

# Open Space ZOTA

Planning Commission Review Packet  
September 15, 2022

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# Article 1: Definitions

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- Open space, useable (deleted)
- Open space (new)
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- Walkable Route (new)

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*Fraternity or sorority house* means a building used as a living and/or gathering quarters for students of a college, university or seminary (not living in a "dormitory" as defined herein) who are members of a fraternity or sorority that has been or is seeking to be officially recognized by the college, university or seminary; or their guests. In identifying such use, the following factors shall be among those considered, regardless of number of occupants:

- (a) Signage or other indications that the building is used by a fraternity or sorority;
- (b) Fraternity- or sorority-sponsored social activities, such as meetings; parties; dances or other gatherings; and
- (c) Events to which fraternity or sorority alumni or prospective members are invited.

The term "family or housekeeping unit" or "boarding or lodging house" as defined herein are excluded, unless the use demonstrates specific characteristics of use as set forth above.

*Garage, community*, means a structure or structures only for the storage of passenger vehicles or trailers of residents of the neighborhood.

*Garage, private*, means a space or structure, including a carport, on the same lot with or in the building to which it is accessory, primarily for storage of passenger vehicles of the residents of the premises, with no facilities of a commercial or public nature.

*Garden center* means establishments used primarily for the sale of live plants, including greenhouses and plant nurseries. When accessory to the sale of plants, the sale of the following items shall be allowed: cut plants, cut trees and wreaths, bulbs and seeds which may have been transported to the premises for the purpose of resale; ground covers; fungicides, insecticides, chemicals, peat moss, humus, mulches and fertilizers; lawn statuary, furniture, bird baths, bird feeders, birdhouses and pottery; pots and containers for plants; artificial flowers; home lawn and garden equipment, including manual and automatic grass cutting devices, grass seeding devices, mulchers, thatchers, tillers, but not including farm tractors and machinery; garden landscape devices, including railroad ties, stepping stones, fencing, edging, trellises, plastic and burlap; hand tools such as sprayers, shovels, dusters, rakes, hoes, and watering devices; firewood; landscape planning and contracting services incidental to the garden center to include contractual services for lawn and garden sprigging, maintenance, fertilizing, spraying and mowing.

*Garden, market*, means an area of land less than five (5) contiguous acres in size for the cultivation of food and/or non-food crops by an individual or a group of individuals to be sold on site. Such a garden may be located on the ground, in raised beds, or on rooftops; and may utilize greenhouses, hoop houses, high tunnels, vertical gardens, hydroponic systems or aquaponics systems alone or in combination with other techniques for growing food or non-food crops.

*Green infrastructure* means the use of natural features, restored or engineered, to provide multiple benefits to communities including reducing flooding, minimizing urban heat island impacts, and improving water and air quality. Green infrastructure often refers specifically to stormwater infrastructure and stormwater control design approaches and technologies that mimic the natural hydrologic cycle processes of rainfall infiltration, evapotranspiration, and reuse. The phrase is generally contrasted with "gray infrastructure," which relies on a constructed system of pipes and mechanical devices to capture and convey stormwater runoff.

*Greenway* means an area defined as a "greenway" in the comprehensive plan or other adopted plan.

*Hazardous materials* means any chemical, biological or radiological compound, gas, oil, gasoline, lubricant or other petroleum products, substances, solution or mixture which, because of its quality; quantity; concentration; physical or infectious characteristics; or any combination thereof, when released into the environment, presents or may present harmful or potentially harmful effects to human health or welfare or the environment.

*Height of building* means the vertical distance from the established grade in front of the lot or from the average natural grade at the base of the front building wall, if higher, to the average height of the top of the

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*Motel* means a building or group of buildings, containing individual sleeping or living units, designed for the temporary occupancy of transient guests and including hotels; tourist courts; motor lodges; motor hotels or auto courts; but not including boarding or lodging houses.

*Nature preserve* means an area intended to remain in a predominantly natural or undeveloped state to provide resource protection, which may include possible opportunities for passive recreation and environmental education for present and future generations.

*Neighborhood Design Overlay Zone* means an overlay zone, applied in addition to the underlying zoning category, whereby key characteristics of a particular neighborhood or area are preserved for either new building (infill) construction or replacement of existing structures.

*Nightclub* means a commercial establishment for dancing and live entertainment, which may or may not include dispensing and serving alcoholic beverages for consumption on the premises.

*Nursing home* means a facility for which four (4) or more persons may be admitted for periods exceeding twenty-four (24) hours to receive treatment and/or medication for bodily illness, including convalescence from illness.

~~*Open space, useable*, means outdoor area of a lot or tract which is designated and used for outdoor living, recreation, pedestrian access or planting. Such areas may be ground or roof space seventy five percent (75%) open to the sky, balconies a minimum of five (5) feet wide, an enclosed deck, porch, or ground floor portions of a building constructed on columns. Off-street parking and loading areas, driveways, vehicular use area perimeter landscaping and interior landscaping, unenclosed fire escapes, or required front and side street side yard areas do not qualify as useable open space; provided, however, that those portions of the required side street side yard may qualify as useable open space, as long as such open space is separated from the street right-of-way by a fence or solid screen planting.~~

~~*Open space* means land or water area not covered by enclosed structures, vehicular use areas, or streets. Such an area may be predominately in a natural condition or modified for uses such as recreation, education, aesthetics, cultural or natural resource management or public health and safety.~~

~~*Common area* is a specific type of usable outdoor area which is managed and maintained for common use by groups of residents, occupants, or users of a development. Common areas are owned by a private individual or entity, such as an owners association or other mechanism. Common areas must be openly accessible and viewable to enhance the visual character of the area, protect public safety, and minimize conflicts with adjacent land uses.~~

~~*Useable area* is the general outdoor area of a lot intentionally designed for outdoor living and pedestrian access. Such areas include unenclosed ground and roof space a minimum of ten (10) feet wide, and balconies, porches and the like a minimum of five (5) feet wide. Useable open space may include hardscape, landscape, or portions of water areas designed to accommodate or support use. Streets, vehicular use areas, and required vehicular use area interior landscaping do not qualify as useable open space.~~

~~*Vegetated area* means the outdoor area of a lot at ground-level or roof-level consisting of preserved existing vegetation or new vegetation. At least seventy five (75) percent of the area must be covered by living plants. Required vehicular use area interior landscaping is not included. Invasive tree and plant species, per the LFUCG Planting Manual, are not included.~~

*Parking lot, area, or structure* means an area not within a building for temporary (less than 24-hour) off-street parking, loading or unloading of vehicles, whether required or permitted by this Zoning Ordinance; including driveways, access ways, aisles, and maneuvering areas; but not including a loading dock or any public or private street right-of-way.

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*Transfer station* means a facility, as defined in KRS 224.01(010), for the compacting and reloading of solid waste as defined in KRS 109.012(9) prior to its transportation to a permanent disposal site.

*Tree canopy tour* means a guided aerial exploration or transit of the forest canopy, most commonly by means of a series of zip lines or aerial walkways with platforms constructed within the trees generally for scenic views, education, interpretation and recreation.

*Truck terminal* means land and buildings used as a relay station for the transfer of freight from one (1) truck to another; or for the parking or storage of semi-trailers for longer than twenty-four (24) hours, including tractor and/or trailer units. The terminal cannot be used for permanent or long-term accessory storage for principal land uses at other locations. A truck terminal may include areas for the washing or repair of trucks associated with the terminal, but does not include an establishment solely for the display, rental, sale and minor repair of trucks.

*Value-added product sales* means the sale of items that have been produced in a manner that enhances their value (such as organically), or items that have had a change in the physical state or form of the product (such as milling wheat into flour, making strawberries into jam, pressure canning vegetables, making salsa or producing honey) from an agricultural resource.

*Vehicle storage yard* means a place where vehicles, which have a current vehicle registration and bear a current license plate in accordance with state law, and not used in the conduct of a trade; business; or profession are kept for twenty-four (24) hours or longer. A vehicle storage yard does not include a yard for storage of dismantled or partially dismantled automobiles, storage of inoperable vehicles for longer than sixty (60) days, a parking lot, truck terminal, automobile wrecking, or junk yards.

*Walkable route* means the route that a pedestrian may travel between origins and destinations without obstruction and with clear protection from motor vehicles. Walkable routes consist of a continuous network of sidewalks, all weather-surface footpaths, crosswalks, or equivalent pedestrian facilities which are accessible to people of all ages and abilities, as defined by the Americans with Disabilities Act and other Federal, State, and local regulations and guidance. Walkable routes connect accessible building entrances to pedestrian facilities in the public right of way. Walking distance is specified as the length of the walkable route.

