

ORDINANCE 2-2025

AN ORDINANCE APPROVING AND ADOPTING TEXT AMENDMENTS TO APPENDIX F, ARTICLE 8 OF THE OWENSBORO METROPOLITAN ZONING ORDINANCE FOR THE CITIES OF OWENSBORO AND WHITESVILLE, AND DAVIESS COUNTY.

WHEREAS, the Owensboro Metropolitan Planning Commission met in regular session on January 9, 2025, and proposed amendments to the text of the Zoning Ordinance for the Cities of Owensboro and Whitesville, and Daviess County regarding revisions to Article 8; and

WHEREAS, by vote of 9-0 in favor of the amendment of Article 8, the Owensboro Metropolitan Planning Commission has recommended that the proposed text amendments to the Owensboro Metropolitan Zoning Ordinance be approved as being in compliance with the goals and objectives of the adopted Comprehensive Plan and be submitted to the Owensboro Board of Commissioners, Whitesville City Commission, and Daviess County Fiscal Court for approval and adoption by the legislative bodies. Findings of fact in support of adoption of the proposed revisions to the Owensboro Metropolitan Zoning Ordinance are as follows:

1. These amendments to Article 8 will help maintain Daviess County as a viable economic unit.
2. These amendments to Article 8 will promote regional development to enhance economic benefits for citizens of Daviess County.
3. These amendments to Article 8 will promote a diversity of desirable industrial activities for a broad and stable economic base.

4. These amendments to Article 8 will accommodate all intensities of land use activity.

5. These amendments to Article 8 allow agriculture and other natural resource uses wider reign to apply traditional production techniques.

6. These amendments to Article 8 will avoid the introduction of urban activities that would have a detrimental effect on residential activity, but allow some mixture of appropriate nonresidential uses.

7. These amendments to Article 8 will reserve the land in the Rural Service Area primarily for agricultural uses, other natural resource activities, and support uses that need to be near such activities.

8. These amendments to Article 8 will encourage the application of increased buffers where heavy industrial and coal mining uses may be located in close proximity to existing rural residences.

9. These amendments to Article 8 will encourage the use of alternative energy sources where economically and environmentally feasible.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the statements recited in the preamble hereinabove, upon which the adoption of this ordinance is predicated, are hereby adopted and incorporated by reference, as if fully set forth herein.

Section 2. That text amendments to Appendix F of the Owensboro Municipal Code pertaining to Article 8 – Schedule of Zones of the Owensboro Metropolitan Zoning Ordinance for the Cities of Owensboro and Whitesville, and Daviess County shall be the

same and are hereby approved and adopted, as more particularly set out in the attached Exhibit A, which is incorporated by reference as if fully set forth herein.

Section 3. That the attached amendments to the Zoning Ordinance shall be kept on file and available for public inspection in the office of the Owensboro Metropolitan Planning Commission.

Section 4. All prior ordinances or parts thereof, in conflict with the provisions of this ordinance, are to the extent of any such conflict, hereby repealed.

Section 5. This ordinance shall become effective upon its adoption and publication according to law.

INTRODUCED AND PUBLICLY READ ON FIRST READING, this 18th day of February, 2025.

PUBLICLY READ AND FINALLY APPROVED ON SECOND READING, this 4th day of March, 2025.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

Item No.

TITLE
Amendments to the text of Article 8 of the Zoning Ordinance

MEETING OF CITY COMMISSION ON:
BUDGET <i>(State any budget consequences):</i> N/A

SUMMARY AND BACKGROUND <i>(Continue on additional sheet, if necessary):</i>		
<p>The Owensboro Metropolitan Planning Commission met in regular session on January 9, 2025, to consider amendments to the text of the Zoning Ordinance for Owensboro, Whitesville and Daviess County, Kentucky, regarding revisions to Article 8 related to Level 3 Solar Energy Systems. By a vote of 9-0 the Owensboro Metropolitan Planning Commission has recommended that the proposed text amendments be approved in that the proposal is in compliance with the adopted Comprehensive Plan (see attached Findings of Facts and staff report).</p>		
Check if continued on next page		<input type="checkbox"/>

RECOMMENDATION OR ACTION REQUESTED (State the action requested or recommended):
Approve text amendments to Article 8 of the Zoning Ordinance.

