIONS**

- A. Except as herein provided, no structures or land shall be used for any purpose other than that permitted in the zone in which such structures or land is located or is to be located.
- B. Except as herein provided, every structure hereafter erected shall be located on a lot, as herein defined, and in no case shall there be more than one (1) principal structure on one (1) lot, nor shall any structure be erected on any lot which does not abut at least twenty-five (25) feet on a public right-of-way.
- C. Except as herein provided, or approved by the board of adjustment, accessory structures and uses shall not be permitted within any front yard or minimum required side yard in any zone. Accessory structures and uses may be permitted to extend into the minimum required rear yard, as defined herein, all zones, provided that such structures are set back from the rear lot line a minimum of ten (10) feet, and minimum required side yard clearances are maintained. Location of off-street parking, loading and/or unloading areas, fences, and signs, shall be governed by their respective sections, as provided for herein.
- D. Permitted Obstructions In Minimum Required Yards: Except as herein provided, the following shall not be considered to be obstructions when located in the minimum required yards specified.

1. In All Minimum Required Yards - driveways, provided they are not closer than two (2) feet to the property line to which they run approximately parallel to, except that in the event that a common driveway will be used to serve two (2) or more lots, then driveways may be permitted to abut the property line; steps, four (4) feet or less above grade, projecting not more than four (4) feet into the minimum required yards which are necessary for access to a lot from a street or alley; fire escapes and chimneys, projecting eighteen (18) inches or less into the minimum required yards; arbors and trellises; flag poles; bird baths; trees; plants; shrubs; ornaments; utility poles and wires; and outdoor furniture.
2. In Minimum Required Front Yard - bay windows, projecting three (3) feet or less into the minimum required front yard; overhanging eaves and gutters, projecting three (3) feet or less into the minimum required front yard; air conditioning equipment; awnings and canopies, extending not more than six (6) feet into the minimum required front yard.
3. In Minimum Required Rear Yard - bay windows, overhanging eaves, gutters, and air conditioning equipment, projecting three (3) feet or less into the minimum required rear yard; awnings and canopies, provided they do not extend more than ten (10) feet into the minimum required rear yard; uncovered porches, decks, or patios, provided they are less than three (3) feet above grade.
4. In Minimum Required Side Yard - air conditioning equipment, overhanging eaves and gutters, awnings and canopies, projecting eighteen (18) inches or less into the minimum required side yard; uncovered decks, porches, or patios, provided they are less than three (3) feet above grade.

**SECTION 9.9 SPECIAL REQUIREMENTS GOVERNING HOME OCCUPATIONS:**

Home occupations shall include the use of a residential structure for services rendered, other than by direct contact with customers, at that location (for example, where the bulk of the business is by telephone - actual work is performed in home and customer is contacted other than at that location). The following requirements shall apply to home occupations, where permitted herein:

- A. No persons other than members of the family residing on the premises shall be engaged in such operation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. Not more than twenty-five (25) percent of the gross floor area of any one floor of the dwelling unit (including the basement or cellar) shall be used in the conduct of the home occupation.

- C. There shall be no change in the outside appearance of the structure or premises, or other visible evidence of the conduct of such home occupation, that will indicate from the exterior that the structure is being utilized, in part, for any purpose other than that of a dwelling unit, except that a name plate as regulated by Article XIV of this ordinance, shall be permitted.
- D. No home occupation shall be conducted in any accessory structure, nor shall there be any exterior storage of any materials on the premises.
- E. There shall be no commodity sold upon the premises in connection with such home occupation.
- F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the vicinity where such home occupation is located.
- G. No equipment or process which creates noise, vibration, glare, fumes, odors, or electrical interference, detectable to the normal senses off the lot, shall be used in such home occupation. In the case of electrical interference, no equipment or process which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises, shall be used.

**SECTION 9.10 NONCONFORMING LOTS, NONCONFORMING USES, NONCONFORMING STRUCTURES, REPAIRS AND MAINTENANCE, AND NONCONFORMING SIGNS**

**A. NONCONFORMING LOTS**

- 1. Any lot of record which does not meet the minimum requirements of this ordinance, or the zone in which it is located, shall be considered a nonconforming lot of record.
- 2. If two (2) or more lots with continuous frontage are in single ownership and are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the minimum requirements for a lot width and/or area, as established by this ordinance, or the zone in which it is located, the nonconforming lots of record may be developed, provided: the lot is located on an existing and improved public street; a minimum of fifty-one (51) percent of the lots located on the same side of the street within the same block front are developed; and the development proposed on the lot is in conformance with all other requirements of this ordinance. Where a minimum of fifty-one (51) percent of the lots located on the same side of the street within the same block front are not developed, the land involved shall be considered to be an undivided parcel for the purposes of

this ordinance, and no portion of said parcel shall be used or sold which does not meet the minimum lot width and minimum area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance.

3. Where a nonconforming lot of record exists having a lot area and/or frontage less than required by the particular zone district wherein said lot is located, development may be permitted on the lot, provided: the lot is located on an existing and improved public street; the lot is of separate ownership from all adjacent and contiguous parcels; the adjacent and contiguous parcels exist as developed building lots or dedicated street rights-of-way, precluding acquisition of additional area to achieve conformity; and development proposed on the lot is in conformance with all other requirements of this ordinance. Where a variance from any minimum yard, setback, etc., is necessary to develop said lot, an application for such variance shall be submitted to the board of adjustment in accordance with Article XVIII of this ordinance.

#### B. NONCONFORMING USES

1. CONTINUANCE: Except as herein provided, the lawful use of any structure or land existing at the time of the adoption of this ordinance may be continued although such use does not conform to the provisions of this ordinance. However, no nonconforming use may be enlarged or extended beyond its area of use at the time it becomes a nonconforming use, unless: (1) such enlargement or extension is needed to meet any federal, state, or local health and/or safety rule, regulation, or guideline; or (2) until the use is brought into conformance with all provisions of this ordinance.
2. CHANGE FROM ONE NONCONFORMING USE TO ANOTHER: As regulated by Section 18.6, D. of this ordinance.
3. TERMINATION: In all cases, the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to operate a nonconforming use based on any of the following conditions, and if the decision is to do so, the board shall state its bases, in writing, for such determination.
  - a. Nonoperative, nonused, or abandoned for a period of six (6) consecutive months, providing that the board of adjustment may allow the continuation of such nonconforming use if it is determined that reasons for such nonuse were beyond the owners'/operators' control.

- b. Whenever the structure, in which the nonconforming use is operated, is damaged or destroyed in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure in which the nonconforming use is operated.
  - c. Whenever the structure, in which the nonconforming use is operated, becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such structure as of the date of the official order under the applicable ordinance.
  - d. Whenever said nonconforming use is determined to be detrimental or injurious to the public safety, health or welfare.
4. ZONE CHANGE: The foregoing provisions shall apply to uses which become nonconforming due to zone changes which take place thereafter.

C. NONCONFORMING STRUCTURES

- 1. CONTINUANCE: Except as herein provided, any nonconforming structure may be occupied, operated, and maintained in a state of good repair, but no nonconforming structure shall be enlarged or extended unless the enlargement or extension can be, and is, made in compliance with all of the provisions of this ordinance.
- 2. TERMINATION: In all cases, the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to reconstruct the nonconforming structure based on any of the following conditions, and if the decision is to do so, the board shall state its bases, in writing, for such determination.
  - a.——Whenever the nonconforming structure is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure.
  - b. Whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such nonconforming structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such nonconforming structure as of the date of the official order under the applicable ordinance.

- c. Whenever said nonconforming structure is determined to be detrimental or injurious to the public safety, health or welfare.
  3. ZONE CHANGE: The foregoing provisions shall apply to structures which become nonconforming due to zone changes which take place hereafter.
- D. REPAIRS AND MAINTENANCE: On any structure devoted in whole, or in part, to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the cubic content of the structure, as it existed at the time of passage or amendment of this ordinance which rendered it nonconforming, shall not be increased.
- Nothing in this ordinance shall be deemed to prevent the strengthening or restoring, to a safe condition, of any building, structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, except for the conditions as stated in Subsections B., 3. or C., 2.
- E. NONCONFORMING SIGNS
1. CONTINUANCE: Except as herein provided, any nonconforming sign may be continued, modified, and maintained provided, however, that no such sign shall be changed beyond its height and area, as it existed at the time of passage or amendment of this ordinance which rendered it nonconforming.
  2. TERMINATION: In all cases, the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to operate a nonconforming sign based on any of the following conditions, and if the decision is to do so, the board shall state its bases, in writing, for such determination.
    - a. Not meeting the requirements for sign regulations, as regulated in Article XIV of this ordinance.
    - b. Nonuse or abandonment of said nonconforming sign for a period of six (6) consecutive months.
  3. ZONE CHANGE: The foregoing provisions shall also apply to signs which become nonconforming due to zone changes which take place hereafter.

## **SECTION 9.11 EXCEPTIONS AND MODIFICATIONS**



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- A. **EXCEPTIONS TO HEIGHT LIMITS:** The height limitations of this ordinance shall not apply to such things as church spires, various types of towers, smoke stacks, other related structures, and necessary mechanical appurtenances, provided their construction is in accordance with existing or hereafter adopted ordinances of the city, and is acceptable to the Federal Aviation Agency and the Federal Communication Commission.
- B. **OTHER EXCEPTIONS:** Service stations or gasoline filling stations shall be so constructed that the centerlines of the pumps shall be at least twenty-five (25) feet from any street right-of-way line.
- C. **FRONT YARD VARIANCE**
1. In any zone, where the average depth of existing front yards within three hundred (300) feet of the lot in question and within the same block front, is greater than the minimum front yard depth required by this ordinance, the minimum required front yard depth on such lot shall be modified to be the average depth of said existing front yards.
  2. In any residential zone, no front yard shall be required to exceed the average depth of existing front yards on the same side of the street within the same block when fifty-one (51) percent or more of the lots within that block are improved with residential buildings, provided that in no case shall a front yard depth be less than twelve (12) feet.
- D. **SIDE YARD VARIANCE:** Where a nonconforming lot of record exists in any residential zone, no side yard shall be required to exceed the average width of existing side yards with the side having the least width, on the same side of the street within the same block, when fifty - one (51) percent or more of the lots within that block are improved with residential buildings; provided that no side yard width shall be less than five (5) feet, except as authorized by the Board of Adjustment.
- E. **EXCEPTION TO MINIMUM FRONTAGE, AREA, AND YARD REGULATIONS**
1. In any subdivision of an existing or proposed development, in any multi-family or commercial zones described herein, zoning, building, and occupancy permits may be issued in the following circumstances, for lots which do not abut a minimum frontage along a dedicated right-of-way, or lots with a lot area, yard areas, or yard sizes which are less than the minimums therefore required by the area and height regulations established herein for the zone in which such development is located:
    - a. A development plan conforming to the provisions of Section 9.17 of this ordinance, including all existing and proposed lot and yard

areas and sizes in the development, is reviewed and approved by the Planning Commission.

- b. The area of the total development of which such lot is a part, is not less than the minimum total area required for such a development in the zone in which it is located.
- c. The density of the total development of which such lot is a part, is not greater than the maximum density allowed for such a development in the zone in which it is located.
- d. Such lot abuts upon areas within such development, which are either used or proposed for use in common by, or for the benefit of, the owners or tenants of such lot and other lots or areas abutting upon such common area, hereinafter identified and referred to as "benefited abutting property", according to the provisions of legally enforceable agreements or land use restrictions, approved by the Planning Commission and recorded in the office of the County Clerk of Campbell County, Kentucky, which include provisions that:
  - (1) Specifically identify such common areas by a metes and bounds description thereof.
  - (2) Specifically identify the owners of such common areas by name and address, and which identify and establish the obligation and duty of such owners, jointly and severally, to cause such common areas and all improvements thereon, including, without limitation, all motor vehicle access drives and parking areas, pedestrian walkways, other paved surfaces, signs, recreational facilities and open spaces, and other aesthetic and environmental amenities, to be maintained and repaired at least to the extent required by any and all governmental agencies having jurisdiction thereof, or any use or activity conducted thereon.
  - (3) Specifically identify the owners of the benefited abutting property by name and address, and the joint and several obligation thereof to pay a proportionate part of all costs of the aforescribed maintenance and repair of such common areas and the improvements thereon, secured by a lien therefore in favor of the owners of the common areas upon that portion of the benefited abutting property in which they have an ownership interest.
  - (4) Specifically identify and establish a legally enforceable right of the city and its successors to enter upon such common areas, through officers, agents, servants, employees and independent contractors thereof, and cause to occur thereon

the aforescribed maintenance and repair of such common areas and the improvements thereon, at the joint and several cost and expense of the owners of any interest in the benefited abutting property, with the payment thereof secured by a lien in favor of the city upon such common areas benefited abutting property.

- (5) Identify and establish a legally enforceable right of the owners of each lot or parcel of real estate in such development which does not abut upon a dedicated right-of-way to a paved and unobstructed right-of-way and easement from each of such lots across, over and through such common areas, for motor vehicles and pedestrian access thereto from a dedicated right-of-way.

## **SECTION 9.12 CONDITIONAL BUILDINGS AND USES**

### **A. DETERMINATION:**

1. Subject to the requirements of Section 18.7 of this ordinance, the board of adjustment may authorize a conditional use to be located within any zone in which such conditional use is permitted, if the evidence presented by the applicant is such as to establish, beyond any reasonable doubt:
  - a. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community; and
  - b. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity
2. Evaluation of the proposed conditional use and/or development plan shall be based upon the following criteria, where applicable:
  - (a) Design
    - (1) Agreement with the various elements of the Comprehensive Plan, and where applicable, any other adopted plan.
    - (2) Adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g., topography, natural features, streets, relationship of adjacent uses, etc.).

- (3) Nature and extent of the proposed uses in relation to the unique characteristics of the site.
- (4) Extent to which the design of the proposed development responds to the natural and man - made features of the site.
- (5) Building locations should be planned to accomplish a desirable transition with open spaces, pedestrian areas, and off - street parking areas.
- (6) Extent to which the scale of each building relates to the natural environment.
- (7) The primary activity area of a building should be oriented toward a natural site amenity.
- (8) The location of buildings should be designed to provide for an orderly rhythm by avoiding long, unbroken building facades.
- (9) Heights of structures should be compatible with the height of existing structures adjacent to the site.

(b) Circulation

- (1) Amount of traffic that would be generated by the proposed development and the ability of the existing street system to adequately handle said traffic. Where deficiencies exist, proposed traffic improvements that would correct such deficiencies may be considered.
- (2) Extent to which the design of the internal street system provides for the efficient and safe movement of traffic within and adjacent to the site.
- (3) The circulation system should follow the natural terrain of the site.
- (4) The circulation system should provide for the continuation of existing streets and provide for the connection of proposed streets to adjoining properties.
- (5) Extent to which the complete separation of pedestrian and vehicular circulation systems is achieved.
- (6) Pedestrian street crossings should provide for safe crossings where there is good sight distance along the street or at a grade separated crossing.

(c) Open Space

- (1) Existing trees, streams, natural features, and scenic views should be preserved and maintained where feasible and practicable.
- (2) Extent to which an overall landscaping plan is developed and achieved to compliment the overall project.

- (3) Landscaping should be an integral part in the design of off - street parking areas to soften the impact of hard surfaced areas on adjacent areas.
- (4) Open spaces should not be isolated from one another by unrelated physical obstructions, but rather, should be linked together by open space corridors having a reasonable width.
- (5) Open spaces and landscaping along the perimeter of the site shall be compatible with adjoining uses and zones.