*Wall plane, primary*, means a building wall or facade that faces the public right-of-way or street that provides the lot frontage. On through lots, corner lots or lots with multiple frontages on public rights-of-way, only one (1) such wall plane shall be required.

*Wall plane, rear*, means a building wall or facade that is ordinarily opposite to the primary wall plane.

*Wall plane, side*, means a building wall or facade on the side of a structure, other than the primary or rear wall plane.

*Wholesale establishment* means an establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers; to industrial, institutional or professional business users; or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

*Wholesale establishment with warehouse* means the display, storage and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment, including truck terminal or bus servicing facilities; motor freight transportation; moving and storage facilities; warehousing and storage activities.

*Woodlot, commercial*, means premises, or portions thereof, used for seasoning and storage of firewood and for cutting and splitting of timber to produce firewood for later resale (excluding sawmills, planing mills).

*Yard, front*, means an open space extending the full width of the lot between a building and the front lot line, unoccupied and unobstructed from the ground upward except as herein specified. The depth of a front yard is the shortest distance, measured horizontally, between any part of a building, exclusive of such parts herein excepted, and the front lot line.

# Article 20: Standards for Open Space

## Article 20 OPEN SPACE STANDARDS

### Sec. 20-1. Intent.

The intent of this Article is to incorporate intentionally designed and equitably distributed open space into all development projects.

The regulations contained in this provision are intended to:

- Protect and enhance public health, safety, and quality of life by providing safe and accessible open space where people can gather and establish a sense of community.
- Increase environmental sustainability and resiliency by providing green space to offset the impacts of the built environment.
- Support the Urban County Government’s goal of providing access to open space within a 10-minute walk of all neighborhoods and communities.

### Sec. 20-2. Open space requirements.

(a) *Overlap in use and purpose of open space types:* Useable areas, vegetated areas, and common areas are types of open space that may overlap in use and purpose. The area of one type of open space may be counted toward the minimum requirement of other types where the applicable standards of each are being met.

(b) *Summary table of open space requirements:*

<b>Single Family Residential</b>	<b>Useable Area (See Article 1)</b>	<b>Vegetated Area (See Articles 1, 20-3 to 20-4)</b>	<b>Common Area(s) (See Articles 1, 20-5 to 20-8)</b>
R-1A, R-1B, R-1C, R-1D, R-1E, R-1T, R-2, R-3, R-4, M-1P	Not required.	Not required.	Required for > 25 dwelling units
<b>Multi-Family Residential / Group Residential Projects</b>	<b>Useable Area</b>	<b>Vegetated Area</b>	<b>Common Area(s)</b>
R-1T	10%	10%	Required for > 25 dwelling units
R-3	20%	20%	
R-4	15%	15%	
R-5	10%	10%	
<b>Mixed Use / Commercial</b>	<b>Useable Area</b>	<b>Vegetated Area</b>	<b>Common Area(s)</b>
B-1, P-1, B-3, B-4, B-5P, MU-1, MU-2, I-1, I-2	10%	10%	Required for sites > 3 net acres and/or > 25 dwelling units
B-2, B-2A, B-2B	5%	5%	
B-6P, MU-3	15%	15%	
P-2	40%	20%	

(c) The Board of Adjustment shall have the authority to require open space for conditional uses in residential zones based on the minimum open space requirements for the zone in which such use is first allowed as a principal use. Open space for conditional uses located in mixed use / commercial zones shall be based on the minimum open space requirements for the zone in which they are located.

**Sec. 20-3. Vegetated area standards.**

(a) *Requirements.*

- (1) At least seventy five (75) percent of the vegetated area must be covered by living plants.
- (2) Required vehicular use area interior landscaping is not included. Invasive tree and plant species, per the LFUCG Planting Manual, are not included.
- (3) On a preliminary development plan, the required and provided vegetated area square footage shall be listed as a percentage of the developable area in the statistical summary of pertinent site data.
- (4) For a final development plan or preliminary subdivision plan;
  - (a) Vegetated areas must be clearly designated on the generalized planting plan per Article 26 and appear visually distinct from non-qualifying areas.
  - (b) The required and provided vegetated area square footage shall be listed as a percentage of the developable area in the statistical summary of pertinent site data.
  - (c) Where a vegetated area type listed in Table 20-4 is used, hatching or other means of visually designating the area must be shown on the generalized planting plan and the square footage and multiplier rate used must be included in the statistical summary of pertinent site data.

**Sec. 20-4. Vegetated area incentives for green infrastructure.**

- (a) For sites of three (3) acres or less, a net decrease in the required vegetated area square footage may be achieved by providing a green infrastructure type listed in table 20-4(b) below. The ground-level or roof-level square footage of the following green infrastructure types is multiplied by the associated rate to achieve a net decrease in total vegetated area required.

(b) Green Infrastructure Multiplier Table:

<b>Green Infrastructure Type</b>	<b>Multiplier Rate</b>
Innovative Design <sup>1</sup>	1.15
Community Garden <sup>2</sup>	1.15
Tree Stand <sup>3</sup>	1.5
Vegetated Green Infrastructure <sup>4</sup>	1.75
Vegetated Roof <sup>4</sup>	2
Riparian Buffer Restoration/Preservation <sup>5</sup>	2
Tree Preservation Area <sup>6</sup>	2

- 1. Provide an innovative design that is not listed elsewhere in the table but still achieves the basic objectives of these regulations.
- 2. As defined by the LFUCG Code of Ordinances.
- 3. As defined by Article 26 of the LFUCG Zoning Ordinance.
- 4. Must meet requirements of the LFUCG Stormwater Manual.
- 5. Must meet requirements of the LFUCG Stormwater Manual along the length of stream on lot, may also include vegetative stream bank stabilization and restoration areas as specified in the LFUCG Stormwater Manual.



6. Must be accompanied with a note on any Development Plan and/or Preliminary Subdivision Plan: “The Tree Preservation Area shall remain undisturbed and shall be permanently preserved. No significant tree removal, grubbing or clearing shall be allowed without the future amendment of this plan.”

**Sec. 20-5. Common area standards.**

(a) *Location criteria.*

- (1) The development shall be planned so that a common area is within a 1/4 mile (1,320 feet) walking distance along a walkable route (as defined in Article 1) to ninety (90) percent of proposed dwelling units entrances or other applicable building entrances;
- (2) The common areas(s) shall be located within the development to connect to each other and adjacent open spaces via a walkable route.

(b) *Minimum standards for the development of common areas.*

- (1) *Primary access and visibility.* At least fifty (50) percent of the common area perimeter shall have frontage on an approved street or public right-of-way, a vehicle access easement with pedestrian facilities, a shared use path in an easement, or be directly adjacent to a building façade on the same lot that provides visibility and a pedestrian entrance into the common area.
- (2) *Secondary entry points.* Secondary entry points shall be a minimum of twenty (20) feet wide and contain a minimum five (5) foot wide sidewalk that connects to pedestrian facilities on an adjacent approved street, public right-of-way, vehicle access easement, or shared use path in an easement.
- (3) *Physical improvements.* Common areas must include physical improvements and amenities such as walking paths, tables, seating, gardens, play areas, swimming pools, fitness equipment, sports facilities, and the like to support passive and/or active uses.
- (4) *Canopy coverage and shading.* Large tree canopy (Group A species) or other shade providing structures must cover thirty (30) percent of the common area.
- (5) *Topography and hydrology.* A minimum of fifty (50) percent of the common area shall be a generally flat and dry surface suitable for recreational use. Retention and detention basins, wetlands, floodplains and their buffers may be used to meet a portion of the common area requirement if its banks are vegetated and landscaping is provided around the perimeter in an effort to make it a visual amenity for the development and the perimeter is accessible by the provision of pedestrian facilities.

(c) *Additional standards for common areas which serve single family lots.*

- (1) *Minimum size:* Ten thousand (10,000) square feet.
- (2) *Least dimension:* One hundred (100) feet.

(d) *Additional standards for common areas which serve multi-family, mixed-use, and commercial developments.*

- (1) *Minimum size:* Eight thousand five hundred (8,500) square feet.
- (2) *Least dimension:* Twenty (20) feet.