ATTACHMENTS (10 copies for agenda packets)	Check if no attachments
OMPC Recommendation, Staff Report and Meeting Summary Video of the OMPC proceedings are available upon request The transcript will be forwarded once available	<input type="checkbox"/>

Note: All City Commission Agenda items submitted by staff, including appropriate backup materials, must be approved and submitted to the City Clerk not later than noon Thursdays preceding Tuesday, 6:30 p.m. meetings.

Submitted by	Dept. Head Approval	City Attorney Approval	City Manager Approval
Melissa Evans	Bro		



ZONING TEXT AMENDMENT

Subject: Amendments to the text of Article 8 of the Zoning Ordinance

RECOMMENDATION of the Owensboro Metropolitan Planning Commission, Owensboro, Kentucky

Having considered the above matter at a Public Hearing on **January 9, 2025**

and having voted **9 to 0**

to submit this Recommendation to the **Owensboro City Commission**

the Owensboro Metropolitan Planning Commission hereby recommends **APPROVAL**

of this proposal, based on the following Purposes and Findings of Fact.

FINDINGS OF FACT

1. These amendments to Article 8 will help maintain Daviess County as a viable economic unit;
2. These amendments to Article 8 will promote regional development to enhance economic benefits for citizens of Daviess County;
3. These amendments to Article 8 will promote a diversity of desirable industrial activities for a broad and stable economic base;
4. These amendments to Article 8 will accommodate all intensities of land use activity;
5. These amendments to Article 8 allow agriculture and other natural resource uses wider reign to apply traditional production techniques;
6. These amendments to Article 8 will avoid the introduction of urban activities that would have a detrimental effect on residential activity, but allow some mixture of appropriate nonresidential uses;
7. These amendments to Article 8 will reserve the land in the Rural Service Area primarily for agricultural uses, other natural resource activities, and support uses that need to be near such activities;
8. These amendments to Article 8 will encourage the application of increased buffers where heavy industrial and coal mining uses may be located in close proximity to existing rural residences; and,
9. These amendments to Article 8 will encourage the use of alternative energy sources where economically and environmentally feasible.

ATTEST: January 10, 2025

Executive Director, Brian R. Howard, AICP

ENCLOSURES

Staff Report, Proposed Text Amendments, Meeting Summary, meeting video available upon request. Transcript will be forwarded once available.



Background

These proposed revisions to Article 8 of the Owensboro Metropolitan Zoning Ordinance are related to Level 3 Solar Energy Systems in the Zone and Use Table and the Decommissioning of Level 3 Solar Energy Systems as requested by Daviess County Fiscal Court.

Proposed Text Amendments

The proposed text amendments include the following:

1. Increase the setbacks for all equipment to perimeter property lines, residential structures and county parks. All equipment shall be at least seventy-five (75) feet from the perimeter property lines of the project area and shall be located at least one hundred fifty (150) feet from any residential structure. All inverters shall be located at least four hundred fifty (450) feet from any residential structure. All equipment (unless otherwise mentioned) shall be located at least five hundred (500) feet from any county park. Non-participating landowners may waive this setback.
 2. Update screening requirements to state that all screening shall be installed by the start of commercial operation and shall be maintained until the decommissioning of the SES is completed. All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.
 3. Update the decommissioning requirements to require the applicant to post security in the form of a performance bond or Irrevocable Letter of Credit in the amount of one hundred ten percent (110%) of the projected Decommissioning Cost with Daviess County Fiscal Court. The decommissioning plan must be prepared by a registered professional engineer familiar with the decommissioning process of a Level 3 SES, at the expense of the applicant. The decommissioning plan and security shall be updated not less than once every five (5) years.
 4. Limit the total acreage of "prime farmland" (outside of the Special Flood Hazard Area) permitted to allow Level 3 SES shall be one thousand two hundred (1,200) acres as determined and tracked by Daviess County Fiscal Court. No permits shall be authorized once the total number of permitted acres has been allotted.
- Economy and Employment, Objective 3.1.4 – Promote a diversity of desirable industrial activities for a broad and stable economic base.
 - Land Use, Objective 4.1.2 – Accommodate all intensities of land use activity.
 - Land Use, Objective 4.3.2 – Allow agriculture and other natural resource uses wider reign to apply traditional production techniques.
 - Land Use, Goal 4.7 – Avoid the introduction of urban activities that would have a detrimental effect on residential activity but allow some mixture of appropriate nonresidential uses.
 - Land Use, Goal 4.15 – Reserve the land in the Rural Service Area primarily for agricultural uses, other natural resource activities, and support uses that need to be near such activities.
 - Land Use, Objective 4.15.3 – Encourage the application of increased buffers where heavy industrial and coal mining uses may be located in close proximity to existing rural residences.
 - Environment, Objective 7.1.14 – Encourage the use of alternative energy sources where economically and environmentally feasible.

Findings of Fact

The staff recommends approval of the proposed text amendments to Article 8 because the proposal is in compliance with the community's adopted Comprehensive Plan. The findings supporting this recommendation follow:

1. These amendments to Article 8 will help maintain Daviess County as a viable economic unit;
2. These amendments to Article 8 will promote regional development to enhance economic benefits for citizens of Daviess County;
3. These amendments to Article 8 will promote a diversity of desirable industrial activities for a broad and stable economic base;
4. These amendments to Article 8 will accommodate all intensities of land use activity;
5. These amendments to Article 8 allow agriculture and other natural resource uses wider reign to apply traditional production techniques;
6. These amendments to Article 8 will avoid the introduction of urban activities that would have a detrimental effect on residential activity, but allow some mixture of appropriate nonresidential uses;
7. These amendments to Article 8 will reserve the land in the Rural Service Area primarily for agricultural uses, other natural resource activities, and support uses that need to be near such activities;
8. These amendments to Article 8 will encourage the application of increased buffers where heavy industrial and coal mining uses may be located in close proximity to existing rural residences; and,
9. These amendments to Article 8 will encourage the use of alternative energy sources where economically and environmentally feasible.

See the attached draft of the proposed Article 8 revisions.

Conclusions

The purpose of revising Article 8 is to be better equipped to address any future needs of the community.

The proposed text amendments are supported by the following goals and objectives of the Comprehensive Plan:

- Economy and Employment, Goal 3.1 – Maintain Daviess County as a viable economic unit.
- Economy and Employment, Objective 3.1.3 – Promote regional development to enhance economic benefits for citizens of Daviess County.

/56. Indoor individual storage uses may be conditionally permitted in the B-3 and B-4 zones. Indoor individual storage uses are principally permitted in B-5, I-1 and I-2 zones.

The storage of items within any indoor individual storage structure shall conform to the limitations contained in the definition of "indoor individual storage" in Article 14 of this Zoning Ordinance.

In the B-3 and B-4 zones, conditionally permitted indoor individual storage uses also shall be subject to the following restrictions:

- a.** Indoor individual storage shall be limited to the adaptive reuse of an existing retail storefront of not less than 10,000 square feet in size.
- b.** Structures to be used as indoor individual storage units shall be fully conditioned and enclosed.
- c.** Screening and landscaping shall be required as per Article 17 of this Zoning Ordinance.
- d.** Outdoor storage shall be prohibited on the same property as the indoor individual storage structure(s). This shall include vehicles, boats, personal items, etc.
- e.** All uses other than indoor individual storage shall be prohibited within structures while those structures are being used for individual storage, except for those accessory uses that are clearly incidental to and would also be permitted in a B-4 zone.
- f.** The Owner of the indoor individual storage structure(s) shall be responsible for policing the material and/or items being stored. The Owner shall notify the Zoning Administrator upon discovering any storage not meeting the requirements set forth herein, providing the name, address and phone number of the renter whose storage is in question

/57. Storage of distilled spirits shall be permitted in the A-R and A-U zones only on tracts of at least one hundred (100) acres in size.