(d) Utilities

- (1) Extent to which all necessary public utilities and facilities are available to service the proposed development, including police and fire protection, water and sewer services, and other services normally provided within the area. Where deficiencies exist, improvements that would correct such deficiencies may be considered.

(e) Signage

- (1) Signage should be designed to protect and enhance the visual amenities of the site.
- (2) A sign package should be developed for the entire development that forms an integral part of the total design of the site.
- (3) All signs should be of a complimentary scale and proportion in design and in visual relationship to the site and buildings.
- (4) Extent to which signs define and enhance the architectural elements of a building or site.
- (5) Extent to which signage is consolidated and coordinated with the overall site design.

B. **CONDITIONAL USE PERMITS:** In accordance with KRS 100.237, the board of adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein which may be suitable only in specific locations in the zone only if certain conditions are met:

- 1. The board of adjustment may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under

consideration. In addition, a Certificate of Land Use Restriction shall be filed. The board shall have power to revoke conditional use permits for noncompliance with the condition thereof. Furthermore, the board shall have the right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

2. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the city.
3. In any case where a conditional use permit has not been exercised within the time limit set by the board, or within twelve (12) consecutive calendar months from date of issuance, such conditional use permit shall not revert to its original designation unless there has been a public hearing. Exercised as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement has been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
4. The zoning administrator shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permit.

If the landowner is not complying with all of the conditions listed on the conditional use permit, the zoning administrator shall report the fact in writing to the chairman of the board of adjustment. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time it is furnished to the chairman of the board of adjustment.

The board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the board of adjustment finds that the facts alleged in the report of the zoning administrator are true and that the landowner has taken no steps to comply with time between the date of the report and the date of the hearing, the board of adjustment may authorize the zoning administrator

to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

5. Once the board of adjustment has completed a conditional use permit, and all the conditions required are of such type that they can be completely and permanently satisfied, the zoning administrator, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file. Thereafter, said use, if it continues to meet the other requirements of this ordinance, will be treated as a permitted use.
6. When an application is made for a conditional use permit for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, an owner of every parcel of property adjoining the property to which the application applies, and such other persons as this ordinance or board of adjustment bylaws shall direct. Written notice shall be by first class mail with certification by the board's secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the board the name and address of an owner of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.
7. When any property within the required notification area for a public hearing upon a conditional use permit application is located within an adjoining city, county, or planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by first class mail, to certain public officials, as follows:
  - a. If the adjoining property is part of a planning unit, notice shall be given to that unit's commission; or
  - b. If the adjoining property is not part of a planning unit, notice shall be given to the mayor of the city in which the property is located or, if

the property is in an unincorporated area, notice shall be given to the judge/executive of the county in which the property is located.

### **SECTION 9.13 BUILDING REGULATIONS AND WATER AND SANITARY SEWER SERVICE**

- A. **BUILDING REGULATIONS:** All structures shall be designed, erected, or altered in accordance with the applicable housing and building codes.
- B. **WATER AND SANITARY SEWER SERVICE:** Except as herein provided, no principal building may be constructed in any zone unless such building is connected to a public water and central sanitary sewer system of adequate capacity and design, and approved by proper authorities.

1. Individual on-site disposal systems may be permitted only within those areas which are not currently served by a centralized sanitary sewer system. Individual on-site disposal systems may be permitted only under the following conditions:
  - a. On-site disposal systems shall be permitted to be located only on lots which abut existing streets. Where new street rights-of-way are created, or new streets constructed within an existing right-of-way, all existing lots or newly subdivided lots shall be required to connect to a centralized sewerage system;
  - b. The lot shall comply with the Area and Height Regulations for Permitted Uses, as established in the R-RE Zone; and
  - c. On-site disposal systems shall be provided with an aerobic type (aerator) treatment plant which shall be built in accordance with the regulations of the applicable state and local agencies and shall remain in operation until a connection is made to a centralized sewerage system.

In those areas where on-site disposal systems are permitted, a connection to the applicable water agency's supply shall not be required.

3. Where existing or proposed development is presently not served by a public sanitary sewer system, and is located within a reasonable distance of an existing or newly extended sanitary sewer line, as determined by the zoning administrator, said development shall be required to connect with the public sanitary sewer system and the on-site disposal system shall be discontinued.



4. A copy of the approved on-site disposal system permit shall be submitted to the zoning administrator and/or building official prior to the issuance of a building permit.

#### **SECTION 9.14 MOVE AND SET**

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

5. No transport or building permit to move and set shall be issued until the applicant has first obtained the necessary permits from all other applicable agencies.

**D. FEES**

1. There will be a building investigation permit fee, as established by the city, to cover the costs of investigation and inspection for determining the structural soundness of buildings, structures, or improvements which are proposed to be moved. The fee is payable in advance and must accompany the application provided for herein. This fee is not returnable. If buildings, structures, or improvements are found to be capable of complying with the city's Building Code and this ordinance, a building permit to move and set will be issued at the regular fee as determined by the valuation of said building, structure, or improvements as published in the Building Code. This fee is in addition to the Building Investigation Fee.
- b. No person, corporation, or company shall transport, move, or set any building, structure, or improvement in the city, until and unless such person, corporation, or company shall post with the building inspector a good and sufficient indemnity bond in the amount of five thousand dollars (\$5,000.00) in favor of the city. Such bond shall be made by a Surety Corporation authorized to do business in the Commonwealth of Kentucky; said bond may be issued on an annual basis but shall not be in excess of such period of time.

**SECTION 9.15 LANDSCAPE REGULATIONS**

- A. **PURPOSE:** The purpose of this ordinance is to promote and to protect the health, safety and welfare of the community through reduction of noise, air, and visual pollution, air temperature, headlight glare, and to improve the aesthetic character of the community by improving the appearance of vehicular use areas and property adjoining public/private road rights-of-way and driveways, preserving existing trees, and requiring screening between land uses.
- B. **WHO PROVIDES LANDSCAPING:** Landscaping required to fulfill these regulations shall be provided by the property owner. If an adjacent property has landscaping fulfilling perimeter landscaping requirements, the requirement for perimeter landscaping along the common boundary may be waived upon appeal to the City of Cold Spring Landscape Committee. Single family lots in subdivisions with approved landscaping and tree protection plans are exempt from certain provisions of these regulations per Subsection F.

- C. **TYPES OF LANDSCAPING REQUIRED:** Landscaping required per these regulations includes perimeter landscaping, vehicular use area (parking lot) or interior landscaping, street trees along new public or private streets, and landscaping for screening of dumpsters.
- D. **LANDSCAPE REQUIREMENTS TABLE:** The Landscape Requirements Table (Table 9-1) contains landscape requirements for perimeter, vehicular use or interior landscaping per these regulations. A variety of options are available per Table 9-1, from which to choose planting materials to meet the requirements of these regulations. Equivalent combinations of the options presented in Table 9-1 are acceptable to meet the intent of these regulations.
- E. **SITES AFFECTED:** Landscaping as required in the Landscape Requirements Table (Table 9-1), shall be required as follows:
1. All new building development and construction or development requiring a zoning map amendment.
  2. Existing Developed Sites:
    - a. New parking lot construction, including the expansion, moving or relocation of existing parking. This requirement shall only affect those newly paved areas of five (5) spaces or larger, or any paved area larger than 1500 square feet. The number of parking spaces added shall also include any spaces added within one (1) calendar year prior to the building permit application for the new spaces. This requirement shall, in no instance, be deemed as retroactively affecting sites prior to the adoption of this amendment.
    - b. Substantial additions to an existing building. Substantial building additions over one thousand (1,000) square feet will be defined per the criteria established below:

Where Existing Structure Is	Substantial Increase An Addition Of
0 - 1,000 sq. ft.	101% or greater
1,001 - 10,000 sq. ft.	40% or greater
10,001 - 25,000 sq. ft.	30% or greater
25,001 - 50,000 sq. ft.	20% or greater
50,001 sq. ft. and above	10% or greater

Perimeter landscaping, except for single-family residential development, is required between addition and adjoining land use or public/private street, per the landscape requirements table. See

Figure 9-1 for additional information. If this does not involve new parking lot construction, interior (Vehicular Use Area) landscaping is not required.

- F. **PRESERVATION OF EXISTING TREES:** To accomplish the purposes of this ordinance the following regulations address the preservation, maintenance and replanting of trees. Each site developed must maintain or plant trees to equal a density of fifteen (15) square feet of basal area per acre. Specific information on how to calculate this density for both existing and new trees can be found in the Planting Manual and Landscape Regulation Guidelines (see Tree Density Calculation). Existing, healthy trees to be preserved within the disturbed limits must be shown on the landscape plan and on the tree inventory (See Subsection J.). Trees that are preserved within the disturbed limits may be substituted for or counted towards required trees in both perimeter and interior landscaping provided that the tree is located within the required perimeter planting easement or vehicular use area. In all cases, trees preserved within the disturbed limits shall count toward the minimum tree density of fifteen (15) square feet of basal area.

Trees located outside the disturbed limits of the site in a stand comprising fifty (50) percent canopy cover or greater may be included in the calculation of basal area for the site at a rate of forty (40) square feet of basal area per acre. These areas do not have to be included in the detailed tree inventory. However, if a tree density survey is conducted which indicates a density of greater than forty (40) square feet per acre, the higher figure may be used provided sufficient information/documentation is submitted with the tree inventory. Trees outside the disturbed limits of the site shall be protected during construction per the Planting Manual and Landscape Regulation Guidelines.

Trees to be preserved, per the specifications in the Planting Manual and Landscape Ordinance Guidelines, shall have a minimum of 200 square feet of unpaved area that has less than three (3) inches of earth added or removed around the tree. All trees to be preserved shall be protected by a continuous orange construction fence, or other approved marking, and be identified with a weatherproof sign. The sign shall identify the area as a "Tree Save Area" utilizing lettering with a minimum dimension of 3 inches in height and legible from a minimum of 50 feet. Signs shall be placed at least every fifty (50) feet along the construction fence. Signs and fencing shall remain in place until construction is complete. Replacement trees should reflect the general characteristics (i.e., height, mature canopy cover, etc.) of those trees removed from the site, unless site characteristic, such as overhead power lines, require planting of other types of trees.

1. **SPECIAL PROVISIONS FOR TREES 22 INCH DBH (DIAMETER AT BREAST HEIGHT) AND LARGER:** On all sites, trees with a diameter at

breast height (dbh) of twenty-two (22) inches or greater shall be preserved unless approval is granted for a planting adjustment by the Landscape Committee. Each tree permitted to be removed shall be replaced with a total number of trees equal to or greater than five (5) square feet of basal area per Table 2, Replacement Trees, in the Planting Manual and Landscape Regulation Guidelines. The minimum replacement shall be two (2) trees for each tree of twenty-two (22) inches DBH permitted to be removed.

2. **OFF-SITE TREE REPLACEMENT:** The landscape committee (See Subsection K.) may permit off-site tree replacement after all criteria in Subsection J. have been considered and it is found that inadequate space is available on-site to plant trees required per this regulation. Off-site replacement must be on a public or private site within the jurisdiction or equivalent specially designated funds may be provided to the City for future planting or maintenance of trees.
3. **EXCEPTIONS FOR SINGLE FAMILY RESIDENTIAL SUBDIVISIONS LOTS AND AGRICULTURAL ZONES -** The requirements for tree preservation previously described apply to the development of all single-family residential subdivisions. When lots within subdivisions are built upon the owner-occupant may remove any tree that is not a required street tree, without replacing said trees. The owner-occupant shall notify the city of their intent to remove any such trees.

The provisions of these regulations regarding preservation of existing trees shall be exempt for lots in the A-1 (Agricultural One) zone district, created by identification plat.

4. **SITES CLEARED OR TREES REMOVED PRIOR TO SUBMISSION OF TREE INVENTORY -** Where trees have been removed or grading has occurred after the adoption of these regulations a minimum of fifteen (15) square feet of basal area per acre, or fraction thereof, shall be planted on the site per the approved landscape plan in accordance with the Planting Manual Landscape Regulation Guidelines and or restitution shall be made per the provisions for off-site replacement. It is recommended that sites and disturbed limits thereof not be graded in a manner that trees may have been damaged or trees removed, until a tree inventory and landscape plan has been submitted and approved per Subsection J.
- G. **PLANTING MANUAL AND LANDSCAPE REGULATIONS GUIDELINES:** The city shall have on file a manual that outlines recommended plant materials, illustrations of the landscape ordinance applications and minimum requirements for other landscape materials. This manual shall be used as a guideline to anyone preparing a landscape plan in order to meet the requirements of this

Landscape Ordinance. This aforementioned manual is hereby and herewith incorporated by reference into this Ordinance as if it were fully set forth herein. Any amendments to this manual may be done by appropriate Resolution of the Cold Spring City Council from time to time as it sees fit without the necessity of amending this Ordinance.

The Planting Manual and Landscape Regulation Guidelines include plant lists, which can be used for reference purposes when selecting trees and shrubs to meet the requirements of these regulations. The lists are as follows:

PLANT LIST A: SHADE TREES (Mature height greater than 30 ft.)

PLANT LIST B: FLOWERING AND NON - FLOWERING TREES  
(Mature height less than 30 ft. for use under power lines.)

PLANT LIST C: EVERGREEN/BROADLEAF TREES

PLANT LIST D: DECIDUOUS SHRUBS

PLANT LIST E: EVERGREEN/BROADLEAF SHRUBS

PLANT LIST F: STREET TREES

PLANT LIST G: UNACCEPTABLE SHRUBS AND TREES

Please note that with the exception of Plant List G, Unacceptable Plants, the Plant Lists included in the manual are only suggestions of use groups that have been successful in this region for urban landscaping. The choice of plant materials is not limited to those of the lists, but all plants and trees specified on landscape plans that are not included must have proven acceptability in this region. No shrubs and trees on Plant List G will be permitted.

## H. MISCELLANEOUS REGULATIONS

1. EASEMENTS, RIGHTS-OF-WAY, AND SETBACKS: Landscaping must be placed in the required area between the property line and the front, rear and side yard setbacks, except as permitted herein. Required landscaping may be placed wholly or partially in utility or other easements providing all requirements can be fulfilled and the holder of the easements grants approval. Trees placed under overhead utility wires must be from List B. The rights-of-way of any public street may also be utilized for the required landscaping provided that the appropriate government grants approval. It must be noted that an Encroachment Permit shall be required from the Kentucky Transportation Cabinet to plant within state right-of-way. When rights-of-ways are used for required landscaping it shall be the

responsibility of the property owner to maintain said landscaping and to replace any required landscaping subsequently removed by the Kentucky Transportation Cabinet or local legislative bodies.

2. **SIGHT TRIANGLE:** That area at street or drive intersections where all landscaping is prohibited, except ground covers, shrubs not to exceed 24 inches in height, and trees that are without limbs, from the ground up seven feet (see Figure 9-2).
3. **JOINT DRIVEWAYS:** If two properties share a driveway or vehicular use area and have a written reciprocal access agreement, no vehicular use area screening shall be required along the paved portion of the common boundary. Interior landscaping shall be required on the property submitting plans.
4. **DUMPSTERS:** Shall be screened on at least three (3) sides according to Table 9-2.

When dumpsters located less than ten (10) feet from an unwindowed portion of a building on the same property, landscape screening may be waived by the Zoning Administrator for the side of the dumpster facing that building wall. Fencing shall be required on that side.