- (3) *Connectivity*: When multiple common areas are provided to meet the minimum size requirement, they must be connected via a walkable route.
- (e) *Calculation and documentation*.
  - (1) *Calculation*. Only the portions of common areas which meet the applicable requirements of sections 20-5(a) through 20-5(d) may be included in area and distance calculations.
  - (2) *Preliminary development plan requirements*.
    - (a) Common areas must be generally located and dimensioned on the plan.
    - (b) The provided common area square footage shall be listed in the statistical summary of pertinent site data.
    - (c) Documentation of walkable routes and distances may be requested by the Division of Planning. Requested documentation shall be provided as a visual exhibit at an appropriate scale.
  - (3) *Final development plan and preliminary subdivision plan requirements*.
    - (a) Common areas must be clearly designated and dimensioned and should appear visually distinct from non-qualifying areas.
    - (b) The provided common area square footage shall be listed in the statistical summary of pertinent site data.
    - (c) Documentation of walkable routes and distances may be requested by the Division of Planning. Requested documentation shall be provided as a visual exhibit at an appropriate scale
    - (d) The requirements of 20-5(b) shall be depicted on the plan or and/or documented through notes on the plan.

**Sec. 20-6. Common area exemption for development near publically accessible open spaces.**

Where proposed dwelling unit entrances or other applicable building entrances are located within the specified walking distance along a walkable route of the following three instances, those entrances may be exempted from the common area requirements of this Article. Documentation of walkable routes and distances shall be provided as a visual exhibit at an appropriate scale submitted to the Division of Planning and a note documenting such shall be included on any Development Plan.

- (a) 1/2 mile (2,640 feet) of an entrance to an existing or proposed LFUCG Park; or
- (b) 1/4 mile (1,320 feet) of an entrance to an existing or proposed portion of a greenway which meets the applicable requirements of sections 20-5(a) through 20-5(d); or
- (c) 1/4 mile (1,320 feet) of an entrance to another existing publicly accessible open space which meets the applicable requirements of sections 20-5(a) through 20-5(d).

**Sec. 20-7. Common area signage and shared use path access.**

- (a) *Signage*: Incidental signs indicating the hours of operation and ownership or party responsible for maintenance shall be posted at the primary entrance point(s) to the common area. Signage may also reference the Kentucky Recreational Use Statute (KRS 411.190), which encourages owners of

land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

- (b) *Shared use paths*: When a shared use path, as defined in the Land Subdivision Regulations, passes through or is accessed via a common area, an appropriate easement shall be provided. Shared use paths that connect to or are classified as a main line path, major path, or minor path that will be maintained by LFUCG shall be in the form of a dedicated easement. Shared use paths that connect to or are classified as a main line path, major path, or minor path that are maintained by others and local or minor paths shall be in the form of an access easement. Access to shared use paths shall be available for twenty-four (24) hours of the day seven (7) days of the week.

**Sec. 20-8. Common area provisions for multi-phase developments and timing.**

- (a) Development proposed in phases shall be considered as a single development for the purposes of calculating the common area(s).
- (b) In cases where less than one hundred (100) percent of the total amount of common area is provided within the first phase of a multiphase development, the remaining amount shall be apportioned into each of the remaining development phases.
- (c) For commercial, industrial, and mixed use development all common areas and associated improvements shall be completed at the time of fifty (50) percent buildout.
- (d) For residential development all common areas and associated improvements shall be completed at the time that fifty (50) percent of dwelling units have been constructed.

# Article 23-3: Expansion Area Definitions

(Included for reference, no changes proposed)

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*Density Transfer Right (DTR)* means a residential density development right which is severable from the real property to which it is appurtenant and which is transferable to another parcel within a specific Expansion Area.

*Direct Vehicular Access* means a driveway which allows a motorized vehicle to move from a residential lot onto a public or private way.

*Expansion Areas* means the land area of Lexington-Fayette County added to the Urban Service Area under the provisions of the adopted Expansion Area Master Plan and more specifically designated as EA-1, EA-2A, EA-2B, EA-2C and EA-3; as applied to density transfers and exactions as set forth herein, each of the five (5) designated Expansion Areas shall be considered distinct and separate.


*Expansion Area Master Plan (EAMP)* means an element of the Lexington-Fayette Urban County Government's Comprehensive Plan adopted by the Planning Commission on July 18, 1996, including any duly approved subsequent amendment. As used in this Article, the term shall also be construed to extend to any other Comprehensive Plan element expressly and directly applicable to the Expansion Areas.

*Fence, Stone* means a fence either built of quarried or dressed rocks; or from rocks which have been gathered from fields or creek bottoms; or of undressed ledge or quarried rock.

*Fence, Transparent* means a fence which has at least sixty percent (60%) of its surface area open, and allows the free and unobstructed passage of light.

*Greenway* means land designated as a greenway in the Expansion Area Master Plan.

No change proposed,  
included for reference.



*Open Space, Common* means outdoor area of a lot or tract which is used for outdoor living, recreation, pedestrian access, or plantings, including buffer yards. Such open space shall generally be available for the use and enjoyment of larger groups of persons such as homeowners' associations, tenant associations, the general public and the like; but shall not be construed to include lands purchased by any government entity for public use, such as parks or street rights-of-way.

*Open Space, General* means an area not covered by structures, driveways, parking lots, walkways, streets, or other paved surfaces.

*Pedestrian Accessway* means an improved path or sidewalk which is designed for pedestrian movement.

*Receiver Site* means a parcel of land to which DTR are transferred.

*Rural Scenic Roads* means a road which is designated as a Rural Scenic Road in the Expansion Area Master Plan.

*Scenic Resource Area* means an area designated and mapped as a Scenic Resource Area in the Expansion Area Master Plan.

*Sender Site* means a parcel of land from which DTR are severed and transferred.

*Special Design Area* means an area designated and mapped as a Special Design Area in the Expansion Area Master Plan.

(Code 1983, § 23-3; Ord. No. 196-96 , § 1, 10-3-1996; Ord. No. 353-2000 , § 1, 11-16-2000; Ord. No. 166-2017 , § 11(23-3), 11-16-2017; Ord. No. 102-2021 , § 10, 10-28-2021)

# **Article 23-3: Expansion Area General Provisions**

**(Included for reference, no changes proposed)**

regulations applicable to the Receiver Site. The deeds of conveyance and restriction shall be recorded prior to certification of approval of the development plan.

- 3) Where a developer dedicates land to a public entity, at no cost, for a purpose not expressly provided for through an exaction, and the public entity accepts such dedication, the developer may transfer the density allocated by the underlying zoning category of that parcel to any parcel of land within the same Expansion Area which is designated as EAR-2, EAR-3, CC or TA.
- (n) *Accessory Dwelling Units.* Density, which might otherwise be implied by provisions which permit an Accessory Dwelling Unit, shall not be transferred to any other area or parcel of land.
- (o) *Fencing Along Agricultural Land.* Fencing shall be provided along the boundary of any development that adjoins land being used for agricultural purposes and which is recommended for Core Agricultural and Rural Land in the Comprehensive Plan. Such fencing shall be required to be a single standard gauge diamond mesh wire fence, of durable construction, not less than seventy-two (72) inches high set on nine-foot posts with a required six-inch top board, unless the owner of the agricultural parcel agrees to an exemption, or to comparable protection, in the form of a legally recorded covenant.
- (p) *Satellite Dish Antennas.* Shall be permitted in all zones subject to the provisions of Section 15-7.
- (q) *Front Yard Landscaping in Residential Zones.* At least fifty percent (50%) of the front yard of any residential dwelling in any EAR category shall be landscaped with vegetative material of any type.
- (r) *Buffering of Uses.* Buffering of uses shall be as follows:
1. Except as provided herein, where adjacent housing developments differ by more than three (3) dwelling units per acre, the Planning Commission may require a buffer yard of six (6) feet in width, with one (1) tree for every forty (40) feet of linear boundary from the Group A, B, or C of the Plant List, as referenced by Article 18 of this Zoning Ordinance; plus a minimum four-foot-high hedge, fence, wall or earth mound or combination thereof. In order to encourage a diversity of housing types within a single development, such buffering shall not be required where single-family detached houses are interspersed with or are adjacent to detached single-family houses, duplexes, tri-plexes or four-plexes in a single development.
  2. Any development in an ED or CC zone which directly adjoins any EAR zone shall be required to provide a buffer yard of six (6) feet in width, with one (1) tree for every thirty (30) feet of linear boundary from the Group A, B, or C of the Plant List, as referenced by Article 18 of this Zoning Ordinance; plus a 6-foot high fence, wall or earth mound. The responsibility for such buffer shall be the ED or CC property, although the buffer yard may be shared as provided in Section 18-3(a)(3)(c).
  3. Any residential or nonresidential development in the Expansion Areas which abuts an interstate highway shall meet the requirements of Section 18-3(a)(1)(4) as for a residential zone.
- (s) *Scenic Resource Areas.* Areas designated as Scenic Resource Areas shall be limited to a maximum on-site density of no more than three (3) dwelling units per five (5) acres. All development shall be clustered so that at least eighty percent (80%) of the portion of the development within the Scenic Resource Area is preserved as common open space or agricultural uses and is sited so as to minimize the visual impact of the development on the adjoining rural road to the greatest extent feasible. Within the Scenic Resource Areas, there shall be no parking areas and no buildings or structures other than driveways, transparent fences and stone fences permitted within two hundred (200) feet of the right-of-way of Delong Road, Winchester Road, Walnut Grove Lane, Deer Haven Lane, Faulkner Avenue and Russell Cave Road. Utilities, drainage and sanitary sewer facilities may be located within this two hundred (200)-foot area only upon the approval of the Planning Commission, who shall approve such