Storage of distilled spirits shall be conditionally permitted in the A-R and A-U zones on tracts of at least twenty (20) acres in size.

Prior to the approval of a conditional use permit hereunder, the OMBA must consider the impact of the proposed use upon surrounding properties and insure that the character of the area is protected. This type of establishment shall not be considered as altering the agricultural or residential character of its particular area and shall not be justification for zoning map amendments.

In the A-R and A-U zones, permitted and conditionally permitted storage of distilled spirits also shall be subject to the following restrictions:

- a.** The construction type shall be limited to rack supported structures or pallet storage structures constructed in accordance with the requirements of the current edition of the Kentucky Building Code.
- b.** The size, height and separation of any single structure shall be in accordance with the requirements of the current edition of the Kentucky Building Code.
- c.** The structures shall be used for the storage of distilled spirits only; any change in the product/material stored shall deem the conditional use permit null and void.
- d.** All structures shall be set back at least 200 feet from all property boundaries.

e. All structures shall be located at least 750 feet from any principal structure on an adjoining property; this may be waived if the applicant provides a sworn affidavit from the owner of said structure that he/she is agreeable to the waiver.

f. At least twenty five (25) percent of the property shall be dedicated to agricultural uses as defined in KRS 100 and/or left as open/natural space.

g. As part of the application process, the property owner shall agree that if the use ever exceeds the conditions of an approved permit, the property owner must take the necessary steps to come into compliance, cease operations, and/or relocate to an appropriately zoned location.

/58. Agriculture, Horticulture and Silviculture Industries shall be Conditionally Permitted in A-R and A-U zones located outside of the Urban Service area on parcels of at least twenty-five (25) acres in size. This type of use shall not be considered as altering the agriculture or residential character of its particular area and shall not be justification for zoning map amendments. Conditionally permitted agriculture, horticulture and silviculture industries shall be subject to the following restrictions:

- a.** Any structure associated with the use shall not exceed twenty thousand (20,000) square feet in size and all structures associated with the use shall not exceed fifty thousand (50,000) square feet in total.
- b.** The operation must not employ more than thirty (30) persons unless it is located on a road that is classified as a State Primary or State Secondary route or has any section classified as such, no operation shall employ more than one hundred (100) persons.
- c.** The operation shall be limited to agriculture, horticulture or silviculture activities and their related accessory uses.
- d.** The applicant must submit a full scope of work along with the conditional use permit application showing the operation is limited in size and scope as to not cause a negative impact or nuisance to neighboring properties. If at any time that scope of work changes or any conditions set forth with the approved conditional use permit are not met, the conditional use permit shall be revoked and the operation shall cease.
- e.** All applicable building codes for commercial/industrial structures shall be followed. The OMPC Building, Electrical, HVAC department shall be contacted regarding any required permits or inspections prior to any construction activity taking place.