Screening is not required for dumpsters located within industrial zones, unless dumpster location is within 100 feet of a commercial, professional office, or residential zone or use.

5. **SIGN LANDSCAPING:** Freestanding signs shall have one (1) square foot of landscaping per square foot of signage around the base of the sign. Plants shall be chosen from Plant List D or E (see Planting Manual and Landscape Regulation Guidelines).
6. **CONFLICTS IN REQUIREMENTS:** When an activity or land use falls under more than one of the categories listed in the table, the most stringent of the requirements shall be applied.

#### I. LANDSCAPE MATERIALS

1. **WALLS AND FENCES:** When walls or fences are used to fulfill screening requirements, they shall be indicated on the landscape plan. They are to be of weatherproof materials. This includes using pressure treated lumber or painting of lumber if it is not redwood or cedar and using aluminum or galvanized hardware. Chain link fences with wood or synthetic slat material shall not be used to meet the requirements of these regulations.

2. PLANTS AND TREES: All plants are to be healthy and part of the acceptable plants listed in the Planting Manual. A plant manual should be obtained from the city that outlines recommended plant material.
- a. Quality: Plant materials used in conformance with provision of this ordinance shall comply with the American Standards for Nursery Stock (ANSI Z60. 1-1990, or most current edition) as prepared and published by the American Association of Nurserymen which is on file at the City Hall. In addition all plant materials shall have passed any inspection required under state and/or local regulations.
  - b. Deciduous Trees (trees which normally shed their leaves in the fall): Shall be species having an average mature crown spread of greater than fifteen (15) feet in Campbell County and having trunk(s) which can be maintained with a minimum of seven (7) feet of clear wood in areas which have visibility requirements. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by a grouping of the same so as to create the equivalent of a fifteen (15) foot crown spread. A minimum of six to eight (6-8) feet overall height or a minimum caliper (trunk diameter, measured by 6 inches above ground for trees up to 4 inches caliper) of at least 2.5 inches immediately after planting shall be required. Flowering or non-flowering trees from Plant List B (see Planting Manual and Landscape Regulation Guidelines) may be not less than 2-inch caliper. Trees of species whose roots are known to cause damage to public roadways or other public works shall not be planted closer than fifteen (15) feet from such public works, unless the tree root system is completely contained within a barrier for which the minimum interior container dimensions shall be five feet square and five feet deep and for which the construction requirements shall be four (4) inches thick reinforced concrete.
  - c. Evergreen Trees: Shall be a minimum of six (6) feet high with a minimum caliper of 1-1/2 inches immediately after planting.
  - d. Shrubs and Hedges: Shall be at least 15" - 20" in average height when installed. All plants shall conform to opacity, mature height, and other requirements within five (5) years after the date of the final approval of each planting or replanting. Privet, Ligustrum species cannot meet the opacity requirements and may not be used to satisfy the requirements of this Article. The height of the planting shall be measured from the level of the surface of the vehicular use area at the edge closest to the screening.



- e. Grass or Ground Cover: Grass of the fescus (Gramineae) or Bluegrass (Poaceae) family shall be planted in species normally grown as permanent lawns in Campbell County, and may be sodded, plugged, sprigged, or seeded; except in swales or other areas subject to erosion, where solid sod, erosion reducing net, or suitable mulch shall be used, nurse-grass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Ground cover shall be planted not more than 15 inches on center and in such a manner as to present and have 75% of complete coverage after two complete growing seasons.
3. EARTH MOUNDS: Earth mounds shall be constructed with slopes, not to exceed 2.5 to 1, which allow easy maintenance of grass or other ground cover. Differences in elevation between areas requiring screening do not constitute an earth mound.
4. MAINTENANCE AND INSTALLATION: All landscaping materials shall be installed according to accepted planting procedures (see Planting Manual). The Owner(s) of multi-family residential and all other non-residential property shall be responsible for the perpetual property maintenance of all landscaping materials, including existing trees, and shall keep them in a proper, neat and orderly appearance, free from refuse and debris at all times. All dead plant material shall be replaced within one year, or by the next planting period, whichever comes first; while other defective landscape material (e.g. mulch, rock, fencing, etc.) shall be replaced or repaired within three months.

#### J. SUBMISSION REQUIREMENTS

1. TREE INVENTORY: A tree inventory shall be completed prior to any grading or tree removal on-site and shall be submitted as part of any Stage II Development Plan or Improvement Drawings.

The inventory shall be drawn at a scale no smaller than 1" = 100'-0" and shall include all trees within the disturbed limits of the site proposed to be preserved and protected during construction (See Subsection G. for information on required preservation of existing trees). Information on the inventory shall include: the disturbed and construction limit boundaries; existing and proposed buildings; existing and proposed utilities; approximate boundary of the area beyond the disturbed limit with fifty (50) percent canopy cover; statistical summary of acres within disturbed and construction limits, and area of site that is undisturbed; location of all trees to be preserved/protected within disturbed limits and a completed tree

protection schedule (See Landscape Regulation Manual, Section II for details); and, contour lines.

2. **LANDSCAPE PLAN CONTENT:** The landscape plan shall be drawn to a scale no smaller than 1" = 100'-0" and shall include: all property lines; a north arrow; a scale; all easements; all existing and proposed structures and their uses; dumpsters; all vehicular use areas, labeled as to size and number of parking spaces; the names and addresses of the owners and plan preparers; and either topographic contour or spot elevations where elevation changes occur in areas to be landscaped.
3. **TREE PROTECTION PLAN:** Locate all trees within the disturbed limits that are to be preserved and illustrate how they will be protected during the construction phase, per guidelines in the Planting Manual and Landscape Ordinance Guidelines, Section II, C.
4. **BUILDING OR ZONING PERMIT:** A building or zoning permit shall not be issued until the required landscape plans have been approved. A Certificate of Occupancy shall not be issued unless either:
  - a. All landscaping has been installed and approved by the Zoning Administrator, or
  - b. A full cash bond, irrevocable letter of credit (on an approved bank), or other form of acceptable surety has been posted in an amount equal to the cost of contracting the purchase and installation of the landscaping, plus 25%.

The owner shall have up to 90 days after approval/acceptance of the bond or other surety, as determined by the City Clerk, with the advice of the City Attorney, to install the required landscaping. If, after the established time frame, the landscaping is not installed, the city will contract the landscaping using the posted bond. Two one month extensions of the bond may be allowed beyond the established time from if it is determined that planting will be detrimental to the plant material.

When Street Trees are planted to meet the tree density requirements of these regulations, in accordance with the subdivision of property, a full cash bond, irrevocable letter of credit or other form of acceptable surety in the amount of 125% of the cost of contracting the purchase and installation of the landscaping shall be required to be posted by the developer. If the developer chooses, this bond, letter of credit, or other acceptable surety may be separate from that surety posted for all other public improvements. This bond, or letter of credit, shall be posted at the same time as the surety

is posted for other public improvements and shall be posted for a time frame of one (1) year and may be renewed as necessary.

NOTE: It shall be the developer of the subdivision's responsibility to install the trees as indicated on the Stage II Development Plan or Improvement Drawings. Bond for trees will be kept one year from date of acceptance of the improvements. The amount of the bond will be for the cost of each tree, the actual cost of installation and guaranteeing trees for one year. The Letter of Credit or Bond may be extended for an additional period, not to exceed one (1) year, if it is determined by the city that the developer is making adequate attempts to install the landscaping, as required. If trees are absent or dead after one year, or if the developer is not making substantial progress in planting the trees, the City will contract the planting. After one year, if the trees are installed and living and the City Clerk has released the bond or letter of credit, the continued maintenance of the trees shall be the property owner's responsibility. Trees replaced by the property owners at a later date shall be from the same category as listed in the Landscape Manual. The City encourages developers to use a thematic approach to tree selection, but to avoid the use of the same tree species on more than one street within the subdivision.

#### K. LANDSCAPE COMMITTEE AND PLANTING ADJUSTMENTS

1. LANDSCAPE COMMITTEE: For the purpose of the administration of this Article there shall be established a Landscape Committee, which shall be made up of five (5) members, appointed by the Mayor with the approval of the City Council. The length of term shall be two (2) years, except at initial appointment staggered terms are to be used with two of the initial appointees receiving a one (1) year term and the remainder receiving two (2) year terms. This committee shall consist of private citizens with an interest in and knowledge of landscaping and tree preservation issues.

Requests for planting adjustments shall be reviewed by the Landscape Committee. The Landscape Committee shall review each adjustment request per the requirements of this ordinance and shall determine after the filing of an application with the City Clerk by an aggrieved party and after an appropriate due process hearing before the Committee forward its findings and decision to the Applicant, said ruling on the planting adjustment request shall be binding. Appeals of decisions of the Landscape Committee shall be made to the City of Cold Spring Board of Adjustments.

2. PLANTING ADJUSTMENTS: If the property owner wishes to request a planting adjustment of the Landscape Requirements, an application shall be filed with the City Clerk, who shall convene the Landscape Committee.
3. REVIEW AND APPROVAL OF ADJUSTMENT REQUESTS: Prior to review by the Landscape Committee, plans shall be submitted for review and recommendation of the city planning staff or its duly authorized representative. The committee, in its review of requests for adjustments,

shall in making its decision consider all of the following criteria, along with comments from the city staff or duly authorized representative:

- a. The need for the adjustment is due to circumstances typical of the land in the general vicinity of the site or in the same zone.
- b. The strict application of the Landscape Ordinance would deprive the applicant of a reasonable use of the land or create an unnecessary hardship.
- c. Circumstances necessitating an adjustment are not the result of an action by the applicant subsequent to the passage of the Landscape Ordinance.
- d. Adherence to the Landscape Ordinance will adversely affect the health, safety and welfare of the public or will adversely alter the general character of the general vicinity.

In addition to the above criteria, before trees with a DBH of twenty-two (22) inches or greater may be removed, the Committee shall determine that the tree is either unhealthy and/or that no reasonable site design modifications can be made to avoid removal of the tree.

**TABLE 9-1  
LANDSCAPE REQUIREMENTS TABLE**

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
Any commercial or professional office zone or land use, or any conditional use	Any residential zone or land use	20 feet	<p>Choose one of the following:</p> <ol style="list-style-type: none"> <li>List A* (shade trees), 1 tree per 35 linear feet or fraction thereof, (1) plus double row hedge, list E (evergreen/broadleaf shrubs)</li> <li>List B (flowering and non-flowering trees), 1 tree per 20 linear feet or fraction thereof, plus double row hedge, List E (evergreen/broadleaf shrubs)</li> <li>6 foot wall, fence, or earth mound, plus hedge List D and 1 tree per 40 linear feet from List A (shade trees)</li> <li>6 foot wall, fence, or earth mound, plus hedge List D and 1 tree per 40 linear feet from List B (flowering and non-flowering trees)</li> <li>Double row, staggered, planting of trees from List C at 15 feet on center</li> </ol>
Any industrial zone or land use	Any residential, commercial, or professional office zone	75 feet side and rear yard	<p>36 foot wide, 6 foot tall earthen berm (4) and a double row of staggered trees from List C (evergreen/broadleaf trees) at 15 feet on center.</p> <p>STORAGE YARD: 6 foot fence or wall and hedge (from List E: evergreen/broadleaf shrubs) facing front yard only and/or any public/private street</p>

\* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.

2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.

3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicular use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.

4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.

page 2 of 4

Table 9-1 (continued)

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
Any multi-family residential (3 units per building or greater density) zone or land use	Any single family residential zone or land use	20 feet	Choose one of the following: 1. List A* (shade trees), 1 tree per 45 linear feet or fraction thereof, plus double row hedge, list E (evergreen/broadleaf shrubs) 2. List B (flowering and non-flowering trees), 1 tree per 20 linear feet or fraction thereof, plus double row hedge, List E (evergreen/broadleaf shrubs) 3. 6 foot wall, fence, or earth mound, plus hedge List D (deciduous shrubs) 4. Continuous double row, staggered, planting of trees from List C (evergreen/broadleaf trees) at 15 feet on center
Any commercial, professional office or industrial zone or land use	The public right-of-way, public or private street	10% of each yard area must be landscaped	Trees, shrubs, planting beds, and/or perennials in a motif designed by the owner. A minimum of 3 trees shall be planted per 100 linear feet of road frontage. This is in addition to other required landscaping (3).

\* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.
2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.
3. If the vehicle use area is located in the front side or rear yard, the required interior vehicular use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.
4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.

page 3 of 4

Table 9-1 (continued)

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
A junk, salvage, refuge, or parts yard or recycling center	Any zone or street (public or private)	20 feet	Choose one of the following: 1. 6 foot wall or fence, plus single row hedge List D (deciduous shrubs) or List E (evergreen/broadleaf shrubs), plus 1 tree from List A (shade trees) or List B (flowering and non-flowering trees) per 35 feet of linear boundary or fraction thereof (1) 2. 6 foot solid fence or wall and staggered double row planting of trees from List C (evergreen/broadleaf trees) at 15 feet on center
Street trees may be planted along all public or private streets to meet the requirements of these regulations		4 feet	Choose one of the following: 1. List A (shade trees), 1 tree per 60 feet on center (maximum) 2. List F (street trees), 1 tree per 60 feet on center (maximum) 3. List B (flowering and non-flowering trees), 1 tree per 60 feet on center (maximum)

\* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.

2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.

3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicle use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.

4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.

page 4 of 4

Table 9-1 (continued)

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
A Vehicular Use Area (VUA) associated with any zone or land use, except single-family	Any public or private street	10 foot perimeter screening easement	Choose one of the following: 1. List A* (shade trees), 1 tree per 40 linear feet or fraction thereof, (1) plus 8 shrubs from List D (deciduous shrubs) or List E (evergreen/broadleaf shrubs) 2. List B (flowering and non-flowering trees), 1 tree per 25 linear feet or fraction thereof, plus 8 shrubs from List D (deciduous shrubs) or List E (evergreen/broadleaf shrubs) 3. If minimum planting strip exceeds 25 feet in width, shrubs are not required  --PLUS --
	--PLUS --  in all cases	If over 25 feet  --PLUS --  5% interior landscaped area (2)	List A (shade trees) or List B (flowering and non-flowering trees), 1 tree per 250 square feet of interior landscaped area (1 tree minimum)

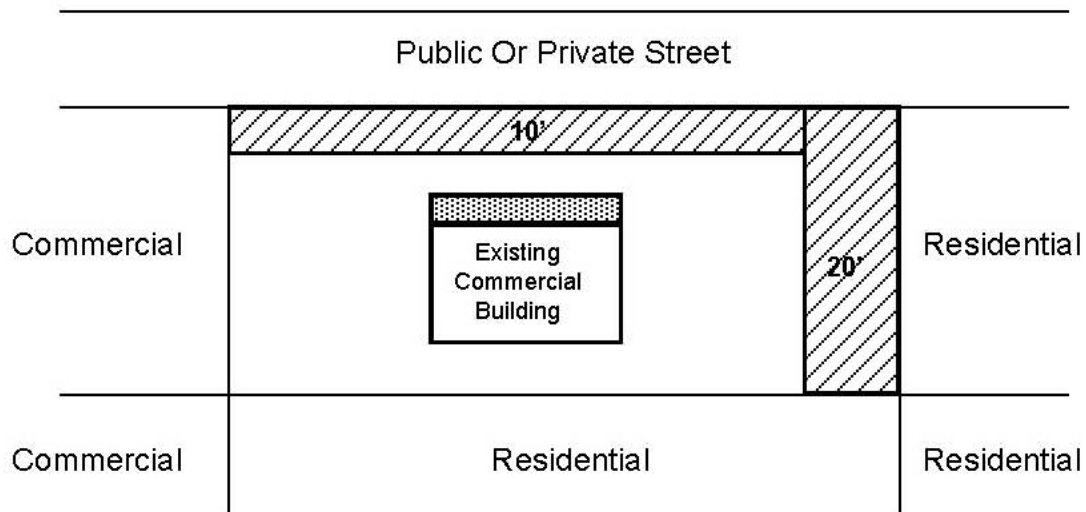
\* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.
2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.
3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicular use area landscaping and the 5 foot perimeter screening easement will be included as counting towards the total front yard landscaping required.
4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.