No change, included for reference.



facilities only upon a finding that alternative locations are not feasible from an engineering standpoint; would result in undue hardship; or would be detrimental from an environmental standpoint. Further, the Commission shall impose conditions on the design and installation of any facility to ensure that the visual quality of the area is maintained.

- (t) *Special Design Areas.* All development in a Special Design Area shall be clustered so that at least sixty percent (60%) of the portion of the development within the Special Design Area is preserved as common open space or agricultural uses, and is sited so as to minimize the visual impact of the development on the adjoining rural road to the greatest extent feasible. Within the Special Design Areas, there shall be no parking areas and no buildings or structures other than driveways, transparent fences and stone fences permitted within two hundred (200) feet of the right-of-way of Delong Road, Athens-Boonesboro Road and Chilesburg Road.
- (u) *Boundaries of SDAs.* The boundaries of SDAs shall be as shown on the adopted Comprehensive Plan, unless it is determined during the development review process by the Planning Commission that the final boundary requires refinement based upon more detailed analysis of the final development features, such as roads; land use; topography; and view sheds. To further refine the boundary, the Planning Commission must find that the final development configuration will better implement the intent of the SDA than when the boundary was first established in the 1996 Comprehensive Plan. In all cases, the Planning Commission shall not reduce the overall land area in the SDA, nor modify the minimum setbacks from roadways established in Subsection (t) of this section, and must adopt findings that the final boundary meets the intent of the Expansion Area Master Plan, and this Article of this Zoning Ordinance.
- (v) *Protection of Woodlands.* The development of parcels of land which contain mature woodlands, tree stands, and/or significant individual trees which are identified in the Expansion Area Master Plan Natural Resources Map Series and/or Land Capability Study shall be designed and carried out so as to protect and preserve all mature trees to the maximum extent practicable. Individual trees may be removed only as necessary to carry out economically feasible development and/or to achieve the objectives of the Expansion Area Master Plan, provided that the removal of individual trees will not result in the loss of the woodlands or tree stands of which they are a part; and that the design of the development has maximized the preservation of tree stands and significant individual trees. Consideration should be given by the Planning Commission to alternative street cross-sections, street geometrics, and development designs where the developer has established that significant trees will be properly preserved as a result of such alternative designs and/or standards.
- (w) *Affordable Housing Units.* Units that are designated as Affordable Housing Units shall be restricted by the developer exclusively to affordable housing for a minimum period of fifteen (15) years. Further, such units shall be identified separately in the Certificate of Land Use Restriction filed for the development where the units are located, and such units shall be subject to a deed restriction in favor of the Lexington-Fayette Urban County Government which shall restrict the use of the property and shall establish monitoring procedures to ensure that the units remain affordable during the period. During the affordability period, an affordable housing unit may be sold to a non-low-income household by acquisition of a DTR, which must be assigned to the site, and repayment of any and all development exactions that may have been waived. Such site may be a receiver of a DTR only if the maximum density permitted with DTR would not be exceeded.

(Code 1983, § 23A-2; Ord. No. 196-96, § 1, 10-3-1996; Ord. No. 173-2000, § 1, 6-29-2000; Ord. No. 353-2000, § 1, 11-16-2000; Ord. No. 175-2002, § 1, 7-16-2002; Ord. No. 207-2002, § 1, 8-22-2002; Ord. No. 133-2016, § 2, 7-7-2016; Ord. No. 166-2017, § 11(23A-2), 11-16-2017)



# Article 23A: Expansion Area Zones

(Updates to all listed below)

- 23A-5 EAR 1 Special provisions
- 23A-6 EAR 2 Special provisions
- 23A-7 EAR 3 Special provisions
- 23A-9 CC Special provisions
- 23A-10 ED Special provisions

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3. Outdoor speakers and public address systems. Such systems shall only be permitted by the Board of Adjustment upon finding that the system would not constitute a public nuisance by creating excessive noise on the property and surrounding properties; and is a necessary adjunct to the proposed use and has been designed to serve only such need. The Board may limit such features as to the location, power, and time of operation of such systems to ensure the protection of surrounding uses and properties.
  4. Temporary structures designed for use or occupancy for sixty-one (61) to one hundred eighty (180) days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.
  5. Ecotourism activities to include primitive camping, fishing and hunting clubs, and seasonal activities.

(e) *Prohibited Uses.*

1. Commercial recreational facilities such as amusement parks, bowling alleys, skating rinks, pool or billiard halls, outdoor theaters, automobile race tracks, athletic club facilities.
2. Indoor recreational facilities.
3. Ecotourism activities, except as permitted herein.

Lot, Yard, and Height Requirements.

(f) *Maximum Height of A Building.* Thirty-five (35) feet.

(g) *Parking Requirements.*

Outdoor Athletic Facilities: One space for every five (5) spectator seats.

Riding Stables, Sportsmen's Farms, and Zoological Gardens: Five spaces plus one (1) space for each employee.

Golf Courses: Three spaces for each hole on the main course.

Driving Ranges: One space per driving tee, plus one (1) space per employee, with a minimum of five (5) spaces.

Other Recreational Facilities or Ecotourism activities not otherwise stated herein: Five (5) spaces, plus, one (1) space for each employee for each separate use.

(Code 1983, § 23A-4; Ord. No. 196-96, § 1, 10-3-1996; Ord. No. 353-2000, § 1, 11-16-2000; Ord. No. 60-2009, § 20, 5-7-2009; Ord. No. 99-2011, § 12, 8-25-2011; Ord. No. 137-2016, § 4(23A-4), 7-7-2016; Ord. No. 166-2017, § 11(23A-4), 11-16-2017)

### **Sec. 23A-5. Expansion Area Residential 1 (EAR-1) Zone.**

(a) *Intent.* This zone is intended to provide a mixture of low density residential uses which will serve as a transition between the more intensely developed suburban neighborhoods and the Rural Service Area.

(b) *Principal Uses.*

1. Single-family, two-family, multifamily, and townhouse dwellings.
2. Community residences.
3. Golf courses and common open spaces.
4. Places of religious assembly when located adjacent to a street that has the functional classification of collector/boulevard or arterial.

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(c) *Accessory Uses.*

1. Private garages and parking areas.
2. Accessory Dwelling Units, as regulated in Article 3-12.
3. Swimming pools and tennis courts, which may include a clubhouse, as approved by the Planning Commission on a final development plan, for the use and enjoyment of the surrounding neighborhood, which may also include weight training and exercise rooms, restrooms, meeting rooms, or similar facilities.
4. Home offices and home occupations.
5. Family childcare for up to six children.
6. The keeping of not more than two (2) roomers or boarders by a resident family.
7. Childcare facilities and schools for academic instruction when accessory to a place of religious assembly on the same property.
8. Non-commercial hiking and bicycling trails.

