

Article amendments approved unless noted:	OMPC	Owensboro	Daviess Co.	Whitesville
Revised zoning ordinance	08-Sep-1979	14-Mar-1980	27-Dec-1979	07-Apr-1980
2003 Review Committee: Format changes only	11-Dec-2003	02-Mar-2004	05-Feb-2004	06-Apr-2004

12.1 FINDINGS OF FACT. The following findings of fact made:

12.11 Residential, Commercial, Industrial or Agricultural Classification Inadequate. Within Daviess County there are a number of land activities that have characteristics of operations that do not readily permit classification in the usual residential, commercial, industrial, or agricultural districts. However, they are necessary to the livability or economic health of the community or are of such character that their specific control is necessary.

12.12 Conditional Use Inadequate. Many of these activities are permitted as conditional uses within particular residential, commercial, industrial, or agricultural zones. However, the need for specifically enumerated performance standards and site locational standards make inclusion as a conditional use in a particular zone inadequate, since the restrictions in each zone must be applied equally to all uses within the zone, and the conditions which the Board of Adjustment may attach are not enumerated in such a manner as to avoid inconsistent and unequal treatment of similar activities.

12.2 PURPOSE AND OBJECTIVES. The reclassification of certain activities from the category of conditional use in a particular residential, commercial, industrial, or agricultural zone to an exclusive use zone is intended to:

12.21 Establish Specific Standards. Classification of these activities within exclusive use zones will enable specific site locational standards to be enumerated and applied. Such standards will protect that public health, safety, and welfare more adequately, will assure more equal treatment of the same or similar uses. Transportation facilities, including the use of roads and bridges shall also be considered.

12.22 Avoid Confusion Concerning Requirements. By specifically stating the standards to be applied to these activities, confusion and doubt about the standards will be reduced, and enforcement of the standards by the Inspector will be facilitated.

12.23 Increase Compatibility With Adjacent Uses. Exclusive use zones intended to make such activities more compatible with adjacent uses, allow greater flexibility in site selection for the activity, and require the zoning of the site to be re-examined upon termination of the permitted activity within such an exclusive use zone.

12.3 ESTABLISHMENT OF EXCLUSIVE USE ZONES. Activities placed in an exclusive use zone are those not capable of ready classification as residential, commercial, or industrial uses or which require specific, unique regulation unnecessary or inappropriate to other uses properly classified in residential, commercial, or industrial zones. Each such zone shall be designated EXCLUSIVE USE ZONE I (EX-1), etc. in order of adoption. The regulations for each exclusive use zone shall be included as an appendix to Article 12. Thus, the exclusive use zone for Coal Mining, as an example, shall be referred to as Article 12, Appendix A, Exclusive Use Zone I, Coal Mining. The abbreviated designation shall be (EX-1, EX-2, etc.)

12.4 REGULATIONS IN EXCLUSIVE USE ZONES. The regulations adopted under this chapter relating to each exclusive use zone created must include the following if applicable:

12.41 Definition of the specific use to be permitted.

12.42 Site, design and locational standards such as:

- a. Lot, yard and height requirements;

- b. Landscape buffer and fencing requirements;
- c. Sign restrictions;
- d. Access design requirements and limitations;
- e. Regulations relating to surface and subsurface drainage, flood plains and soil erosion;
- f. Off-street parking requirements;
- g. Other site and design requirements as determined necessary and reasonable to make such activity compatible with neighboring land uses likely to be affected by such activity.

12.43 Operational Standards. Performance standards may be established relating to those aspects of the activity which must be controlled to protect the public health, safety, or welfare such as:

- a. noise, air, water and soil pollution on other areas;
- b. stormwater drainage, flood plain or erosion control problems;
- c. and other operational requirements which are necessary and reasonable to make such activity compatible with neighboring land uses likely to be affected by such activity.

12.44 Bonding Requirements. Performance bonds may be required, and the amount, duration and supervisory agency should be established.

12.45 Reference to Other Applicable Laws. A listing of local, state and federal requirements applicable to such use may be included to facilitate effective coordination between the various agencies having jurisdiction over the particular use. Such a list shall not be considered exhaustive, but it is merely to be available to assist persons requesting such zoning.

12.5 PROCEDURES AND STANDARDS FOR APPROVAL OF EXCLUSIVE USE ZONE

12.51 Administration Process For Exclusive Use Zoning. Any activity which must be conducted within an exclusive use zone shall be permitted only upon approval by the appropriate legislative body of the required exclusive use zone. Requests for such zoning shall be made through the OMPC in accordance with Kentucky Revised Statute Chapter 100, the intent of

which is shown in H. B. 390, 1966 Session, General Assembly and the County Ordinance of October 16, 1973 relating to flood control and land uses.

12.52 Information Required In Application. The information necessary for proper review of each application shall be specified for each exclusive use zone. Additional information may be required by the OMPC.

12.53 Factors Which Shall Be Considered. In passing on requests for exclusive use zoning, all relevant factors specified for each zone and those listed below shall be considered.

12.531. The importance, to the community, of the services provided by the proposed facility or activity.

12.532. The availability of alternative locations for the proposed facility or activity.

12.533. The compatibility of the proposed use with existing uses and uses anticipated in the foreseeable future.

12.534. The relationship of the proposed use to the Land Use Plan, or other community plans.

12.535. Such other factors which are relevant to the purpose of this ordinance.

12.54 Time For Acting On An Application. The time for acting on an application shall be in accordance with normal OMPC procedures unless otherwise specified.

12.6 APPENDIX - EXCLUSIVE USE ZONE. Each exclusive use zone shall be included as an appendix to this section of the Zoning Ordinance.