FIGURE 9-1  
PERIMETER LANDSCAPING REQUIRED PER BUILDING ADDITION

ADDITION #1  
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS



ADDITION #2  
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS

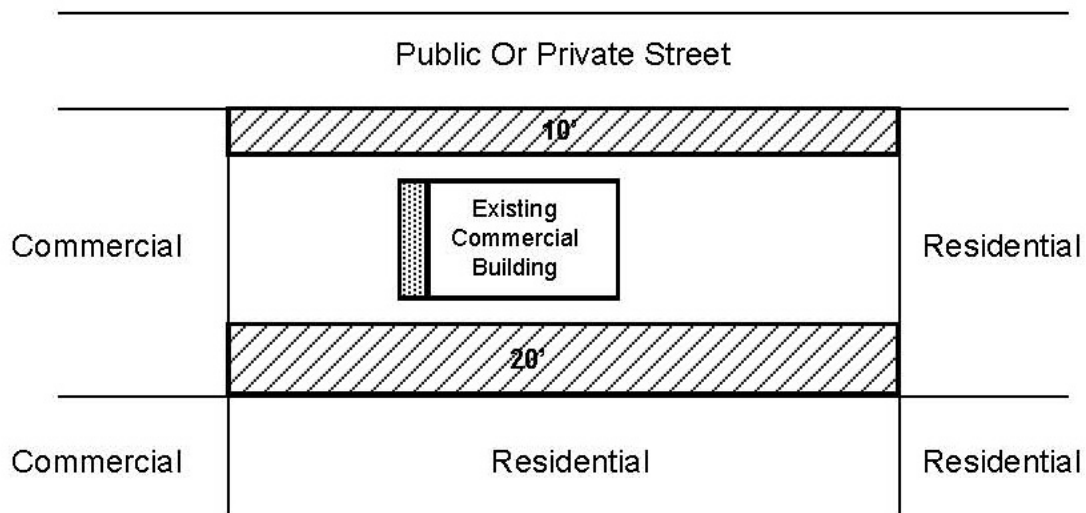
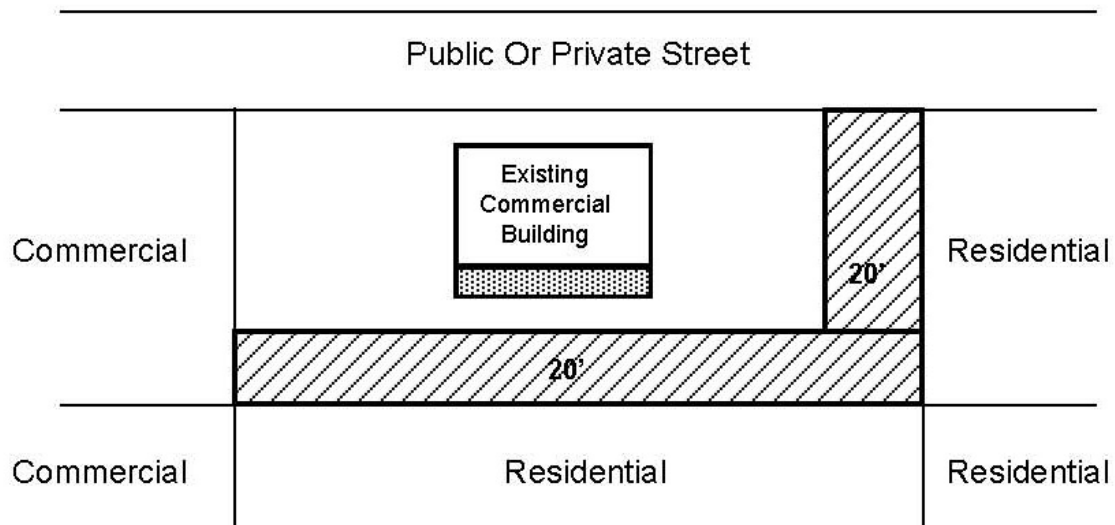
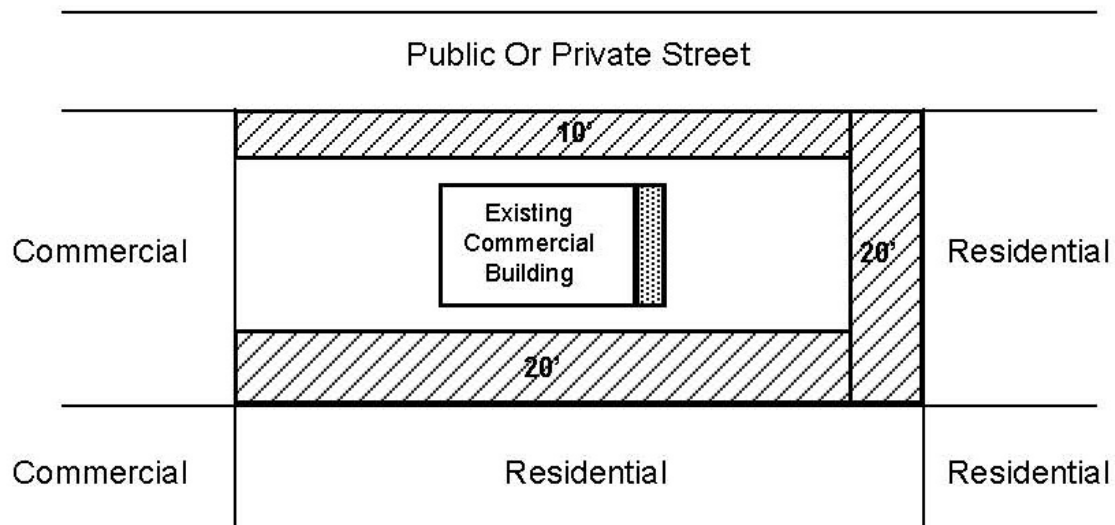


FIGURE 9-1 (continued)  
PERIMETER LANDSCAPING REQUIRED PER BUILDING ADDITION

ADDITION #3  
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS

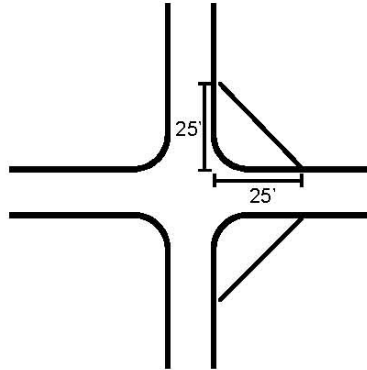


ADDITION #4  
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS

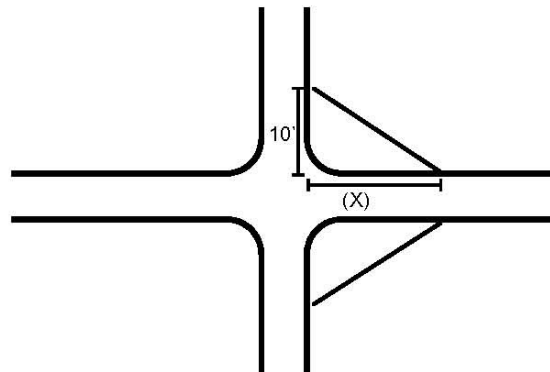


**FIGURE 9-2**  
**CITY STREETS/STATE HIGHWAY SIGHT TRIANGLES**

1. Local and Collector Streets: When two city streets intersect or a driveway intersects a city street, the sight triangle shall consist of the area between points twenty-five (25) feet along both streets from the intersection of the edges of the pavement.



2. Arterial or State Maintained Roadways: Where a city street, driveway or other entrance intersects with a state highway, the sight triangle shall consist of the area between a point located along the edge of the state highway pavement the distance an automobile traveling the speed limit can go in six seconds. An Encroachment Permit from the Kentucky Department of Transportation is required to plant in the State Right-of-Way.



(X) SIGHT DISTANCE	SPEED LIMIT
484 feet	55 miles per hour
396 feet	45 miles per hour
308 feet	35 miles per hour
220 feet	25 miles per hour
132 feet	15 miles per hour

TABLE 9-2  
DUMPSTER SCREENING TABLE

DUMPSTER* OCCURS IN	WHICH ADJOINS	REQUIRED SCREENING
any zone or land use other than residential	any zone or land use other than residential	fencing per plant manual
any residential land use or zone	any zone or land use	fencing per plant manual plus hedge on three sides from list D or E
any zone or land use	any residential land use or zone	fencing per plant manual plus hedge on three sides from list D or E

\* Includes dumpsters, compactors, and all other solid or other waste containers

**SECTION 9.16 OUTDOOR SWIMMING POOLS**

A. PRIVATE SWIMMING POOLS: All private swimming pools shall be regulated according to the following requirements:

1. Shall be permitted to locate in the rear yard no closer than ten (10) feet to any property line.
2. Swimming pools which are constructed in-ground shall be required to have a fence or wall, including a self-closing and self-latching door or gate around the pool or the property on which the pool is located. Such fence or wall shall be at least four (4) feet in height, but not more than seven (7) feet in height (only classes 1, 3, 4, or 5 are permitted, as regulated in Article XIII of this ordinance). Such fences or walls shall be constructed in such a manner that a child may not reach the pool from the street or any property without climbing the fence or wall or opening a gate or door.
3. Swimming pools which are located above-ground shall be required to have a fence or wall, including a self-closing and self-latching door or gate around the pool or property on which the pool is located. Such fence or wall shall be at least four (4) feet in height, but not more than seven (7) feet in height (only classes 1, 3, 4, or 5 are permitted, as regulated by Article XIII of this ordinance). Such fences or walls shall be constructed in such a manner that a child may not reach the pool from the street or any property without climbing the fence or wall or opening the gate or door. Said fence or wall may be the wall of the above ground pool providing, however, that said wall is at least four (4) feet in height above the surrounding ground level.

In addition, any access to above-ground pools by means of a ladder, filter, stairway, apparatus, or paraphernalia shall be provided with a self-closing and self-latching door or gate, or some other device that would prevent a child from gaining access to the pool by means of a ladder, stairway, apparatus or paraphernalia.

4. No lighting shall be permitted which would glare from any swimming pool area onto any street or into any adjacent property.
5. 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. Any water used in the operation of a swimming pool, which is obtained from other than a public source, shall be approved by the appropriate Health Department.

6. All swimming pools existing at the time of adoption of this ordinance which are unprotected by a surrounding fence or wall, including gates or doors, as regulated herein, shall be required to comply with the provisions of this section within six (6) months after adoption of this ordinance.
- B. PUBLIC, SEMI-PUBLIC, AND COMMERCIAL SWIMMING POOLS: All public, semi-public, and commercial swimming pools shall be regulated according to the following requirements:
1. Except as herein provided, no swimming pool including the apparatus and equipment pertaining to the operation of the swimming pool, shall be permitted within any minimum required yards or within the limits of any public utility right-of-way or easement.
  2. The swimming pool, or the property on which the pool is located, shall be surrounded by a fence or wall, including a self-closing and self-latching door or gate (only classes 1, 3, 4, or 5 fences are permitted, as regulated by Article XIII of this ordinance). Such fences or walls shall be at least five (5) feet in height, but not exceeding the height as permitted herein, and of such construction that a child may not reach the pool from the street or from any property without opening the door or gate or climbing the wall or fence.
- In lieu of providing a fence or wall, as required herein, swimming pools may be provided with a pool cover in compliance with the Kentucky Building Code and provided the following required safety criteria are met:
- a. The safety standard cover must pass the strength test and be able to withstand at least 490 pounds (equivalent to two adults and a child) on any given 3 square foot area.
  - b. The cover must be able to drain water so that water does not accumulate and pose a drowning threat to a child.
  - c. The pool cover shall be designed to fit securely over all sides of the pool preventing a child from lifting the cover or entering the water. The cover shall also have a latch, which cannot become undone or loosened, to secure it in a closed position. If the cover is operated electrically, it shall provide for a manual override in the event of a power failure.
  - d. The power disconnect for the pool cover shall be located inside a building and shall include a visual detector or light which remains lit at all times when the pool cover is not in place.
  - e. That the pool will be kept under observation at all times while the pool cover is not in place.

3. No lighting shall be permitted which would glare from any swimming pool area onto any street or into any adjacent property.
4. All swimming pools including the apparatus and equipment pertaining to the operation of the swimming pool, shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the city. Any water used in the operation of the swimming pool, which is obtained from other than from a public source, shall be approved by the appropriate Health Department.
5. No mechanical device for the reproduction or amplification of sounds used in connection with swimming pools shall create a nuisance to adjacent properties.

**SECTION 9.17 DEVELOPMENT PLAN REQUIREMENTS:** No structure shall be erected or structurally altered nor shall any grading take place on any lot or parcel in zones where a development plan is required, except in accordance with the regulations of this section and an approved development plan as hereinafter required. Before a permit is issued for construction, one copy of the development plan, at a scale no smaller than one (1) inch to one hundred (100) feet shall be filed with the planning commission, or their duly authorized representative, the building inspector, and the zoning administrator. The development plan shall identify and locate, where applicable, the information as listed in Section 9.18, B. -- Stage II Development Plan Requirements.

All such development plans shall be reviewed by the planning commission, or its duly authorized representative. The planning commission, or its duly authorized representative shall review the development plans in accordance with requirements of this and other applicable sections of this ordinance and the comprehensive plan, and shall take one of the following actions: approval, approval with conditions, or disapproval.

All development plans approved shall be binding upon the applicants, their successors and assigns and shall limit the development to all conditions and limitations established in such plans.

Amendments to plans may be made in accordance with the procedure required by this ordinance subject to the same limitations and requirements as those under which such plans were originally approved.

After final approval, the subject area may be developed in phases, provided all of the procedures required by the planning commission, or its duly authorized representative, have been complied with.