(d) *Conditional Uses.*

1. Home-based businesses.
2. Family Childcare for seven and not more than twelve (12) children, provided the total number of children living or being cared for on the premises shall not exceed twelve (12).
3. Temporary Real Estate Sales Offices for the sale of lots located only within the subdivision in which the sales office is located, to be removed at the end of two (2) years or when all the lots are sold, whichever comes first.
4. Clubhouse, with sale of food and merchandise, when accessory to a golf course.
5. Historic house museums.
6. Schools for academic instruction, except as permitted herein, but only when located on a lot adjacent to a street that has the functional classification of collector/boulevard or arterial.
7. Equine trails.
8. Seasonal activities.
9. Market gardens.
10. The short-term rental (defined in the Code of Ordinances) of Accessory Dwelling Units, as regulated in Article 3-12 of the Zoning Ordinance. The Board of Adjustment, in considering approval of such conditional use, shall consider and make a finding that the number of rooms granted shall not have an adverse effect on surrounding properties. In addition, in considering such a conditional use, the Board of Adjustment shall take into consideration the number of short-term rental facilities, if any, within the general neighborhood of the property being considered for such use.

(e) *Prohibited Uses.* All uses not specifically listed as permitted shall be prohibited.

Lot, Yard, Height, and Density Requirements.

(f) *Dwelling Unit Density.* The dwelling unit density within the EAR-1 zone shall not exceed three (3) units per gross acre. (See Special Provisions, below.)

(g) *Maximum Height of Building.* Thirty-five (35) feet.

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- (h) *Floor Area Ratio.* None; except where more than one (1) principal residential structure is placed on a lot, the FAR shall not exceed 0.5.
- (i) *Off-Street Parking Requirements.*
1. There shall be a minimum of one (1) space per dwelling unit for single-family detached, duplex and townhouse residential units. Multifamily units shall have a minimum of 1.5 spaces per unit; except for elderly housing, which shall provide three (3) spaces for every four (4) units. One additional space shall be provided for any accessory dwelling unit.
  2. Golf courses. As per CD.
  3. Community residences. One space per every four (4) beds, plus one (1) space for each employee on the maximum working shift, with a minimum of five (5) spaces.
  4. Accessory and conditional uses. Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.
- (j) *Special Provisions.*
1. At least twenty-five percent (25%) of the net developable acreage of any project in the EAR-1 zone shall be open space. **Common open space shall be accessible from a public right-of-way or access easement with pedestrian facilities at intervals not to exceed 1/4 mile (1,320 feet). Access points shall be a minimum of forty (40) feet wide and contain a minimum five (5) foot wide sidewalk that connects to adjacent pedestrian facilities.**

(Code 1983, § 23A-5; Ord. No. 196-96, § 1, 10-3-1996; Ord. No. 353-2000, § 1, 11-16-2000; Ord. No. 84-2001, § 1, 4-5-2001; Ord. No. 311-2002, § 1, 12-5-2002; Ord. No. 207-2003, § 1, 8-28-2003; Ord. No. 108-2004, § 1, 5-25-2004; Ord. No. 227-2005, §§ 1, 2, 8-25-2005; Ord. No. 60-2009, § 21, 5-7-2009; Ord. No. 129-2016, § 1, 7-5-2016; Ord. No. 22-2017, § 5(23A-5), 3-2-2017; Ord. No. 166-2017, § 11(23A-5), 11-16-2017; Ord. No. 102-2021, §§ 11, 12, 10-28-2021)

## **Sec. 23A-6. Expansion Area Residential 2 (EAR-2) Zone.**

- (a) *Intent.* The intent of the Expansion Area Residential 2 Zone is to provide a mixture of residential uses and housing types, to allow density transfer from areas which should not be developed, and to provide for well-designed neighborhoods.
- (b) *Principal Uses.*
1. As for EAR-1.
  2. Schools for academic instruction.
- (c) *Accessory Uses.* As for EAR-1.
- (d) *Conditional Uses.*
1. As for EAR-1.
  2. Boardinghouses, rehabilitation homes, nursing homes, personal care facilities, and assisted living facilities. As a prerequisite requirement, sites for such uses must front on a street with a functional classification of collector or arterial.
  3. Existing radio, telephone or television transmitting or relay facilities as of May 26, 2005, including line-of-sight relays and towers, except as permitted by KRS 100.324, and only under the following conditions:

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- a. Such facilities shall be operated at all times in compliance with applicable federal, state and local laws and regulations, including all standards of the Federal Aviation Administration and the Federal Communications Commission.
  - b. No transmitting or relay tower shall be located closer than the height of the tower from another lot under different ownership, or any public or private street or highway, unless the tower is constructed to withstand a minimum wind speed of one hundred (100) miles per hour.
  - c. The plans of tower construction shall be certified by an engineer registered in the Commonwealth of Kentucky.
  - d. All towers shall be equipped with an anti-climbing device or fence to prevent unauthorized access.
- (e) *Prohibited Uses.* As for EAR-1.  
Lot, Yard, Height, and Density Requirements.
- (f) *Dwelling Unit Density.*  
Minimum Density: Three (3) dwelling units per gross acre.  
Maximum Density without DTR: Six (6) dwelling units per gross acre.  
Maximum Density with DTR: Nine (9) dwelling units per gross acre.
- (g) *Maximum Height of Building.* Thirty-five (35) feet.
- (h) *Floor Area Ratio.* None; except where more than one (1) principal residential structure is placed on a lot, the FAR shall not exceed 0.75.
- (i) *Minimum Front Yard.* Five (5) feet.
- (j) *Off-Street Parking Requirements.*  
There shall be a minimum of one (1) space per dwelling unit for single-family detached, duplex and townhouse residential units. Multifamily units shall have a minimum of 1.5 spaces per unit; except for elderly housing, which shall provide three (3) spaces for every four (4) units. One additional space shall be provided for any accessory dwelling unit.
- (k) *Special Provisions.*
  - 1. Affordable housing units shall not be considered as dwelling units for the purposes of calculating maximum density, provided the number of affordable units does not exceed eight (8) units per gross acre.
  - 2. At least twenty-five percent (25%) of the net developable acreage of any project in the EAR-2 zone shall be open space. **Common open space shall be accessible from a public right-of-way or access easement with pedestrian facilities at intervals not to exceed 1/4 mile (1,320 feet). Access points shall be a minimum of forty (40) feet wide and contain a minimum five (5) foot wide sidewalk that connects to adjacent pedestrian facilities.**
  - 3. Permitted schools shall not be located on a lot exceeding fifteen (15) acres in area.

(Code 1983, § 23A-6; Ord. No. 196-96, § 1, 10-3-1996; Ord. No. 226-98, § 1, 8-27-1998; Ord. No. 353-2000, § 1, 11-16-2000; Ord. No. 108-2004, § 1, 5-25-2004; Ord. No. 171-2005, § 1, 7-7-2005; Ord. No. 60-2009, § 22, 5-7-2009; Ord. No. 166-2017, § 11(23A-6), 11-16-2017)

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## Sec. 23A-7. Expansion Area Residential 3 (EAR-3) Zone.

- (a) *Intent.* The intent of the Expansion Area Residential 3 Zone is to provide a mixture of residential uses and housing types at a higher density than the other Expansion Area Residential zones, to allow density transfer from areas that should not be developed and to provide for well-designed neighborhoods.
- (b) *Principal Uses.* As for EAR-2.
- (c) *Accessory Uses.* As for EAR-2.
- (d) *Conditional Uses.* As for EAR-2.
- (e) *Prohibited Uses.* As for EAR-2.  
Lot, Yard, Height, and Density Requirements.
- (f) *Dwelling Unit Density.*
  - Minimum Density: Six dwelling units per gross acre.
  - Maximum Density without DTR: Eighteen (18) dwelling units per gross acre.
  - Maximum Density with DTR: Twenty-four (24) dwelling units per gross acre.
- (g) *Maximum Height of Building:* Sixty (60) feet.
- (h) *Floor Area Ratio:* None.
- (i) *Minimum Front Yard:* Five (5) feet.
- (j) *Off-Street Parking Requirements.* There shall be a minimum of one (1) space per dwelling unit for single-family detached, duplex and townhouse residential units. Multifamily units shall have a minimum of 1.5 spaces per unit, except for elderly housing which shall provide three (3) spaces for every four (4) units. One additional space shall be provided for any accessory dwelling unit.
- (k) *Special Provisions.*
  - 1. Affordable housing units shall not be considered as dwelling units for the purposes of calculating maximum density, provided the number of affordable units does not exceed eight (8) units per gross acre.
  - 2. At least twenty-five percent (25%) of the net developable acreage of any project in the EAR-3 zone shall be open space. **Common open space shall be accessible from a public right-of-way or access easement with pedestrian facilities at intervals not to exceed 1/4 mile (1,320 feet). Access points shall be a minimum of forty (40) feet wide and contain a minimum five (5) foot wide sidewalk that connects to adjacent pedestrian facilities.**
  - 3. Permitted schools shall not be located on a lot exceeding fifteen (15) acres in area.
  - 4. No more than twenty-five percent (25%) of the required off-street parking for a multifamily residential development shall be located between the closest residential building and the right-of-way of any collector street.