**APPENDIX 12a
EXCLUSIVE USE ZONE I (EX-1)
COAL MINING**

12a.1 Findings of Fact. The following facts establish the need to place coal mining into an exclusive use zoning district.

12a.11 Characteristics of Coal Mining. Coal mining of land for the removal of valuable and needed coal deposits is a part of the community's economy. The high volume of truck traffic associated with transporting coal and the noise, dust and other potential nuisance-like characteristics suggest industrial zoning would be appropriate. However, coal mining of land is a limited duration use, and once such use is terminated in Daviess County, it is found that the areas are not within immediate reach of public utilities and other facilities which are necessary to sustain concentrated urban growth. This limitation makes industrial zoning inappropriate for subsequent uses to be located on this land within the foreseeable future. Major factors in determining proper site location for coal mining are the particular locations for coal deposits, the depth below the surface at which the mineral is found and the possible destruction of other natural amenities. These factors are not usually considered in the location of industrial zones. Therefore, coal mining and location criteria for such uses must be defined separately.

12a.12 Need For Specific Standards. If proper coal mining standards are not adhered to, the operation may result in the pollution of streams; severe soil erosion and a total loss of the land for other compatible uses for years to come. Coal mining will involve extensive reclamation practices. As a result of the factors listed above, coal mining must be placed in an exclusive use zone, which includes specific operational and reclamation standards and appropriate protection for subsequent use.

12a.2 Purpose And Objectives. The major purpose and objectives of this zone are to place coal mines in an exclusive use zone in order to establish site location and design standards which will:

12a.21 Protect Public Health. By preventing water pollution, noise pollution, air pollution or other such health hazards as would occur as a result of improper location, operation and reclamation standards.

12a.22 Protect Public Safety. By requiring proper use and design of thoroughfares to accommodate the heavy equipment necessary for transportation of coal.

12a.23 Improve Compatibility. With adjacent uses by requiring adequate setback and regular policing of heavily traveled routes to the site.

12a.24 Promote Public Welfare. By providing a reasonable control for the extraction of this valuable and vital natural resource of Daviess County.

12a.3 Establishment Of Exclusive Use Zone (EX-1) For Coal Mining. Exclusive use zone (EX-1) shall have as its only permitted uses coal mining and agricultural and those accessory uses as are necessary to the operation of coal mining and agriculture. All other uses including residential, commercial and industrial are prohibited.

12a.31 Subsequent Zoning. The exclusive use zone designation replaces the previous industrial zoning classification for coal mining and upon completion of the coal mining operation no other use shall be permitted, other than agriculture without placing the property in the appropriate zoning classification. The site shall revert to its original zone after mining.

12a.4 Planning For Coal Mining. Due to potentially adverse environmental impact of coal mining, detailed site and operational plan information shall be submitted to the State. The applicant also must obtain the necessary permits from federal, state and local agencies having jurisdiction over any phase of the operation prior to the beginning of said operation. The OMPC or the respective authority may require the posting of sufficient bond for maintenance and repair of those public facilities which are not otherwise bonded.

12a.41 Site Standards, Operational and Reclamation Procedures shall be the same as that required by the Kentucky Department of Natural Resources and Environmental Protection and in accordance with state regulations adopted pursuant to Kentucky Revised Statute Chapters 350, 351 and 352.

12a.5 Coal Mine Location Standards. The following site location standards must be met, if at all possible, for they are designed to protect the public health, safety, and welfare; and these standards must be balanced against the community's economic and environmental costs for the extraction of such minerals.

12a.51 Soil And Geologic Criteria. The geologic quadrangle map of Daviess County, Kentucky, 1972, prepared by the Kentucky Geological Survey, designates areas within Daviess County where coal deposits may be found. The Owensboro Metropolitan Planning Commission shall make use of such maps as a general guide in reviewing applications for (EX-1) zoning classifications.

12a.511 Soil Characteristics. An investigation must be made to determine:

- a. the agricultural potential of the land, Prime agricultural land as defined by the U. S. Soil Conservation Service shall be protected from normal mining procedures as permitted under K. R. S. 350, 351 and 352.

12a.52 Restricted Buffer Areas. Coal mining shall not be permitted within a minimum of one hundred (100) feet of a public right-of-way nor within a minimum of three hundred (300) feet of a neighboring residential, commercial or industrial developed property. This minimum may not be adequate in all cases and may be re-established dependent on circumstances of individual cases. Factors to be considered are set out in Article 12, Subsection 12.53.

12a.53 Access Design. Particular attention must be given to proper, safe design of entrances and exits to public highways. Entrance onto a public highway should not exceed a maximum of three per cent (3%) minus grade for a distance of one hundred feet (100') from the highway right-of-way. Proposed entrance and exit locations with existing plus grades shall be leveled (to zero grade) for a distance of thirty (30) feet from the right-of-way. An additional seventy (70) feet with a maximum three per cent (3%) plus grade shall also be provided. Sight distance along the through roadway at such intersections or entrances shall be ten (10) feet for each one (1.0) MPH of speed limit but not less than three hundred fifty (350) feet. In addition, sight distance along the stop leg of the intersection or entrance shall be not less than thirty (30) feet.

12a.54 Signs and Directions. Only necessary identification and directional signs shall be permitted. Signs shall not exceed forty (40) square feet in area and shall not be located on public right-of-way.

12a.6 Definition. For the interpretation of this Article, definitions of Kentucky Revised Statute, Chapters 350, 351 and 352 shall apply.

12a.7 Violations. Violators of Kentucky Revised Statutes 350, 351 and 352 and applicable ordinances and orders, as determined by the respective legislative body or any other agency of the state or federal government, shall not have additional sites zoned (EX-1) for coal mining, until such violation is corrected.