**SECTION 9.18 DEVELOPMENT PLAN REQUIREMENTS - STAGES I, II, AND RECORD PLAT:**

- A. STAGE I DEVELOPMENT PLAN REQUIREMENTS: The Stage I Development Plan shall identify and provide, where applicable, the following information:
1. Plan(s) of the subject property, drawn to a scale not smaller than one (1) inch equals one hundred (100) feet, that identifies and provides the following information:
    - a. The total area in the project;
    - b. The present zoning of the subject property and all adjacent properties;
    - c. All public and private rights-of-way and easement lines located on or adjacent to the subject property which are proposed to be continued, created, enlarged, relocated, or abandoned;
    - d. Existing topography and approximate delineation of any topographical changes shown by contour with intervals not to exceed five (5) feet;
    - e. Delineation of all existing and proposed residential areas in the project with a statement indicating net density of the total project:
      - (1) Detached housing - location and approximate number of lots, including a typical section(s) identifying approximate lot sizes and dimensions and height of buildings;
      - (2) Attached housing - location and description of the various housing types (i.e., townhouses, fourplex, garden apartment, etc.) including approximate heights of typical structures and the approximate number of units by housing type;
    - f. Delineation of all existing and proposed nonresidential uses in the project:
      - (1) Commercial and industrial uses - location and type of all uses, including approximate number of acres, gross floor area, and height of buildings;
      - (2) Open Space/Recreation - the approximate amount of area proposed for common open space, including the location of recreational facilities and identification of unique natural features to be retained;



- (3) Other public and semi-public uses - location and type of all uses, including approximate number of acres, gross floor area, and height of buildings;
- g. Location of all existing and proposed pedestrian walkways, identifying approximate dimensions;
- h. Location of all existing and proposed off-street parking and loading and/or unloading areas, identifying the approximate number of spaces;
- i. Location of all existing and proposed streets, identifying approximate dimensions of pavement, right-of-way widths, and grades;
- j. Location of all existing and proposed water, sanitary sewer, and storm drainage lines, indicating approximate pipe sizes;
- k. Certification from appropriate water and sewer agencies indicating that services are available.
- l. Identification of the soil types and geologic formations on the subject property, indicating anticipated problems and proposed methods of handling said problems.
- m. A schedule of development, including the staging and phasing of:
  - (1) Residential area, in order of priority, by type of dwelling unit;
  - (2) Streets, utilities, and other public facility improvements, in order of priority;
  - (3) Dedication of land to public use or set aside for common ownership; and
  - (4) Nonresidential buildings and uses, in order of priority.

The aforementioned information may be combined in any suitable and convenient manner so long as the data required is clearly indicated. A separate plan or drawing for each element is not necessary, but may be provided at the option of the applicant.

- B. **STAGE II DEVELOPMENT PLAN REQUIREMENTS:** The Stage II Development Plan shall identify and provide, where applicable, the following requirements:

1. Plan(s) of the subject property drawn to a scale of not smaller than one (1) inch equals one hundred (100) feet, that identifies and provides the following information:
  - a. The existing and proposed finished topography of the subject property shown by contours with intervals not to exceed five (5) feet. Where conditions exist that may require more detailed information on the proposed topography, contours with intervals of less than five (5) feet may be required by the planning commission, or its duly authorized representative;
  - b. All housing units on the subject property:
    - (1) Detached housing - Location, arrangement, and number of all lots, including lot dimensions and maximum height of buildings;
    - (2) Attached housing - Location, height, and arrangement of all buildings, indicating the number of units in each building, and, where applicable, location, arrangement and dimensions of all lots;
  - c. Location, height, arrangement, and identification of all nonresidential buildings and uses on the subject property and, where applicable, location and arrangement of all lots with lot dimensions;
  - d. Location and arrangement of all common open space areas and recreational facilities, including lot dimensions. Methods of ownership, operation, and maintenance of such lands shall be identified;
  - e. Landscaping features, including identification of planting areas and the location, type, and height of walls and fences;
  - f. Location of signs indicating their orientation, size, and height;
  - g. All utility lines and easements:
    - (1) Water distribution system, including line sizes, width of easements, type of pipe, location of hydrants and valves, and other appurtenances;
    - (2) Sanitary sewer system, including pipe sizes, width of easements, gradients, type of pipes, invert elevations,

- location and type of manholes, the location, type, and size of all lift or pumping stations, capacity, and process of any necessary treatment facilities, and other appurtenances;
- (3) Storm sewer and natural drainage system, including pipe and culvert sizes, gradients, location of open drainage courses, width of easements, location and size of inlets and catch basins, location and size of retention and/or sedimentation basins, and data indicating the quantity of storm water entering the subject property naturally from areas outside the property, the quantity of flow at each pickup point (inlet), the quantity of storm water generated by development of the subject area, and the quantity of storm water to be discharged at various points to areas outside the subject property;
  - (4) Other utilities (e.g., electric, telephone, etc.) including the type of service and the width of easements;
- h. Location of all off-street parking, loading and/or unloading, and driveway areas, including typical cross sections, the type of surfacing, dimensions, and the number and arrangement of off-street parking and loading and/or unloading spaces;
  - i. Circulation System:
    - (1) Pedestrian walkways, including alignment, grades, type of surfacing, and width;
    - (2) Streets, including alignment, grades, type of surfacing, width of pavement and right-of-way, geometric details, and typical cross sections;
  - j. Provisions for control of erosion, hillside slippage, and sedimentation, indicating the temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction;
  - k. A schedule of development, including the staging and phasing of:
    - (1) Residential area, in order of priority, by type of dwelling unit;
    - (2) Streets, utilities, and other public facility improvements, in order of priority;

- (3) Dedication of land to public use or set aside for common ownership; and
- (4) Non-residential buildings and uses, in order of priority.

The aforementioned information may be combined in any suitable and convenient manner so long as the data required is clearly indicated. A separate plan or drawing for each element is not necessary, but may be provided at the option of the applicant.

**SECTION 9.19 REGULATIONS CONCERNING AIR RIGHTS:** Any proposed use of air rights, as defined herein, shall be in the form of a development plan, as regulated in Section 9.17 of this ordinance, submitted to the planning commission, or its duly authorized representative, for review.

**SECTION 9.20 REGULATIONS CONCERNING DESIGN AND CONSTRUCTION OF IMPROVEMENTS:** Any proposed development requiring the construction of streets (including curb and gutters), sidewalks, sewers (sanitary and storm), water lines, or other public improvements, which does not constitute a subdivision, as herein defined, shall be required to be designed and constructed in accordance with the applicable articles and sections of the subdivision regulations, unless specifically waived by the planning commission.

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

- A. No vehicle which is inoperable, non functional, in a state of disrepair, or lacking a valid license, shall be stored in excess of seventy-two (72) hours in any residential zone, unless it is in a completely enclosed building.
- B. It shall be unlawful for any person to live in any automobile, recreational vehicle, or truck, within the limits of the city.
- C. RECREATIONAL VEHICLES
  - 1. No person shall allow a recreational vehicle, not in daily use for purposes of transportation, to be parked, or otherwise located on a public street, or in the front or side yard of any residence or commercial property, as established by city ordinance, on any property located in the city.
  - 2. All recreational vehicles must be stored in an inconspicuous manner so as not to detract from the residential atmosphere of the community, nor may such vehicles be parked or stored so as to create a nuisance condition as defined by the ordinances of the city or state law.

3. "Recreational vehicle", for purposes of this section, shall be defined to include: Campers, trailers, boats, house trailers, motor homes, race car, snow mobile or parts on or off a trailer, any dune buggy on or off a trailer, any motorcycle trailer, any pickup camper on or off the pickup, and any other such device designed to be mounted upon any other motor vehicle, towed behind any motor vehicle, or in any way integrated into a movable, temporary housing facility.

**D. IMPOUNDMENT OF VEHICLES FOR PARKING VIOLATIONS**

1. Any recreational vehicle parked upon the streets of the city at a place, in manner of for a length of time prohibited by this ordinance, is declared to be an obstruction in any such streets and a public nuisance, and any police officer of the city is authorized to cause the same to be removed to and impounded in the depository provided by the city for such purpose.
2. All charges shall be paid to the city for any fine, storage charges or hauling charges before the release of an impounded vehicle is authorized.
3. Impounded vehicles shall be held for a period of ninety (90) days, and if unclaimed by that time, shall be advertised and sold.

- E. PARKING OF TRUCKS IN RESIDENTIAL ZONE PROHIBITED** - It shall be unlawful to park or to keep any commercially licensed truck or van at any place on property located in a residential zone, except in a completely enclosed building.

**SECTION 9.22 HILLSIDE DEVELOPMENT CONTROLS**

- A. This section is designed to ensure, when development is proposed in those areas of the community which have physical characteristics limiting development (hillside slopes of 20 percent or greater), that said development is in a manner which is harmonious with adjacent lands so as to minimize problems of drainage, erosion, earth movement, and other natural hazards.
- B. Areas of land on which development is physically restricted due to excessive hillside slopes shall be limited according to the following requirements:
  1. Development proposed on land areas identified on the comprehensive plan as "Physically Restrictive Development Areas", and any other areas which have slopes of 20 percent or greater, shall require approval from the planning commission, or its duly authorized representative, before development may occur.

2. No excavation, removal, or placement of any soil, foundation placement, or construction of buildings or structures of any nature within the area identified as Physically Restrictive Development Area in Subsection A., 1., above, may occur until plans and specifications for such work have been submitted in the form of a development plan as regulated by Section 9.17 of this ordinance. In addition to development plan requirements, the following shall also be submitted:
  - a. Plan(s) which show existing topography and the proposed physical changes necessary for construction, indicating grading (cutting and filling), compaction, erosion, sedimentation basins, areas to be defoliated, and any other pertinent information which will change the natural physical features of the site or general area.
  - b. Information defining results of subsurface investigation of the area under consideration, including test borings, laboratory tests, engineering tests, and a geological analysis. Such investigation shall be made by a qualified, registered civil engineer and a geologist, indicating that any structural or physical changes proposed in the area will be completed in a manner which will minimize hillside slippage and/or soil erosion.
3. The development plan and other information required by this section shall be reviewed by the city engineer, who will recommend to the planning commission, or its duly authorized representative, what effect the proposed development will have on hillside slippage and/or soil erosion.

After consideration of the recommendations, the planning commission, or its duly authorized representative, may authorize use of the site in accordance with the submitted plans.
4. If, after review of the plans required by this section, the planning commission, or its duly authorized representative, determines that said proposed plans will not minimize hillside slippage and/or soil erosion, the planning commission, or its duly authorized representative, shall deny a permit for the development of said land.

C. CRITERIA: Evaluation of the proposed development plan shall be based upon the following criteria:

1. PUBLIC POLICY:

- a. Public works in hillside areas should be designed to preserve the natural character of the land to the greatest extent possible. Deep

or extensive excavations and fills scar the landscape and should be avoided.

- b. Excessive cutting and filling should be avoided in the construction of hillside roadways.
- c. Roadways constructed on hillsides should, wherever possible, follow the contours of the land or climb the slopes with a gentle grade.

## 2. REGULATING THE SUBDIVISION OF HILLSIDE LAND:

- a. Plans for hillside subdivisions should be laid out so that lots on the flatter upland portions of the site are held back from the crest of the hill.
- b. In planning hillside subdivisions, maximum existing vegetation should be retained.
- c. In planning hillside subdivisions, lots located on sloping portions of the site and at the crests of hills should be arranged so that intrusion of buildings constructed on lower elevations into the views of those above will be minimized.
- d. Hillside vegetation should not be heedlessly displaced, degraded, or destroyed.
- e. Subdivisions in hillside areas should be designed to preserve the natural character of the land, to the greatest extent possible.

## 3. REGULATING THE CHARACTER OF DEVELOPMENT:

- a. The visual impact of grading should be minimized by avoiding flat grading planes and sharp angles of intersection.
- b. When it is necessary to use retaining walls, their height should be minimized.
- c. When buildings are constructed on hillside sites, yards and patios should respect the natural contours, drainage patterns, and vegetation of the site.
- d. Slopes exposed in new development should be landscaped in order to mitigate visual impacts created by hillside grading.
- e. The natural slope line of the hill, as seen in profile, should be retained.
- f. Existing native vegetation should be preserved, and when disturbed, should be supplemented with new native vegetation.
- g. Trees should be planted in random clusters, not in rows, to compliment the natural pattern of tree distribution.
- h. All cuts, fills, and any other earth modifications should be replanted with appropriate native vegetation.

- i. The risk of off - site geologic property damage should be minimized by locating development away from areas which are vulnerable to sliding.
- j. Grading for buildings, driveways, outdoor use areas, utilities, etc., should be minimized to preserve the natural topography of the site.
- k. When grading operations are necessary, the smallest practical areas of land should be exposed at any one time during development and the length of exposure should be kept to the shortest practicable amount of time.

4. REGULATING EARTHWORKS:

- a. The tops and toes of excavations and their slopes should be set back from property boundaries and structures as far as necessary for the safety of adjacent properties and adequacy of foundation support and to prevent damage as a result of water runoff.
- b. No fill should be placed over trees, stumps, or other organic or unstable material.
- c. All retaining walls should be promptly backfilled.
- d. Where storm and drainage improvements are necessary, they should be designed to create a natural, rather than a man - made, appearance.
- e. In order to prevent runoff, erosion control plans should utilize existing trees and vegetation to the maximum extent possible.

**SECTION 9.23 APPLICATION FOR TEMPORARY PERMITS**

- A. Application for a temporary permit for an outdoor promotional or merchandising activity (i.e., fireworks sales, Christmas tree sales) shall be made and submitted at the office of the Zoning Administrator on the appropriate forms furnished by said Administrator and in accordance with Article XVI of this ordinance.
- B. The application shall be signed by the person(s) or entity requesting the temporary permit and the fee owner of the subject property.
- C. There shall be no more than two (2) temporary permits issued to a property in a calendar year.
- D. Temporary permits shall be issued for a period not to exceed thirty (30) consecutive calendar days.
- E. Temporary permits may only be issued in commercial zones.
- F. Temporary activities may only utilize class 5 or 6 signs, as regulated by Article XIV of this ordinance.



- G. No temporary activity shall take place within any required off-street parking space.
- H. Before approving any temporary activity, the zoning administrator shall determine that there are a sufficient number of off-street parking spaces on the site in question to accommodate the existing use of the property and the proposed temporary activity.

**SECTION 9.24 REGULATIONS PERTAINING TO THE KEEPING OF CATTLE , HORSES, SHEEP AND OTHER LIVESTOCK:** The keeping and/or raising of cattle, horses, sheep and other livestock may be permitted in any residential zone, provided that the following conditions are fulfilled at all times:

- A. The keeping and/or raising of cattle, horses, sheep and other livestock shall be allowed only as an accessory use to the residential units in all Residential Zones except the R-RE Zone.
- B. No buildings in which farm animals will be kept shall be located closer than one hundred (100) feet to any adjacent property lines except that where a building presently exists, it may continue to be used to keep farm animals providing that it is never located closer than one hundred (100) feet to any adjoining residents.
- C. No storage of manure or odor or dust-producing substance or use shall be permitted within one hundred (100) feet of any adjoining residents.
- D. All structures in which farm animals will be kept, shall be located so that any drainage resulting from such use will not drain into adjacent areas and affect the health of, nor produce offensive odors to the surrounding residents.
- E. For each one thousand (1000) pound unit of livestock (i.e., one cow and one calf or eight sheep) there shall be provided one (1) acre of land, with supplemental feeding; or three (3) acres of land without supplemental feeding provided, further, that a minimum of three (3) acres of land shall be provided for the first one thousand (1000) pound unit or any portion thereof with or without supplemental feeding.
- F. Fences shall be required to be erected around the entire area to be used for the keeping of cattle, horses, sheep and other livestock. Fences of class 2, 3, 4, 7, and 8 only, shall be permitted, up to a maximum height of sixty (60) inches, providing that class 7 fence shall be permitted in the R-RE Zone, only, when not adjacent to another Residential Zone.