(Code 1983, § 23A-7; Ord. No. 196-96 , § 1, 10-3-1996; Ord. No. 353-2000 , § 1, 11-16-2000; Ord. No. 108-2004 , § 1, 5-25-2004; Ord. No. 60-2009 , § 23, 5-7-2009; Ord. No. 112-2015 , § 1, 10-8-2015; Ord. No. 166-2017 , § 11(23A-7), 11-16-2017)

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## Sec. 23A-8. Transition Area (TA) Zone.

- (a) *Intent.* The intent of the Transition Area zone is to create an overlay district to be used in conjunction with an EAR zoning category to allow for the development of residential uses and civic, cultural, religious, and educational institutions on lands which are located immediately adjacent to Community Center zones.
- (b) *Principal Uses.*
  - 1. As for the underlying EAR zoning category.
  - 2. Only when the Transition Area is included as an integral part of the development plan for adjacent land in the Community Center zone, then the following uses shall be permitted:
    - a) Nursing homes and personal care facilities.
    - b) Kindergartens, nursery schools and childcare centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
    - c) Places of religious assembly.
    - d) Buildings and facilities for social or recreational purposes operated by a non-profit organization and which are generally open to the public and do not render a service customarily carried on as a business.
- (c) *Accessory Uses.* As for the underlying EAR zoning category.
- (d) *Conditional Uses.* As for the underlying EAR zoning category.
- (e) *Prohibited Uses.* As for the underlying EAR zoning category.  
Lot, Yard, Height, and Density Requirements.
- (f) *Dwelling Unit Density.* As for the underlying EAR zoning category; except that when the property zoned TA is included as an integral part of the development plan for adjacent land in the Community Center zone, the density shall be as provided for the CC zone hereinbelow.
- (g) *Maximum Height of Building.* As for the underlying EAR category; except that when the property zoned TA is included as an integral part of the development plan for adjacent land in the Community Center zone, the maximum permitted height shall be forty-eight (48) feet.
- (h) *Floor Area Ratio.* As for the underlying EAR zoning category; except that when the property zoned TA is included as an integral part of the development plan for adjacent land in the Community Center zone, the FAR shall be as provided for the CC zone hereinbelow.
- (i) *Minimum Front Yard.* Five (5) feet
- (j) *Off-Street Parking Requirements.*
  - 1. *Residential Uses.* As per the underlying EAR category.
  - 2. *Other Permitted Uses.* Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.
- (k) *Special Provisions.*
  - 1. As per the underlying EAR zoning category.

(Code 1983, § 23A-8; Ord. No. 196-96 , § 1, 10-3-1996; Ord. No. 353-2000 , § 1, 11-16-2000; Ord. No. 166-2017 , § 11(23A-8), 11-16-2017)

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## Sec. 23A-9. Community Center (CC) Zone.

- (a) *Intent.* The intent of this zone is to implement the Community Center land use designation in the Expansion Area Master Plan by providing a mixture of residential uses and nonresidential uses which serve the needs of the surrounding residential neighborhoods.
- (b) *Principal Uses.*
1. As for EAR-3.
  2. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
  3. Offices for business, professional, governmental, civic, social, fraternal, political, religious, and charitable organizations, including but not limited to, real estate sales offices.
  4. Places of religious assembly.
  5. Libraries, museums, art galleries, and reading rooms.
  6. Medical and dental offices, clinics, and laboratories.
  7. Studios for work or teaching of fine arts, such as photography; music; drama; dance and theater.
  8. Community centers and private clubs.
  9. Nursing and personal care facilities, and rehabilitation homes.
  10. Computer and data processing centers.
  11. Ticket and travel agencies.
  12. Kindergartens, nursery schools and childcare centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
  13. Business colleges, technical or trade schools or institutions.
  14. Establishments for the retail sale of food products, such as supermarkets; dairy, bakery, meat, beer, liquor, and wine and other food product stores; and provided that production of food products is permitted only for retail sale on the premises.
  15. Restaurants, except as prohibited under Section 8-16(e)(14) and (15), which offer no live entertainment or dancing.
  16. Establishments for the retail sale of merchandise, including clothing; shoes; fabrics; yard goods; fixtures, furnishings, and appliances, such as floor covering, radios, TV, phonograph products and other visual and sound reproduction or transmitting equipment; furniture; kitchen and laundry equipment; glassware and china; and other establishments for the retail sale of hardware and wallpaper, lawn care products; paint and other interior or exterior care products; hobby items; toys; gifts; antiques; newspapers and magazines, stationery and books; flowers; music; cameras; jewelry and luggage; business supplies and machines; prescription and non-prescription medicines and medical supplies.
  17. Beauty shops, barber shops, shoe repair, self-service laundry, or laundry pick-up station, including clothes cleaning establishments of not more than 40 pounds capacity and using a closed system process.
  18. Automobile service stations, provided such use conforms to all requirements of Article 16.
  19. Repair of household appliances.



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20. Retail sale of plant nursery or greenhouse products, except as prohibited herein.
  21. Outdoor miniature golf or putting courses.
  22. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
  23. Carnivals, special events, festivals, and concerts on a temporary basis, and upon issuance of a permit by the Divisions of Planning and Building Inspection, which may restrict the permit in terms of time; parking; access; or in other ways to protect public health, safety, or welfare, or deny such if public health, safety, or welfare are adversely affected. A carnival, special events, festivals, and concerts may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.
  24. Indoor theaters.
  25. Rental of equipment whose retail sale would be permitted elsewhere in this zone.
  26. Arcades, including pinball, and electronic games.
  27. Athletic club facilities.
  28. Swimming pools; tennis courts; putting greens; hiking, bicycling and equine trails; and other similar commercial and non-commercial recreational uses.
  29. Brew-pub.
  30. Day shelters.
  31. Commercial farm markets.
  32. Market gardens.
  33. Banquet facilities.
  34. Offices of veterinarians, animal hospitals or clinics, provided that:
    - (a) All exterior walls are completely soundproofed;
    - (b) Animal pens are located completely within the principal building; and
    - (c) Boarding is limited to only animals receiving medical treatment.
- (c) *Accessory Uses.*
1. As for EAR-3.
  2. Storage, excluding outdoor storage, and provided that no building for such accessory use shall have openings other than stationary windows within one hundred (100) feet of any residential zone.
  3. The sale of malt beverages, wine, or alcoholic beverages when accessory to a restaurant permitted under Section 8-16(b)(3). Such accessory use shall not devote more than twenty percent (20%) of its public floor area exclusively to the preparation and service of such beverages, nor provide any separate outside entrances or separate identification signs for those areas.
  4. Parking lots and structures.
  5. Satellite dish antennas as further regulated by Section 15-7.
  6. One (1) or two (2) pool or billiard tables within an establishment.
- (d) *Conditional Uses.*
1. As for EAR-3.

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2. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein.
  3. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
    - a) That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
    - b) That a reasonable degree of reclamation and proper drainage control is feasible; and
    - c) That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any federal, state or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
  4. Self-service car washes when accessory to a service station, provided that surface water from such establishments shall not drain onto adjacent property, and that adequate on-site storage lanes and parking facilities shall be provided so that no public way shall be used for such purposes.
  5. A restaurant, without live entertainment or dancing, which devotes more than twenty percent (20%) of its public floor area exclusively to the preparation and service of malt beverages, wine or alcoholic beverages.
  6. Restaurants offering live entertainment and/or dancing, cocktail lounges, or nightclubs, unless prohibited under Sections 8-14(e)(14) and (15). Such uses shall be located at least one hundred (100) feet from any residential zone and shall be soundproofed to the maximum extent feasible by using existing technology, with noise emissions not creating a nuisance to the surrounding neighborhood.
  7. Upholstery shop.
  8. Outdoor speakers and public address systems. Such systems shall only be permitted by the Board of Adjustment upon findings that the system would not constitute a public nuisance by creating excessive noise on the property and surrounding properties; and is a necessary adjunct to the proposed use and has been designed to serve only such need. The Board may limit such features as the location, power, and time of operation of such systems to ensure the protection of surrounding uses and properties.
  9. Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
    - a. To check on all operating equipment;
    - b. To check fire suppression system(s);
    - c. To check the condition of the fire alarm(s);
    - d. To check for indications of fuel leaks and spillage;
    - e. To remove trash from the site;
    - f. To monitor the general condition of the site.
  10. Temporary structures designed for use or occupancy for sixty-one (61) to one hundred eighty (180) days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.
  11. Circuses, provided all structures are located not less than two hundred (200) feet from any residential zone; and further provided that all structures for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home or personal care facility. A circus

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may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.