/59. Solar Energy Systems (SES) shall comply with the following criteria:

- a.** The height of any ground mounted SES shall not exceed twenty (20) feet as measured from the highest natural grade below each solar panel (excludes utility poles and antennas constructed for the project)
- b.** Setback requirements for Level 1 and Level 2 SES shall be in compliance with the zoning classification for the parcel.
- c.** Setback requirements for Level 3 SES shall be as follows: (1) All equipment shall be at least fifty (50) feet from the perimeter property lines of the project area. All equipment shall be at least seventy-five (75) feet from the perimeter property lines of the project area. Non-participating landowners may waive this setback; (2) No interior property line setbacks shall be required if the project spans multiple contiguous properties, and; (3) All equipment shall be located at least one hundred (100) feet from any residential structure. All equipment (unless otherwise mentioned) shall be located at least one hundred fifty (150) feet from any residential structure; (4) All inverters shall be located at

d. All Level 3 SES shall be screened with an 8' tall fence and a double row of staggered pines planted 15' on center from any public right-of-way or adjacent residential use. The pine trees shall be located outside of the fence. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential or MHP zones. Screening shall be installed by the start of commercial operation and shall be maintained until the decommissioning of the SES is completed. All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.

e. There shall be no signs permitted except those displaying emergency information, owner contact information, warning or safety instructions or signs that are required by a federal, state or local agency. Such signs shall not exceed 5 square feet in area.

f. Lighting shall be prohibited except that required by federal or state regulations.

g. Decommissioning of Level 3 SES shall be as follows:

1. The developer shall post a Surety Bond for the abandonment of the site and in the event the Commission must remove the facility. Abandonment shall be when the SES ceases to transfer energy on a continuous basis for twelve (12) months. The surety bond shall be one and one quarter (1.25) percent of the total cost of the installed SES. The applicant shall provide security in the form of a performance bond or Irrevocable Letter of Credit in the amount of one hundred ten percent (110%) of the projected Decommissioning Cost [see 59. g. 2. (5)], if the Decommissioning Cost is a positive number, securing Owner's decommissioning obligations. The form and content of surety shall be in accordance with the requirements of KRS 278.706(2)(m)(5) and shall name Daviess County Fiscal Court as secondary beneficiary. The Decommissioning Security shall be delivered to the County Judge/Executive of the Daviess County Fiscal Court and the owner shall provide a copy to the planning director. The surety instrument shall be provided prior to commencement of construction. The Decommissioning Security shall be issued for a period of not less than five (5) years. The surety instrument shall be updated and revised in conjunction with a resubmitted decommissioning plan not less than once every five (5) years. A surety instrument shall be continuously maintained by applicant, their successors in interest and/or assigns, until such time as the Large-Scale SES is decommissioned and all disturbed areas are reclaimed, revegetated, and restored.

2. A decommissioning plan shall be submitted at the time of application by the party responsible for decommissioning and the land owner and must include the following: (1) Defined conditions upon which the decommissioning will be initiated. i.e. there has been no power production for 12 months, the land lease has ended, or succession of use of abandoned facility, etc.; (2) Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations; (3) Restoration of

least four hundred fifty (450) feet from any residential structure; and, (5) All equipment (unless otherwise mentioned) shall be located at least five hundred (500) feet from any county park.

the property to its original condition prior to development of the SES; (4) The time frame for completion of decommissioning activities The estimated salvage value of the SES; (5) the party currently responsible for decommissioning, and The estimated cost to decommission the SES and restore the subject property minus the estimated salvage value of the SES is the Decommissioning Cost; (6) Plans for updating the decommissioning plan The time frame for completion of decommissioning activities; (7) the party currently responsible for decommissioning, and; (8) Plans for updating the decommissioning plan.

3. The applicant shall be responsible for a decommissioning plan, prepared by a registered professional engineer familiar with the decommissioning process of a Level SES, at the expense of the applicant, and updated not less than once every five (5) years, containing the following: (1) The anticipated life of the project and defined conditions upon which decommissioning will be initiated; (2) The estimated decommissioning costs, including removal of the Solar Energy System and related foundations, pads, underground collector lines and roads, transmission lines, and the revegetation and restoration of the property, including soils, to its original condition and all calculations supporting the decommissioning estimate; (3) The manner in which the project will be decommissioned, including provision and a timetable (such timetable not to exceed five (5) years) for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition; (4) A copy of any contract containing specific agreements regarding decommissioning; and, (5) The manner of SES component disposal including the estimated recycled value of components.

h. The total number of acres of "prime farmland" (outside Special Flood Hazard Area Zone A) in the unincorporated areas of the county which are permitted to allow Level 3 SES shall be limited to one thousand two hundred (1,200) acres as determined and tracked by Daviess County Fiscal Court. No permits shall be authorized once the total number of permitted acres has been allotted. "Prime farmland" means a map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture as having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses.