**SECTION 9.25 PHASED ZONING REGULATIONS:**

- A. Phased zoning is an overlay type regulation to be used in cases where the timing and/or phasing of the zoning of an area is especially critical to the implementation of the adopted comprehensive plan. The intent of the phased zoning regulations is to encourage redevelopment of a specified area for the use and/or density designated within the comprehensive plan when the necessary conditions for such development are realized (e.g., demolition of existing buildings). Implicit in such a phased zoning approach is the premise that until such conditions are realized, the type of development designated within the comprehensive plan is premature; such development would be prevented by temporarily zoning the area to generally conform with the predominant existing land use, with a clear stipulation of an intended future rezoning, which would be in compliance with the adopted comprehensive plan.
- B. The phased zoning regulations may be overlaid over any zoning classification by means of a zone change process. The use of the phased zoning regulations would indicate that the regulations of the overlaid zone are currently being enforced, based upon the general existing land use, but upon attainment of all the requirements of the zone which corresponds to the adopted comprehensive plan for the type of use and/or density, the area could be rezoned in direct compliance with the plan.
- C. Phased zones are indicated on the official zoning map by adding to the overlaid zone, the letter "P", as a suffix enclosed in parentheses. For example, in order to properly phase its change, an area zoned R-1C, which is identified for future use on the adopted comprehensive plan for "industrial" could be temporarily zoned R-1C(P), indicating that present development on the site would be in conformance with the regulations of the overlaid R-1C Zone, but that, upon the attainment of certain conditions (e.g., provision of an adequate access road, demolition of existing buildings), the area could be rezoned through a zone change procedure to an industrial zone. At the time of the zone change, the temporary R-1C(P) Zone is removed and the area is developed according to the regulations of the new zone, which is in conformance with the adopted comprehensive plan.
- D. The minimum size of any area to be rezoned, as regulated by this section of the ordinance, is one (1) acre, provided that all other provisions of this ordinance and the subdivision regulations are adhered to. Development of a smaller tract adjacent to an existing zone being requested may be permitted if the proposed development conforms to and extends the original development as if the new area had been a part of the original development and provided further that the zone is in conformance with the comprehensive plan.

## **SECTION 9.26 REGULATIONS CONCERNING SATELLITE RECEIVING STATIONS**

- A. **DEFINITION:** A Satellite Receiving Station is hereby defined as an accessory structure whose purpose is to receive communication or other signals from

orbiting satellites and other extraterrestrial sources, and which consist of three (3) main components: the station itself (often called a dish); a low-noise amplifier (LNA) and a receiver. The station and the LNA are located outdoors and are connected by coaxial cable to the receiver, which is placed indoors. The height of the station shall be measured vertically from the highest point of the signal - receiving apparatus, when positioned for operation, to the bottom of the base which supports the station.

**B. SATELLITE RECEIVING STATION CONSTRUCTION**

1. Before proceeding with the construction or erection of a satellite receiving station in the city a permit for the same shall be first obtained by the owner or his agent from the city of Cold Spring.
2. All satellite receiving stations shall comply with BOCH and FCC requirements.
3. The construction and installation of all satellite receiving stations shall conform to applicable city Building Code and Electrical Code Regulations and requirements.
4. Electromagnetic interference - each satellite receiving station shall be filtered and/or shielded so as to prevent the emission of radio-frequency energy that would cause any harmful interference with the radio and/or television broadcasting or reception on adjacent properties. In the event that harmful interference is caused subsequent to the granting of a building permit, the owner of the station shall promptly take steps to eliminate the harmful interference in accordance with all applicable regulations.
5. Each satellite receiving station shall serve only the building located upon the zoning lot on which said satellite receiving station is constructed pursuant to this Section.
6. Satellite receiving station shall be constructed of noncombustible and corrosion-resistant materials.
7. Satellite receiving stations shall be constructed and erected in a secure and a wind-resistant manner. The station shall be wind-resistant enough to withstand 85 mile per hour winds normally and 70 mile per hour winds when combined with ice, without sustaining damage.
8. The satellite receiving station must be adequately grounded for protection against a direct strike of lightning.

9. Roof-mounted satellites shall have a certification from a structural engineer regarding the location stating that the structure is capable of safely supporting the station and that said station does not provide any additional stress which the structure cannot bear.
  10. No advertising or signage of any type is permitted on a satellite dish other than the manufacturers name plate.
- C. RESIDENTIAL ZONES. A satellite receiving station may be located in any residential zone provided that the same:
1. Shall be neutral in color and bear no advertising emblem or information other than the name of the manufacturer in letters not to exceed two (2) inches in height.
  2. Shall be compatible with the appearance and character of the neighborhood.
  3. Shall be limited to one per lot.
  4. Shall not exceed ten (10) feet in diameter.
  5. Shall not be roof-mounted, except when the building permit application is accompanied by a structural Engineer's certification per paragraph B-9 above.
  6. Shall be located only in a rear yard, a minimum of fifteen (15) feet from any lot line.
- D. BUSINESS DISTRICTS. A satellite receiving station may be located in any business zone provided that the same:
1. Shall be neutral in color and bear no advertising emblem or information other than the name of the manufacturer in letters not to exceed two (2) inches in height.
  2. Shall be compatible with the appearance of the surrounding area.
  3. Shall be limited to the lesser of one (1) per lot or per building.
  4. Shall not exceed twelve (12) feet in diameter.
  5. Shall not be roof-mounted, except when the building permit application is accompanied by a structural engineer's certification per paragraph B-9 above.

6. If roof-mounted, shall extend no more than thirty-five (35) feet above ground level.
  7. If ground mounted, shall be located only in a rear yard. The visual impact of the satellite receiving station shall be reduced by screening, if over ten (10) feet in height. If the subject parcel adjoins a residential zone, all stations shall be placed a minimum of fifteen (15) feet from any lot line and effectively screened by a fence, wall, or dense screening hedge to a minimum height of six (6) feet. Said fence, wall or hedge shall be located on or near the lot line bounding the residential zone and shall otherwise comply with the applicable zoning requirements governing its location, and shall be located a minimum of fifteen (15) feet from any lot line.
- E. MANUFACTURING DISTRICTS. A satellite receiving station may be located in any manufacturing zone provided that the same:
1. Shall be neutral in color and bear no advertising emblem or information other than the name of the manufacturer in letters not to exceed two (2) inches in height.
  2. Shall be compatible with the appearance of the surrounding area.
  3. Shall be limited to the lesser of one (1) per lot or per building.
  4. Shall not exceed twelve (12) feet in diameter.
  5. Shall not be roof-mounted, except when the building permit application is accompanied by a structural engineer's certification per paragraph B-9 above.
  6. If roof-mounted, shall extend no more than thirty-five (35) feet above ground level.
  7. Shall not be visible between ground level and ten (10) feet above ground level from any street adjoining the lot.
  8. If ground-mounted, shall be located only in a rear yard. The visual impact of the satellite receiving station shall be reduced by screening, if over ten (10) feet in height. If the subject parcel adjoins a residential zone, all stations shall be placed a minimum of fifteen (15) feet from any lot line and effectively screened by a fence, wall, or dense screening hedge to a minimum height of six (6) feet. Said fence, wall or hedge shall be located on or near the lot line bounding the residential zone and shall otherwise

comply with the applicable zoning requirements governing its location, and shall be located a minimum of fifteen (15) feet from any lot line.

- F. **PRE-EXISTING INSTALLATIONS.** Satellite receiving stations legally in existence at the time of the passage of this ordinance shall be considered to be exempt from compliance for a period of two (2) years from the effective date of this ordinance. At the end of the two (2) period the station must be in compliance with the provisions of this ordinance.
- G. **PERMIT FEE.** The permit fee shall be established from time to time by appropriate ordinances of the Cold Spring City Council.

**SECTION 9.27 REGULATIONS CONCERNING UTILITIES:** No utilities shall be extended into any area for which a preliminary subdivision plat has been approved, unless the extension thereof is beneath the surface of the ground.

## **SECTION 9.28 TRIP REDUCTION REGULATIONS**

- A. **PURPOSE:** The Greater Cincinnati Metropolitan Area has been identified as a non-attainment area for federal ozone level standards. Ozone is a compound and is the primary constituent of smog. This type of air pollution can be primarily attributed to motor vehicles. Due to the increasing responsibilities being placed on local governments to formulate plans which will help to reduce ozone levels, and the sanctions which will be placed upon metropolitan areas if ozone levels are not reduced, it is imperative that measures be taken by local legislative body's and other applicable agencies to reduce the amounts of ozone and other types of air pollution within the total community. Therefore, it is the purpose of these regulations to encourage and accommodate alternatives to single-occupant motor vehicle trips through the promotion and development of transportation management programs. A reduction in such trips can be expected to assist in reducing traffic congestion, air pollution, and energy consumption.
- B. **DEFINITIONS:** For the purpose of this section of the ordinance, the following definitions shall apply:
1. **Carpool** - A motor vehicle occupied by two or more employees who commute together to/from work.
  2. **Compressed Work Week** - A work schedule for an employee which eliminates at least one round trip commute two times a week.
  3. **Flextime** - The scheduling of employee arrivals and departures at a work site so that the number of single occupant vehicle trips during peak hours is reduced.

4. Subscription Bus Service - Transportation of persons in a motor vehicle for commute purposes, where the driver is not employed by the owner/tenant of the work site, either on a fixed route or demand response. This definition shall not include public/private mass transit services.
  5. Telecommuting - A system of either working at home or at an off - site work station with computer facilities that link to the work site.
  6. Vanpool - A van occupied by five or more employees who commute together to/from work.
- C. **APPLICABILITY:** These regulations shall be applicable to all existing and new residential and non-residential uses or developments, the owner(s)/developer(s) of which elect to participate.
- D. **TRANSPORTATION MANAGEMENT COORDINATOR:** Owner(s)/developer(s) of every residential and non-residential use or development which elect to participate in the transportation management program must identify a specific individual, department, or other entity to act as the transportation management coordinator. If the use is existing at the time of adoption of this ordinance, the transportation management coordinator shall be identified at the time the owner(s)/developer(s) of the use or development elect to participate in the transportation management program. If the use or development is new, the occupancy permit shall not be issued until the transportation management coordinator is identified. The transportation management coordinator shall perform the following duties and functions:
1. Coordinate and manage day-to-day operations of the transportation management program.
  2. Monitor and report, as required by this ordinance, performance of the transportation management program.
  3. Act as the administrative liaison between the legislative body and the owner(s)/developer(s) of the use or development.
- E. **REPORTING PROCEDURES:** An annual report, summarizing performance and effectiveness of the transportation management program, shall be filed with the zoning administrator no later than February 28. This report shall cover the period of January 1 through December 31 of the previous calendar year. This report shall contain, at a minimum, the following information, where applicable:
1. Address of the use or development.
  2. Names and types of uses within the development.

3. Number of employees at the use or development by work hours.
4. Number of dwelling units within the development.
5. A description of the types of services provided in the transportation management program.
6. Number of persons who utilize the services by type of service.
7. Number of off-street parking spaces located on the site.

F. TRANSPORTATION MANAGEMENT PROGRAM AND INCENTIVES:

1. NON-RESIDENTIAL USES:

- a. The transportation management program, for non-residential uses, may include one or more of the following services. For each service provided, a reduction in the number of required off-street parking spaces may be taken.

(1) VANPOOLING OR SUBSCRIPTION BUS SERVICE: A reduction of up to twenty percent (20%) of the number of required off-street parking spaces may be allowed for non-residential uses which employ vanpooling or a subscription bus service. To qualify for this reduction, the applicant must submit, along with the zoning permit application, the following:

- (a) Information indicating that the owner/tenant will obtain or lease to employees vans, buses, or other high occupancy vehicles, for the purpose of providing transportation of additional employees.
- (b) Information indicating that the owner/tenant will operate or hire vans, buses, or other high occupancy vehicles, for the purpose of providing transportation of employees.

(2) CARPOOLING: A reduction of up to fifteen percent (15%) of the number of required off-street parking spaces may be allowed for non-residential uses which institute a carpooling program. To qualify for this reduction, the applicant must submit, along with the zoning permit application, the following:



- (a) Information indicating that the program is registered with Rideshare, as established by the Ohio-Kentucky-Indiana Regional Council of Governments.
  - (b) Information indicating that the owner/tenant will provide passive matching services (i.e., bulletin board notice, paycheck stuffers, office newsletter, etc.).
  - (c) Information indicating that all reasonable efforts will be made to register existing and new employees with ride matching services.
  - (d) Information indicating that the program will be actively promoted to employees through newsletters, posters, and other materials.
- (3) ON-SITE AMENITIES AND OTHER ACTIVITIES:
- (a) A reduction of up to ten percent (10%) of the number of required off-street parking spaces may be allowed for non-residential uses which provide on-site amenities or other activities which encourage a reduction in trip generation or alternative modes of transportation. Examples of acceptable on-site amenities and other activities are as follows:
    - [1] Provision of flextime.
    - [2] Provision for a compressed work week.
    - [3] Provision for telecommuting.
    - [4] Provision of cafeteria facilities.
    - [5] Provision of preferential parking for high occupancy vehicles.
    - [6] Provision for bicycle parking.
    - [7] Provision of locker and shower facilities.
  - (b) To qualify for this reduction, the applicant must submit, along with the zoning permit application, the following:

- [1] Information indicating the types and amounts of amenities and activities.
  - [2] Information indicating that use of the amenities and activities will be actively promoted to employees through newsletters, posters, and other materials.
- (4) TRANSIT: A reduction in the number of required off-street parking spaces, equal to the estimated reduction in trip generation, may be allowed for non-residential uses which are located within one-half (1/2) mile of any regularly scheduled bus route stop, with service available during commuting hours. (Example: If the zoning ordinance requires one off-street parking space for every two employees and there are six employees who use the transit system to get to/from work, there can be a reduction of three off-street parking spaces)
- b. As an alternative to reducing the required number of off-street parking spaces, owner(s)/developer(s) of a use or development may increase the floor area, as follows:
  - (1) The owner(s)/developer(s) of the use or development must provide the full amount of off-street parking spaces required by the city's/county's zoning ordinance prior to the proposed increase in floor area.
  - (2) At the time that a zoning permit application is submitted, the applicant must submit the required information and provide the transportation management programs listed in Subsection F., 1., a., herein.
  - (3) The amount of the additional floor area shall be fifty percent (50%) of the figure calculated by taking the number of off-street parking spaces which would be reduced through the incentive programs listed herein multiplied by the off-street parking space variable listed in this ordinance. (Example: Assume that the zoning ordinance requires office uses to provide a minimum of one off-street parking space for every 200 square feet of gross floor area. A 50,000 square foot office building would be required to provide a minimum of 250 off-street parking spaces. Also assume that the owner/developer will provide the necessary transportation

management programs that will allow a reduction of 20% in the number of required off-street parking spaces. Instead of providing 200 off-street parking spaces ( $250 - [250 \times 20\%]$ ), the developer would be allowed to enlarge the gross square footage of his building by 5,000 square feet ( $50\% \times [50 \times 200]$ )

2. RESIDENTIAL USES: The transportation management program for residential uses is divided into multi-family residential developments and single-family residential developments.
  - a. MULTI-FAMILY RESIDENTIAL DEVELOPMENTS: An increase of up to ten percent (10%) in density may be allowed for multi-family residential developments which provide all of the following:
    - (1) Each resident, upon initial occupancy, must receive information on available mass transit services.
    - (2) The owner must provide shuttle or subscription bus service to various local shopping and business areas.
    - (3) Additional off-street parking spaces, which meet the minimum requirements of this ordinance must be provided for the increased number of dwelling units.
  - b. SINGLE-FAMILY RESIDENTIAL DEVELOPMENTS: An increase of up to ten percent (10%) in density may be allowed for single-family residential developments which provide one or both of the following:
    - (1) All roadways must be designed and constructed so as not to preclude vanpool or bus service.
    - (2) An area within the development must be designated, designed, and constructed to accommodate ridesharing, vanpooling, park and ride, or other commuter parking service, at a rate of one (1) space for every ten (10) dwelling units. Such area must be approved by the appropriate mass transit agency prior to approval of the zoning permit. If the mass transit agency does not approve the location of such an area, the developer/owner may pay an "in lieu of" fee, equal to the amount of the estimated cost of construction of such an area, to the appropriate mass transit agency.