12. Ecotourism activities to include zip line trails; tree canopy tours; fishing clubs; botanical gardens; natural preserves; and seasonal activities.
13. Recreation vehicle and trailer campgrounds, but only when located within five hundred (500) feet of an interstate interchange.
14. Hunting clubs, but only when located more than five hundred (500) feet from a residential zone.

(e) *Prohibited Uses.*

1. As for EAR-3.
2. As for A-R, except as expressly permitted herein.
3. Any use dependent upon septic tanks or pit privies.
4. Pawn shops.
5. Golf driving ranges.
6. Except when accessory to a permitted automobile service station, the above- or below-ground storage of any flammable material in gaseous form, including compressed natural gas; and the above- or below-ground storage of more than five (5) gallons of gasoline.
7. Greenhouses, plant nurseries, and garden centers.
8. Establishments primarily engaged in agricultural sales and services.
9. Warehouses, as well as storage uses, except as accessory uses herein.
10. Shops of special trade and general contractors, such as plumbing; heating; carpentry; masonry; plastering; painting; metal work; printing; electrical; sign painting; tile, mosaic and terrazzo work; electro-plating; drilling; excavating; wrecking; construction, and paving. This is not intended to prohibit the administrative offices of such.
11. Manufacturing, compounding, assembling, bottling, processing and packaging and other industrial uses for sale or distribution other than as retail on the premises.
12. Truck terminals and freight yards.
13. Amusement enterprises, such as outdoor theaters, automobile racing, or horse racing.
14. Kennels, outdoor runways or pens for animals.
15. Establishments engaged in the display, rental, sales, service and major repair of automobiles, repair of motorcycles, boats, trucks, travel trailers, farm implements, contractor's equipment, mobile homes, and establishments primarily engaged in the sale of supplies and parts for any of the above-mentioned vehicles or equipment, except as permitted herein.
16. Establishments for cleaning, dyeing, laundering and the like, other than self-service and pick-up stations; except for clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed system process.
17. Hotel or motel.
18. Wholesale establishments.
19. Greenhouses, nurseries, hatcheries.

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20. Establishments offering live entertainment in which a person simulates any sexual act or in which a person is unclothed, or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areola, the male or female genitalia, or the buttocks.
  21. Establishments at which any employee is unclothed or in the attire, costume or clothing described above, or is clothed in such a manner as to simulate the breast, genitalia, buttocks, or any portion thereof.
  22. Establishments having as a substantial or significant portion of their stock in trade for sale, rent or display, pictures, books, periodicals, magazines, appliances and similar material which are distinguished or characterized by their emphasis on matter depicting, describing or relating to such sexual activities as:
    - (a) Depiction of human genitals in a state of sexual stimulation or arousal;
    - (b) Acts of human masturbation, sexual intercourse or sodomy; or
    - (c) Holding or other erotic touching of human genitals, pubic region, buttocks or breasts.
  23. Indoor motion picture theaters having as a substantial or significant portion of their use the presentation of material having as a dominant theme or characterized or distinguished by an emphasis on matter depicting, describing or relating to such sexual activities as:
    - (a) Depiction of human genitals in a state of sexual stimulation or arousal;
    - (b) Acts of human masturbation, sexual intercourse or sodomy; or
    - (c) Holding or other erotic touching of human genitals, pubic region, buttocks or breasts.
  24. Pool or billiard halls.
  25. Primitive campgrounds; farm tours; hayrides; corn mazes; outdoor rodeos; riding stables; horse shows; fishing lakes; hunting and trapping; sportsmen's farms; and zoological gardens.

Lot, Yard, Height, and Density Requirements.

- (f) *Dwelling Unit Density*. No limitation (See Special Provisions below).
- (g) *Maximum Height of Building*. Forty-eight (48) feet.
- (h) *Floor Area Ratio*. A maximum of 1.0; however, the FAR may be increased to 1.5, provided that the FAR in excess of 1.0 is used for affordable housing.
- (i) *Minimum Front Yard*. Five (5) feet.
- (j) *Off-Street Parking Requirements*.
  1. Residential Uses. As per EAR-3.
  2. All other uses. Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.
- (k) *Special Provisions*.
  1. At least twenty-five percent (25%) of the net developable acreage of any development within a CC zone shall be open space. **Common open space shall be accessible from a public right-of-way or access easement with pedestrian facilities at intervals not to exceed 1/4 mile (1,320 feet). Access points shall be a minimum of forty (40) feet wide and contain a minimum five (5) foot wide sidewalk that connects to adjacent pedestrian facilities.**

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2. At least forty (40) percent of the aggregated floor area of buildings within a development in a CC zone shall be devoted to residential uses as permitted in EAR-3; schools, places of religious assembly and their accessory structures; and public buildings.
  3. No building shall exceed twenty thousand (20,000) square feet in floor area, except:
    - a. A building that contains a mix of residential and nonresidential uses; or
    - b. A building designed and intended to be used for a school, place of religious assembly or public building;
    - c. A building is designed and intended to be used principally as a store selling food, produce and other grocery items (not primarily general merchandise) and not exceeding eighty thousand (80,000) square feet; and
    - d. Up to two (2) additional buildings, which are designed and intended to be used primarily as stores selling general merchandise, which may include food, produce and other grocery items; but only under the following conditions:
      1. The proposed building shall be located within a CC zone containing at least thirty (30) net contiguous acres, and that has frontage on an interstate interchange;
      2. The building shall be part of an integrated development governed for all contiguously zoned CC land (excluding right-of-way) by a single development plan; and
      3. Any building exceeding eighty thousand (80,000) square feet in size shall also adhere to the "Design Guidelines for 'Big-Box' Establishments," excluding guideline numbers 6 and 14, which are contrary to other provisions of the CC zone. Such design guidelines shall be met unless waived by the Planning Commission through its approval of a final development plan.
    - e. The maximum number of buildings permitted over twenty thousand (20,000) square feet by Subsections (k)3.c and d of this section (above) shall be two.
  4. Parking areas shall be designed so as to minimize the placement of parking between the buildings and the adjoining streets.
  5. Each development within a CC zone shall have access to a pedestrian accessway.
  6. Each development shall provide suitable facilities for the parking of bicycles.
  7. The development shall be screened from adjoining zones as for a business zone under Section 18-3(a)(1).
  8. Structures shall be sited to avoid the rear of the building facing a street (other than an alley) to the greatest extent practicable.

(Code 1983, § 23A-9; Ord. No. 196-96, § 1, 10-3-1996; Ord. No. 222-98, § 1, 8-27-1998; Ord. No. 353-2000, § 1, 11-16-2000; Ord. No. 108-2004, § 1, 5-25-2004; Ord. No. 89-2005, § 1, 4-21-2005; Ord. No. 60-2009, § 24, 5-7-2009; Ord. No. 99-2011, § 13, 8-25-2011; Ord. No. 100-2011, §§ 11, 12, 8-25-2011; Ord. No. 122-2012, § 1, 10-11-2012; Ord. No. 125-2014, § 1, 10-9-2014; Ord. No. 68-2015, § 1(23A-9), 6-18-2015; Ord. No. 75-2017, § 1(23A-10), 5-25-2017; Ord. No. 166-2017, § 11(23A-9), 11-16-2017)

### **Sec. 23A-10. Economic Development (ED) Zone.**

- (a) *Intent.* The purpose of the Economic Development zone is to provide land within the Expansion Area for employment opportunities compatible with the overall character of development as provided in the Expansion Area Master Plan.