/60. Medical Cannabis Dispensary shall comply with the following criteria:

a. A Medical Cannabis Dispensary shall not be located within one thousand (1,000) feet of an existing primary or secondary school or daycare for children as measured in a straight line from parcel boundary to parcel boundary. This separation is required by KRS and is not subject to relief by a dimensional variance.

b. A Medical Cannabis Dispensary shall not be located closer than one (1) mile from another approved Medical Cannabis Dispensary and in unincorporated Daviess County shall be limited to one per Rural Community.

RE: January 9, 2025, OMPC Meeting Summary for Proposed Text Amendments to Article 8, Schedule of Zones related to Level 3 SES

During the January 9, 2025, OMPC meeting regarding the proposed text amendments to Article 8 Schedule of Zones relating to the Level 3 SES the following concerned citizens spoke:

- Jeff Kohler
- Kimberly and Jeremy Demarest
- Michaeline Chandler
- Jim Riney
- Greg Coomes
- Darlene Berry
- Caryn Wells
- Michelle Coomes
- Joseph David Berry
- John David Berry
- Lee Mitchell
- David Chandler

The citizen concerns include the industrial size and nature of solar farms and whether they should be allowed in an agriculture zone, as this would change the character of the area and ecosystem; it was proposed that Level 3 SES only be allowed in I-2 Heavy Industrial zones. They cited information that a Level 3 SES would decrease property values of their homes, requested larger setback requirements than the proposed 150' to residential structures and questioned why County parks were given a larger setback than residential structures. Additionally, it was requested the setback to residential structures be measured from the perimeter fence rather than any equipment. It was requested all screening elements, fencing and vegetation, should be installed prior to construction activity and that barbed wire fencing be banned as it creates more of an institutional or industrial feel. It was also requested to give consideration to access points to any Level 3 SES requiring they not be in alignment with any residential access points along county roads. The citizens were also concerned with the overall size of any proposed Level 3 SES stating the total acreage of any one project should be limited to a much smaller scope and separation distance between any Level 3 SES should be added to the ordinance. A major concern of the citizens is the use of any "prime agricultural farmland" for the development of a Level 3 SES as it was suggested to limit them to only reclaimed coal mining ground. Another concern of the citizens is any material, debris or liquid that may come from the solar panels and be leaked into the ground during a flood event given the amount of flood plain in the county where Level 3 SES could be located. It was suggested that any bonding requirements also include bonds designated for roadways and drainage features that may be damaged during construction and that a traffic impact study and environmental study be required as part of the application process. It was requested by several of the citizens who spoke that a moratorium be placed on all Level 3 SES until an ordinance could be crafted that better protects the citizens of Daviess County and addresses their concerns. Additionally, it was requested to limit a Level 3 SES to encompass only contiguous parcels so as not to fully surround any parcel not included within their project area.

The following Planning Commission members asked questions during the meeting:

- Manuel Ball
- Keith Stiff
- Jason Gasser
- Bill Weikel
- Skyler Stewart
- Lewis Jean

Their questions concerned the process moving forward, whether a Conditional Use Permit application for a Level 3 SES could come in anytime under the current ordinance and they verified that the proposal is more restrictive than the current ordinance. The questions and concerns of the Planning Commission were addressed by OMPC Director Brian Howard.

After nearly an hour and a half of discussion a motion to approve the proposed text amendments as written was made with a second and the motion passed unanimously.