G. ENFORCEMENT:

1. If the approved transportation management program, including the requirements of this ordinance, are not being conducted or adhered to, or if the effectiveness of the program is not being met, the owner shall: (1) construct the required amount off-street parking, as required by this ordinance; (2) discontinue the use of the additional amount of building area/dwelling units, provided for within this ordinance; or (3) demolish, raze, or remove the additional amount of building area/dwelling units, provided for within this ordinance.
  2. Prior to the issuance of any occupancy permits, the owner/tenant must verify that the transportation management program, as identified in the zoning permit, will be implemented. Such verification may include copies of contracts, lease agreements, purchase agreements, and any other appropriate documentation.
  3. Provisions of the approved transportation management program shall be binding upon the owner/tenant and all successors. The owner shall record a deed restriction in the County Clerks office, binding all successors in title to the provisions of the approved transportation management program. Additionally, the owner shall include in all leases, a clause which binds all tenants to the provisions of the approved transportation management program.
- H. APPEAL PROCEDURE: The appeal process shall be as provided for within this ordinance.

## **SECTION 9.29 COMPATIBILITY STANDARDS FOR QUALIFIED MANUFACTURED HOUSING**

- A. PURPOSE: The purpose of compatibility standards for manufactured housing is:
1. To permit local governments to adopt and enforce, as part of its zoning regulations, compatibility standards governing the placement of qualified manufactured homes in residential zones, within the local government's jurisdiction, designed to ensure that when a qualified manufactured home is placed in a residential zone, it is compatible, in terms of assessed value, with existing housing located immediately adjacent to (1) either side of the proposed site within the same block front; (2) adjacent to the rear, or (3) within a one-eighth (1/8) mile radius or less from the proposed location of the qualified manufactured home.
- B. A qualified manufactured home that meets the compatibility standards as set forth in Subsections D. 5., and D. 6., of this section, as well as the regulations of the zone in which it is proposed, shall be allowed as a permitted use and as a

primary family residence in any residential zone permitting detached single-family residential uses.

- C. Applications must be submitted to the zoning administrator demonstrating that the compatibility standards as set forth in Subsections D., 5. and D. 6., have been met and contending that the proposed construction, installation, or relocation of the qualified manufactured home is similar and comparable in exterior appearance, building materials, and living area to other dwelling units that have been constructed on adjacent tracts, lots, and parcels.
- D. The procedures for approval shall be in accordance with the requirements of Article XVI and the following:
  - 1. Applications for the placement of qualified manufactured homes shall be submitted with a nonrefundable application fee on a form or forms developed for that purpose to the city zoning administrator. Qualified manufactured homes that have been illegally placed upon a tract, lot, or parcel shall be first removed before an application for approval of placement shall be accepted.
  - 2. The application shall include (1) only information reasonably necessary to make determination as to conformity with the provisions of this Section of this ordinance; (2) recent photographs of the front, side and rear of the qualified manufactured home exterior finish (whichever is applicable); (3) pictures taken from the proposed site of the dwelling unit in the northerly, easterly, southerly, and westerly directions, and pictures of any adjacent dwelling units. The photographs shall be taken within 30 days prior to the submittal of the application. In addition, each application shall be accompanied by a site plan or plot plan containing appropriate information including, but not limited to, the following:
    - a. Location of all existing buildings, structures, easements, and boundary lines;
    - b. North arrow, scale, city and land lot;
    - c. Existing use of adjacent property
    - d. Location of all proposed buildings, structures, and land uses.
  - 3. Applications shall be first reviewed for completeness. If the application is rejected for not being complete, the applicant shall be notified of the reasons for the rejection. The applicant shall be responsible for the satisfaction of all of the comments prior to the resubmission of the revised application.
  - 4. The application shall be reviewed for compatibility with architectural appearance and similarity with:

- a. adjacent development or surrounding developments;
  - b. development within the same zone or general area;
  - c. proposed development permitted in the same zone or general area; and,
- 5. Compatibility with architectural appearance shall be based on the following:
  - a. floor living space and setbacks;
  - b. siding and exterior materials;
  - c. roof pitch;
  - d. square footage;
  - e. general aesthetic appearance.
- 6. Compatibility with the orientation and location of existing structures shall be based on the following:
  - a. building height;
  - b. building width;
  - c. building depth;
  - d. building setbacks.
- 7. A decision of approval, conditional approval or disapproval of a complete application shall be made and the applicant shall be notified in writing. Conditional approval shall require that the specific conditions and the reasons therefore be stated in writing and be agreed to by the applicant; such conditions shall be binding upon the applicant upon agreement. In the case of disapproval, the reasons therefore shall be specifically stated in writing by designating each specific provision of this section or other applicable ordinance that is not met and an explanation as to the reason or reasons why each such provision is not met.

## **SECTION 9.30 FLOOD PROTECTION DEVELOPMENT CONTROLS**

### **A. FINDINGS OF FACT**

- 1. The flood hazard areas of the city of Cold Spring are subject to periodic inundation which result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all which adversely affect the public health, safety, and general welfare.

2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increased flood height and velocity, and by the location in flood hazard areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damage.

B. PURPOSE: The purposes of the flood protection development controls are:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water erosion hazards, or which result in damaging increases in erosion or in flood height or velocity.
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which accommodate or channel flood waters.
4. Control filling, grading, dredging, and other development which may increase erosion or flood damage.
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other areas.

C. DEFINITIONS: Notwithstanding other definitions within this ordinance, the following definitions shall only apply to this section of the ordinance:

1. Addition (to an existing structure) - Any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.
2. Area of shallow flooding - A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) where the base flood depths range from one to three feet, there is no clearly defined channel, the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
3. Area of special flood hazard - The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

4. Base flood - A flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.
5. Base Flood Elevation (BFE) - The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.
6. Basement - That portion of a structure having its floor subgrade (below ground level) on all four sides.
7. Breakaway Wall - A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.
8. Community Rating System (CRS) - A program developed by the Federal Insurance Administration to provide incentives to those communities in the Regular Program to go beyond the minimum floodplain management requirements to develop extra measures for protection from flooding.
9. Community Flood Hazard Area (CFHA) - An area that has been determined by the Floodplain Administrator (or other delegated, designated, or qualified community official) from available technical studies, historical information, and other available and reliable sources, which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety and general welfare. Included are areas downstream from dams.
10. Critical facility - Any property that, if flooded, would result in severe consequences to public health and safety or a facility which, if unusable or unreachable because of flooding, would seriously and adversely affect the health and safety of the public. Critical facilities include, but are not limited to: housing likely to contain occupants not sufficiently mobile to avoid injury or death unaided during a flood; schools, nursing homes, hospitals, police, fire and emergency response installations, vehicle and equipment storage facilities, emergency operations centers likely to be called upon before, during and after a flood, public and private utility facilities important to maintaining or restoring normal services before, during and after a flood, and those facilities or installations which produce, use or store volatile, flammable, explosive, toxic and/or water-reactive materials, hazardous materials or hazardous waste.



11. Development - Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.
12. Elevated structure - A non-basement structure built to have the lowest floor elevated above ground level by means of fill, solid foundation perimeter walls, piling, columns (post and piers), shear walls, or breakaway walls. (See freeboard requirements for residential and non-residential structures.)
13. Elevation Certificate - A statement certified by a registered professional engineer or surveyor on the FEMA-approved form in effect at the time of certification that verifies a structure's elevation and other related information to verify compliance with this ordinance.
14. Emergency Program - The initial phase under which a community participates in the NFIP, intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.
15. Enclosure - That portion of a structure below the Base Flood Elevation (BFE) used solely for parking of vehicles, limited storage, or access to the structure.
16. Encroachment - The physical advance or infringement of uses, plant growth, fill, excavation, structures, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
17. Existing construction - Any structure for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "Existing structures".
18. Existing Manufactured Home Park or Subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management ordinance adopted by the legislative body based on specific technical base flood elevation data which established the area of special flood hazards.

19. Expansion to an existing Manufactured Home Park or Subdivision - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
20. Five-Hundred Year Flood - The flood that has a 0.2 percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate to low risk of flooding.
21. Flood, Flooding, or Flood Water:
  - a. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e. mudflows). See Mudslides.
  - b. The condition resulting from flood-related erosion. See flood-related erosion.
22. Flood Boundary and Floodway Map (FBFM) -A map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and the regulatory floodway.
23. Flood Hazard Boundary Map (FHBM) -A map on which the boundaries of the flood, mudslide (i.e. mudflow), and flood-related erosion areas having special hazards have been designated as Zones A, M, and/or E by the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA).
24. Flood Insurance Rate Map (FIRM) - A map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated special flood hazard areas and risk premium zones.
25. Flood Insurance Study - The report provided by the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) containing flood profiles, the Flood Insurance Rate Map (FIRM), and/or the Flood Boundary Floodway Map (FBFM), and the water surface elevation of the base flood.
26. Floodplain or flood-prone area - Any land area susceptible to being inundated by flood waters from any source.

27. Floodplain Administrator - The individual appointed by a NFIP participating community to administer and enforce the floodplain management ordinances.
28. Floodplain Management - The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management ordinances, and open space plans.
29. Floodplain Management Regulations - This ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control), and other applications of police power, which control development in flood-prone areas. This term describes federal, state and/or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
30. Floodproofing - Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.
31. Floodproofing Certificate - A certification by a registered professional engineer or architect, on a FEMA-approved form in effect at the time of certification stating that a non-residential structure, together with attendant utilities and sanitary facilities is watertight to a specified design elevation with walls that are substantially impermeable to the passage of water and all structural components are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy and anticipated debris impact forces.
32. Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as the "regulatory floodway".
33. Floodway fringe - That area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.
34. Floor - The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

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35. Freeboard - A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood. Freeboard must be applied not just to the elevation of the lowest floor or floodproofing level, but also to the level of protection provided to all components of the structure, such as building utilities, HVAC components, etc.
36. Functionally dependent use facility - A facility, structure, or other development, which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.
37. Hazard potential - The possible adverse incremental consequences that result from the release of water or stored contents due to failure of a dam or misoperation of a dam or appurtenances. The hazard potential classification of a dam does not reflect in any way the current condition of a dam and its appurtenant structures (e.g., safety, structural integrity, flood routing capacity).
38. Highest adjacent grade - The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
39. Historic Structure - Any structure that is:
- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
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- (1) By an approved state program as determined by the Secretary of the Interior, or
  - (2) Directly by the Secretary of the Interior in states without approved programs.
40. Increased Cost of Compliance (ICC) – Increased cost of compliance coverage provides for the payment of a claim for the cost to comply with State or community floodplain management laws or ordinances after a direct physical loss by flood. When a building covered by a Standard Flood Insurance Policy under the NFIP sustains a loss and the state or community declares the building to be substantially or repetitively damaged, ICC will help pay up to \$30,000 for the cost to elevate, floodproof, demolish, or remove the building.

ICC coverage is available on residential and non-residential buildings (this category includes public or government buildings, such as schools, libraries, and municipal buildings) insured under the NFIP.
41. Letter of Map Change (LOMC) – Is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's include the following categories:
  - a. Letter of Map Amendment (LOMA) – A revision based on technical data showing that a property was incorrectly included in a designated SFHA. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.
  - b. Letter of Map Revision (LOMR) - A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features.
  - c. Letter of Map Revision – Fill (LOMR\_F) – A determination that a structure or parcel has been elevated by properly placed engineered fill above the BFE and is, therefore, excluded from the SHFA.
42. Levee - A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
43. Levee System - A flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

For a levee system to be recognized, the following criteria must be met:

- a. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual (a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or revised).
  - b. All operations must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP.
44. Limited storage - An area used for storage and intended to be limited to incidental items which can withstand exposure to the elements and have low flood damage potential. Such an area must be of flood resistant material, void of utilities except for essential lighting, and cannot be temperature controlled.
45. Lowest adjacent grade - The elevation of the sidewalk, patio, deck support, or basement entryway immediately next to the structure and after the completion of construction. It does not include earth that is emplaced for aesthetic or landscape reasons around a foundation wall. It does include natural ground or properly compacted fill that comprises a component of a structure's foundation system.
46. Lowest Floor - The lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, structure access, or storage in an area other than a basement area is not considered a structure's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
47. Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected or attached to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. The term "manufactured home" does not include a "recreational vehicle" (see Recreational Vehicle).
48. Manufactured home park or subdivision - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

49. Mean Sea Level (MSL) - The average height of the sea for all stages of the tide. For the purposes of the National Flood Insurance Program, the MSL is used as a reference for establishing various elevations within the floodplain as shown on a community's FIRM. For purposes of this ordinance, the term is synonymous with either National Geodetic Vertical Datum (NGVD) 1929 or North American Vertical Datum (NAVD) 1988.
50. Mitigation - Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the costs of disaster response and recovery.
51. Mudslide (i.e. mudflow) - Describes a condition where there is a river, flow, or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain. A mudslide (i.e. mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Floodplain Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.
52. National Flood Insurance Program (NFIP) - The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.
53. National Geodetic Vertical Datum (NGVD) - As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used as the vertical datum on the older FIRM's. Refer to FIRM legend panel for correct datum.)
54. New Construction - Structures for which the start of construction commenced on or after the effective date of these floodplain management regulations and includes any subsequent improvements to such structures.
55. New manufactured home park or subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of these floodplain management regulations.
56. North American Vertical Datum (NAVD) – As corrected in 1988, a vertical control used as a reference for establishing varying elevations within the

floodplain. (Generally used on the newer FIRM's and Digitally Referenced FIRM's (DFIRM's). (Refer to FIRM or DFIRM legend panel for correct datum.)

57. Obstruction - Includes but is not limited to any dam, wall, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, structure, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.
58. One-Hundred Year Flood (100-Year Flood) (see Base Flood) - The flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the 100-year flood. Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood with the SFHA.
59. Participating Community - A community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.
60. Pre-FIRM Construction - Construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.
61. Post-FIRM Construction - Construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after December 31, 1974, whichever is later.
62. Probation - A means of formally notifying participating NFIP communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations. During periods of probation, each insurance policy is subject to a \$50 surcharge.
63. Program Deficiency - A defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management standards or of the standards of 44 CFR 60.3, 60.4, 60.5, and/or 60.6.
64. Public Safety and Nuisance - Anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the



customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

65. Recreational Vehicle - A vehicle that is:
- a. Built on a single chassis;
  - b. 400 square feet or less when measured at the largest horizontal projection;
  - c. Designed to be self-propelled or permanently towable to a light duty truck; and
  - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
66. Regular Program - The phase of a community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.
67. Regulatory floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. See Base Flood.
68. Remedy a violation - The process by which a community brings a structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impact of non-compliance. Reduced impact may include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing state or federal financing exposure with regard to the structure or other development.
69. Repair - The reconstruction or renewal of any part of an existing structure.
70. Repetitive Loss - Flood-related damages sustained by a structure on two or more separate occasions during a 10-year period where the value of damages equals or exceeds an average of 50% of the current value of the structure, beginning on the date when the damage first occurred, or, four or more flood losses of \$1000.00 or more over the life of the structure, or, three or more flood losses over the life of the structure that are equal to or greater than the current value of the structure.