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(b) *Principal Uses.*

1. Offices for business, professional, governmental, civic, social, fraternal, political, religious and charitable organizations.
2. Computer and data processing centers.
3. Medical and dental offices, clinics and laboratories, and hospices.
4. Research development and testing laboratories or centers, including agricultural research and experimentation facilities.
5. Mail order businesses.
6. The manufacturing, compounding, assembling, processing, packaging, or similar treatment of articles of merchandise from the following previously prepared materials: asbestos, bone, canvas, cellophane, cellulose, cloth, cork, feather, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious and semi-precious metals, precious and semi-precious stones, rubber, sheet metal (excluding large stampings), shell, textiles, tobacco, wax, wire, wood (excluding sawmills, planing mills), and yarn.
7. The manufacturing, compounding, assembling, processing, packaging, or similar treatment of such products as: bakery goods; billboards; candy; ceramics; cosmetics; drafting instruments; electrical parts; appliances; electric or neon signs; electronic instruments; food products; meat packaging; ice cream; medical and dental instruments; musical instruments; pharmaceuticals; pottery, china, or figurines; radios; record players; rubber and metal stamps; rubber products; scientific instruments and equipment; shoes; television receivers; toiletries, soaps and detergents; toys; and watches and clocks.
8. Other industrial and manufacturing uses such as auto parts rebuilding; battery manufacturing; beverage manufacturing; dairy and non-dairy and food and non-food product bottling plants; box and crate assembly; building materials sales; rental storage yard; bag, carpet and rug cleaning and dyeing; cabinet shop; cannery; caterers; cooperage; crematory; dextrin and starch manufacturing; enameling, lacquering, and japanning; felt manufacturing; electric foundry; furniture manufacturing; heating equipment manufacturing; inflammable underground liquid storage; iron works (ornamental) and wire drawing; parcel delivery stations; phonograph record manufacturing; public utility service yard; radium extraction; stone monument works; tool manufacturing, welding, and other metal working shops.
9. Regional medical campus consisting of an integrated complex of medical service providers and related support facilities on a campus of not less than fifty (50) gross acres governed by a single development plan. The development plan must demonstrate that the regional medical campus will contain hospitals and similar in-patient treatment facilities, which may include accessory cafeterias, pharmacies and gift shops. In addition, the following uses shall be considered part of a regional medical campus: outpatient clinics and treatment facilities, surgery centers, nursing homes, medically-supervised assisted living facilities, and extended-stay hotels.
10. Colleges, universities, business colleges, technical or trade schools, and other schools and institutions for academic instruction.
11. Offices of purchasers, processors, and handlers of agricultural products, limited to administrative uses only.
12. Breweries, wineries, and distilleries.
13. Nursing homes and assisted living facilities.
14. Supportive uses, as further regulated by section 23A-10(j).
  - a. Adult day care centers.

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- b. Automobile service stations, and automobile and vehicle refueling stations, including the accessory retail sale of convenience type merchandise.
  - c. Banks, credit agencies, security and commodities brokers and exchanges credit institutions, savings and loan companies, holding and investment companies.
  - d. Beauty shops and barber shops.
  - e. Cable television system signal distribution centers and studios.
  - f. Community centers and private clubs.
  - g. Dwelling units, provided the units are not located on the first floor of a structure.
  - h. Hotels and motels.
  - i. Kennels, animal hospitals or clinics.
  - j. Kindergartens, nursery schools and child care centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
  - k. Libraries, museums, art galleries, and reading rooms.
  - l. Multi-family dwellings and townhouses, three (3) or more units.
  - m. Pharmacy and retail sale of medical equipment and supplies.
  - n. Restaurants, with or without drive-through facilities.
  - o. Studios for work or teaching of fine arts.
  - p. Telephone exchanges, radio and television studios, including line of sight relay facilities.
  - q. Television system signal distribution centers and studios, including line of sight relay facilities.
  - r. Ticket and travel agencies.

(c) *Accessory Uses.*

- 1. Off-street parking areas and structures, and loading facilities.
- 2. A dwelling unit for watchmen or caretakers, provided that such facilities shall be located on the same premises as the permitted use.
- 3. Offices.
- 4. Recreational facilities, except as otherwise permitted herein.
- 5. Sale of finished products related or incidental to the principal use, provided that the area set aside for sales of these related or incidental items does not constitute more than five percent (5%) of the total floor and storage area.
- 6. Storage and warehousing.
- 7. Meeting and conference centers.
- 8. Satellite dish antennas, as further regulated by Article 15-8. When located within 200 feet of the Urban Service Area boundary, satellite dish antennas shall be limited to:
  - a) A maximum height of four (4) feet above the highest point of the principal building on the lot.
  - b) If located on the ground, satellite dish antennas shall not be visible from the road, and shall be screened with landscape material.

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9. For premises not permitted under 23A-10(b)(14) above, facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Section 15-11 of the Code of Ordinances are met.
  10. Drive-through facilities for the provision of services otherwise permitted herein.

(d) *Conditional Uses.*

1. Kindergartens, nursery schools and childcare centers, where enrollment of children is sponsored and licensed by established places of religious assembly and non-profit community based groups; and/or where enrollment may be limited to children of employees and staff of an office, business or commercial establishment that is located within the contiguous ED zone as the proposed childcare facility. A fenced and screened play area shall be provided in an area located a minimum of ten (10) feet from a collector or arterial street, and shall contain not less than twenty-five (25) square feet per child.
2. Helistops and heliports, provided such facilities conform to the requirements of all appropriate federal, state and local regulations.
3. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
  - a) That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
  - b) That a reasonable degree of reclamation and proper drainage control is feasible; and
  - c) That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any federal, state or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
4. Temporary structures designed for use or occupancy for sixty-one (61) to one hundred eighty (180) days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.
5. Ecotourism activities to include campgrounds; commercial hiking and bicycling trails; equine and zip line trails; tree canopy tours; canoeing and kayaking launch sites; recreational outfitters; fishing and hunting clubs; botanical gardens; nature preserves; and seasonal activities.
6. Market gardens.

(e) *Prohibited Uses.*

1. All uses listed as permitted or prohibited within the B-4, I-1 and I-2 zones, except as expressly permitted herein.
2. Radio, telephone or television transmitting towers.
3. Dormitories.

Lot, Yard, Height, and Density Requirements.

- (f) *Maximum Height of Building.* 120 feet.
- (g) *Floor Area Ratio.* A maximum of 1.0.
- (h) *Minimum Front Yard.* Five (5) feet.



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- (i) *Off-Street Parking Requirements.* Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.

Hospices. One (1) space for every two (2) beds; plus one (1) space for each employee on the maximum working shift, with a minimum of five (5) spaces.

- (j) *Special Provisions.*

1. At least 25% of the net developable acreage of any development within an ED zone shall be open space. Such open space may be clustered across multiple lots or tracts to facilitate the common use of the land. **Common open space shall be accessible from a public right-of-way or access easement with pedestrian facilities at intervals not to exceed 1/4 mile (1,320 feet). Access points shall be a minimum of forty (40) feet wide and contain a minimum five (5) foot wide sidewalk that connects to adjacent pedestrian facilities.**
2. No structures other than sidewalks, transparent fences, or stone fences shall be located within five (5) feet of any public street right-of-way.
3. No more than half of the required off-street parking area shall be located between a building and any collector street.
4. Each parcel in an ED zone shall have direct access to a pedestrian access way.
5. The development shall be screened from adjoining zones and arterial highways as for an industrial zone under Section 18-3(a)(1).
6. All principal uses, other than supportive uses, shall be conducted in a completely enclosed building, except for outdoor storage uses, which shall be enclosed on all sides by a solid wall or fence not less than six (6) feet in height.
7. All buildings and structures shall be at least one hundred (100) feet from any residential zone, unless the portion within that distance has no openings except stationary windows and doors that are designed and intended solely for pedestrian access.
8. No buildings or structures in the ED zone, other than driveways, transparent fences and stone fences, shall be located in a Scenic Resource Area; however, the Scenic Resource Area may be used to calculate the required floor area ratio.
9. No outdoor loudspeakers shall be permitted.
10. No portion of a regional medical campus shall be located within one thousand (1,000) feet of the boundary of the Urban Service Area.
11. There shall be no more than one extended-stay hotel for a regional medical campus that contains 100 acres or less; a second extended-stay hotel is permitted for a regional medical campus that contains more than 100 acres, provided that there shall be no more than two (2) extended-stay hotels in a regional medical campus. The extended-stay hotel shall be: a) a part of a building that also contains medical facilities permitted on the campus; or b) physically connected by interior access ways to facilities containing medical services permitted on the campus. Extended-stay hotels shall be internally oriented to the site (e.g. not located on adjoining arterial streets).
12. Supportive uses shall be principal permitted uses, regulated subject to the following requirements:
  - a. Supportive uses shall not exceed a maximum of eighteen percent (18%) of the otherwise permitted floor area within a development, as identified on the associated final development plan. Mixed Use buildings shall count toward the maximum permitted floor area of supportive uses herein, but not count toward the residential use maximum identified below in Article 23A-