71. Special flood hazard area (SFHA) - That portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zone A, AE, A1 – A30, AH, AO, or AR.
72. Start of Construction (includes substantial improvement and other proposed new development) - The date a building permit is issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement is within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the structure.
73. Section 1316 - That section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.
74. Substantial Damage - Means any damage to a building for which the cost of repairs equals or exceeds fifty percent of the market value of the building prior to the damage occurring. This term includes structures that are categorized as repetitive loss.

For the purposes of this definition, “repair” is considered to occur when the first repair or reconstruction of any wall, ceiling, floor, or other structural part of the building commences.

The term does not apply to:

- a. Any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have

been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or

- b. Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

75. Substantial Improvement - Means any combination of reconstruction, alteration, or improvement to a building, taking place during a 1-year period in which the cumulative percentage of improvement equals or exceeds fifty percent of the current market value of the building. For the purposes of this definition, an improvement occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building.

The term does not apply to:

- a. Any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or
  - b. Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” Or
  - c. Any building that has been damaged from any source or is categorized as repetitive loss.
76. Substantially improved existing manufactured home parks or subdivisions - Repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equaling or exceeding 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.
77. Suspension - Removal of a participating community from the NFIP for failure to enact and/or enforce floodplain management regulations required for participation in the NFIP. New or renewal flood insurance policies are no longer available in suspended communities.
78. Utilities - Includes electrical, heating, ventilation, plumbing, and air conditioning equipment.
79. Variance - Relief from some or all of the requirements of this ordinance.
80. Violation - Failure of a structure or other development to fully comply with this ordinance. A structure or other development without the elevation

certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

81. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically.
82. Water surface elevation - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or river areas.
83. Watershed - All the area within a geographic boundary from which water, sediments, dissolved materials, and other transportable materials drain or are carried by water to a common outlet, such as a point on a larger stream, lake, or underlying aquifer.
84. Zone - A geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

#### D. LANDS TO WHICH THIS ORDINANCE APPLIES

1. This ordinance shall apply to all Special Flood Hazard Areas (SFHA), areas applicable to KRS 151.250 and, as determined by the Floodplain Administrator or other delegated, designated, or qualified community official as determined by the legislative body from available technical studies, historical information, and other available and reliable sources, areas within the jurisdiction of the legislative body which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety, and general welfare.

#### E. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

1. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Campbell County, dated September 30, 2004, with the accompanying Flood Insurance Rate Maps (FIRMS), other supporting data and any subsequent amendments thereto, are hereby adopted by reference and declared to be a part of these regulations, and for those land areas acquired through annexation. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City Council by the Floodplain

Administrator and are enacted by City Council pursuant to statutes governing land use management regulations.

F. ESTABLISHMENT OF DEVELOPMENT PERMIT

1. A Development Permit shall be required in conformance with the provision of this ordinance prior to the commencement of any development activities in the special flood hazard areas (SFHA).
2. Application for a development permit shall be made on forms furnished by the Floodplain Administrator.

G. COMPLIANCE

1. No structure or land shall hereafter be constructed, located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable state regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the legislative body from taking such lawful action as is necessary to prevent or remedy any violation.

H. ABROGATION AND GREATER RESTRICTIONS

1. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

I. INTERPRETATION

1. In the interpretation and application of this ordinance, all provisions shall be:
  - a. Considered minimum requirements;
  - b. Liberally construed in favor of the governing body; and,
  - c. Deemed neither to limit nor repeal any other powers granted under state statutes.

- J. WARNING AND DISCLAIMER OF LIABILITY: The degree of flood protection required by this section of the ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This section of the ordinance does not imply that land outside the areas

of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This section of the ordinance shall not create liability on the part of the Local Floodplain Coordinator or any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

- K. DESIGNATION OF LOCAL FLOODPLAIN COORDINATOR: The Deputy Director for Current Planning with the Northern Kentucky Area Planning Commission is hereby appointed to administer and implement the provisions of these regulations.
- L. PERMIT PROCESS: In addition to the requirements within Article XVI of this ordinance, all applications for a Development Permit shall be made to the Local Floodplain Coordinator prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information may be required:
1. Application Stage:
    - a. Elevation in relation to Mean Sea Level of the proposed lowest floor (including basement) of all buildings.
    - b. Elevation in relation to Mean Sea Level to which any non-residential building will be flood-proofed.
    - c. Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing requirements of this section of the ordinance.
    - d. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
  2. Construction Stage:
    - a. Provide a floor elevation or flood-proofing certificate after the lowest floor, or flood-proofing is completed. Upon placement of the lowest floor or flood-proofing, by whatever construction means, it shall be the duty of the permit holder to submit to the Local Floodplain Coordinator a certificate of the elevation of the lowest floor or flood-proofed elevation, as built, in relation to Mean Sea Level. Said certificate shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same.
    - b. When flood-proofing is utilized for a particular building, said certification shall be prepared by, or under the direct supervision of, a professional engineer or architect and certified by same. Any

work undertaken prior to the submission of the certification shall be at the permit holder's risk. The Local Floodplain Coordinator shall review the submitted floor elevation survey data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey, or failure to make said corrections, shall be cause to issue a stop work order for the project.

M. DUTIES AND RESPONSIBILITIES OF THE LOCAL FLOODPLAIN COORDINATOR: The duties of the Local Floodplain Coordinator shall include, but not be limited to:

1. Review all development permits to assure that the permit requirements of these regulations have been satisfied.
2. Advise applicants that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.
3. Notify adjacent communities and the Kentucky Division of Water prior to any alteration or relocation of the watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
5. Verify and record the actual elevation, in relation to Mean Sea Level, of the lowest floor of all new or substantially improved building.
6. Verify and record the actual elevation, in relation to Mean Sea Level, to which the new or substantially improved buildings have been flood-proofed.
7. Obtain certification from a registered professional engineer or architect, when flood-proofing is utilized for a particular building.
8. Provide interpretation as to the exact location of boundaries of the areas of special flood hazard.
9. Obtain, review, and reasonably utilize any base flood elevation and floodway data that may be available from any federal, state or other source, when base flood elevation data or floodway data has not been provided pursuant to these regulations.

10. Maintain all records pertaining to the provisions of these regulations.
- N. Areas of land adjacent to streams, rivers, or bodies of water which have a high degree of susceptibility to flooding shall be limited to development according to the following regulations, notwithstanding any other section of this ordinance or any other ordinance adopted by the city.
1. The limits of the floodplain (areas subject to flooding during the occurrence of a 100-year flood) and floodway are identified as Flood Protection Control Areas on the zoning map, pursuant to the Flood Insurance Study prepared by the Federal Emergency Management Agency. This study, along with any accompanying maps and other supporting data, and any revisions thereto, are adopted by reference and declared to be a part of this section of the ordinance.
  2. Areas designated as susceptible to flooding during the occurrence of a 100-year flood shall be controlled by both the zoning district in which the area is located and the requirements of this section of the ordinance.

In the case of any proposed activity located along other tributaries or bodies of water not covered in these tables, and located in those areas which are identified as being susceptible to flooding, according to the report prepared by the U.S. Department of Agriculture, Soil Conservation Service, "Soil Survey of Boone, Campbell and Kenton Counties, Kentucky", August, 1973, a survey shall be made by a qualified, registered civil engineer establishing the elevation of the 100-year flood and floodway for said areas prior to the issuance of any zoning and building permits.
  3. No person, city, county, or other political subdivision of the state shall commence filling of any area with earth, debris, or any other material, or raise the level of any area in any manner, or place a building, barrier, or obstruction of any sort on any area, including making any alteration or relocation of a waterway, located within the floodway which would result in any increase in flood levels during the occurrence of a 100-year flood discharge. In those cases where a watercourse is to be altered or relocated, the flood carrying capacity of said portion of the waterway affected must be maintained. Plans and specifications for such work shall be submitted to the Local Floodplain Coordinator for review to determine if said encroachment will meet the requirements of this Ordinance. Said plans shall also be submitted to the Kentucky Department of Natural Resources & Environmental Protection, Division of Water Resources, and other applicable agencies, for their review and approval.



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4. All land outside the floodway of the bodies of water, but located within the floodplain, may be used for any purpose for which it is zoned, provided that:
- a. Any new residential construction, including any expansion or substantial improvements of existing residential structures as herein defined, within said floodplain, shall have the lowest floor elevated to a minimum of two feet above the level of the 100-year flood. Electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. For all new construction and substantial improvement, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage, in an area other than a basement, and which are subject to flooding, shall be designed to automatically equalize hydrostatic exit of floodwaters. Designs for meeting this requirement must be certified by a professional engineer or architect.
  - b. Any new non-residential structures, including any expansion or substantial improvements of non-residential structures, within the floodplain area, shall have the lowest floor elevated to a minimum of two feet above the level of the 100-year flood or together with attendant mechanical, utility, and sanitary facilities shall be designed and floodproofed so that below the 100-year flood level the structure is water tight with walls impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydro-dynamic loads and effects of frequency certified by a professional engineer or architect. For all new construction and substantial improvement of elevated non-residential structures, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage, in an area other than a basement, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a professional engineer or architect.
  - c. For all new construction and substantial improvement of elevated non - residential structures, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of

floodwaters. Designs for meeting this requirement must be certified by a professional engineer or architect or meet the following minimum requirements:

- (1) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - (2) The bottom of all openings shall be no higher than one foot above grade; and
  - (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
5. All utilities constructed to serve structures which are to be located within the floodplain shall be flood protected at a minimum to the elevation of the 100-year flood level.
6. All construction or modification of buildings and structures, including flood-proofing measures and techniques in the flood plain area, as required within this section of the ordinance, shall be in accordance with the applicable design standards of the U.S. Army, Corps of Engineers' publication, entitled "Flood Proofing Regulations", June, 1972 GPO 19730-505-026 Edition, or as amended, and the following requirements:
  - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
  - b. All new construction and substantial improvements shall be constructed with materials and mechanical and utility equipment resistant to flood damage.
  - c. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
  - d. Electrical, heating, ventilation, plumbing, air condition equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and if
  - e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- f. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems' discharges from the systems into flood waters.
  - g. On-site waste disposal systems, where permitted, shall be located to avoid impairment to them or contamination from them during flooding.
- 7. In addition to the above requirements, manufactured homes, as herein defined, shall meet the following standards:
  - a. No manufactured home or recreational vehicle shall be placed in a floodway.
  - b. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
    - (1) Over-the-top ties be provided at each end of the manufactured home, with one additional tie per side at an intermediate location on manufactured homes of less than fifty (50) feet and one additional tie per side for manufactured homes of fifty (50) feet or more;
    - (2) Frame ties be provided at each corner of the home with four (4) additional ties per side at intermediate points for manufactured homes less than fifty (50) feet long and one additional tie for manufactured homes of fifty (50) feet or longer;
    - (3) All components of the anchoring system be capable of carrying a force of 4,800 pounds;
    - (4) Any additions to the manufactured home be similarly anchored.
  - c. For new manufactured home parks and subdivisions; for expansions to existing manufactured home parks and subdivisions; for existing manufactured home parks and subdivisions where the repair, reconstruction or improvement of the streets, utilities, and pads equals or exceeds fifty (50) percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement has commenced; and, for manufactured homes not placed in a manufactured home park or subdivision require:
    - (1) That all manufactured homes meet all of the requirements for new construction, including elevations and anchoring;

- (2) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be a minimum of two feet above the base flood level;
  - (3) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above grade;
  - (4) The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse, and lateral movement;
  - (5) Adequate surface drainage and access for a hauler are provided;
  - (6) In the instance of elevation on pilings; (1) lots are large enough to permit steps; (2) piling foundations are placed in stable soil no more than ten (10) feet apart; and (3) reinforcement is provided for pilings more than six (6) feet above the ground level.
8. Recreational vehicles may be permitted to be located within the limits of the floodplain, subject to compliance with the following requirements:
  - a. The recreational vehicle must be on the site for less than 180 consecutive days;
  - b. The recreational vehicle must be fully licensed and ready for highway use; or
  - c. That the recreational vehicle meet the elevation and anchoring requirements for manufactured homes, as set forth in Subsection H., 7., above.

A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
9. Any existing structure or use which is located within the floodplain and which does not conform to the requirements herein shall be nonconforming and subject to the requirements of Section 9.12 of this ordinance, providing, however, any existing permitted use and structure may be modified, altered, or repaired to incorporate flood proofing measures, where such measures do not raise the level of the 100-year flood.
10. All land designated "Flood Protection Control Area" on the Official Zoning Map, but determined to be above the elevation of the 100-year flood level

may be used for any purpose for which it is zoned without further flood protection controls.

11. A survey of the site in question will be required prior to the issuance of any building permit or construction activity that would alter the site in any manner, to establish the existing elevation of the land.
12. After completion of the first floor elevation, as provided in Subsection (4) of this section, an elevation certificate shall be provided to and maintained in the offices of the Zoning Administrator - Building Official.
13. A site plan, as regulated by Section 9.19 of this ordinance, shall be required for any land below the elevation of the 100-year flood level.
14. A zoning permit, as regulated by Section 16.1 of this ordinance shall be required prior to any grading or construction within any area designated as being located within the floodplain.
15. No encroachments, including fill material or structures shall be located within special flood hazard areas, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

#### O. STANDARDS FOR SUBDIVISION PROPOSALS

1. All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood and be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
4. In areas where base flood elevation and floodway data is not available (Zone A or unmapped streams), base flood elevation and floodway data for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall be provided.

5. All subdivision plans will include the elevation of proposed structure(s) and lowest adjacent grade. If the site is filled above the base flood elevation, the lowest floor and lowest adjacent grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

P. VARIANCE PROCEDURE:

1. The Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of these regulations.
2. The Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any requirement, decision, or determination made by the Local Floodplain Coordinator in the enforcement or administration of these regulations.
3. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the appropriate court of law, as provided in the Kentucky Revised Statutes.
4. Variances may be issued for the repair or rehabilitation of historic structures upon determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variation is the minimum to preserve the historic character and design of the structure.
5. In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
  - a. The danger that materials may be swept onto other lands to the injury of others.
  - b. The danger to life and property due to flooding or erosion damage.
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - d. The importance of the services provided by the proposed facility to the community.
  - e. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility.
  - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - g. The compatibility of the proposed use with existing and anticipated development.

- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as water, gas, electrical, and sewer systems, and streets and bridges.
- 6. Upon consideration of the factors listed in Subsection F., 5., and the purpose of these regulations, the Board of Adjustment may attach such conditions to the granting of the variation as it deems necessary to further the purposes of these regulations.
- 7. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- 8. Conditions for variances:
  - a. Variances shall only be issued upon determination that the variation is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of an historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
  - b. Variations shall only be issued upon:
    - (1) a showing of good and sufficient cause;
    - (2) a determination that failure to grant the variance would result in exceptional hardship;
    - (3) a determination that granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - c. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

- d. The Local Floodplain Coordinator shall maintain the records of all appeals and report any variances to the Federal Emergency Management Agency upon request.

P. SEVERABILITY

1. This section and the various parts thereof are hereby declared to be severable. Should any portion of this section be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the section as a whole, or any portion thereof other than the portion so declared to be unconstitutional or invalid.
2. If any portion, clause, sentence, or phrase of this section is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall not affect the validity of this section as a whole, or any portion thereof other than the portion so declared to be unconstitutional or invalid.