

## **ORDINANCE 3-2025**

### **AN ORDINANCE APPROVING AND ADOPTING TEXT AMENDMENTS TO THE OWENSBORO METROPOLITAN ZONING ORDINANCE FOR THE CITIES OF OWENSBORO AND WHITESVILLE, AND DAVIESS COUNTY, REGARDING REVISIONS TO ARTICLE 18 - FLOOD PLAIN REGULATIONS, SPECIFICALLY REGARDING THE DEFINITIONS OF SUBSTANTIAL IMPROVEMENT TO EXISTING STRUCTURES AND STANDARDS FOR MANUFACTURED HOMES AND RECREATIONAL VEHICLES.**

**WHEREAS**, the Owensboro Metropolitan Planning Commission met in regular session on February 13, 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 18; and

**WHEREAS**, by vote of 7-0 in favor of the amendment of Article 18, 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 18 will help maintain Owensboro, Daviess County and the City of Whitesville as a viable economic unit.
2. These amendments to Article 18 will help preserve existing housing and neighborhoods.

3. These amendments to Article 18 endeavor to identify the housing needs of the community.

4. These amendments to Article 18 encourage the protection of our natural environment and the preservation of our natural resources.

5. These amendments to Article 18 discourage urban development in the floodplains.

**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 the Owensboro Metropolitan Zoning Ordinance for the cities of Owensboro and Whitesville, and Daviess County, regarding revisions to Appendix F of the Owensboro Municipal Code pertaining to Article 18 – Flood Plain Regulations, specifically regarding the definitions of substantial improvement to existing structures and standards for manufactured homes and recreational vehicles, 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 4<sup>th</sup> day of March, 2025.

**PUBLICLY READ AND FINALLY APPROVED ON SECOND READING,** this 18<sup>th</sup> day of March, 2025.

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Thomas H. Watson, Mayor

ATTEST:

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Beth Davis, City Clerk

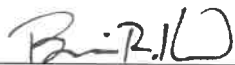


**ZONING TEXT AMENDMENT****Subject: Amendments to the text of Article 18 of the Zoning Ordinance****RECOMMENDATION of the Owensboro Metropolitan Planning Commission, Owensboro, Kentucky**Having considered the above matter at a Public Hearing on **February 13, 2025**and having voted **7 to 0**to submit 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 18 will help maintain Owensboro, Daviess County and the City of Whitesville as a viable economic unit;
2. These amendments to Article 18 will help preserve existing housing and neighborhoods;
3. These amendments to Article 18 endeavor to identify the housing needs of the community;
4. These amendments to Article 18 encourage the protection of our natural environment and the preservation of our natural resources; and,
5. These amendments to Article 18 discourage urban development in the flood plains.

**ATTEST: February 14, 2025**

Executive Director, Brian R. Howard, AICP

**ENCLOSURES**

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

**Background**

The proposed revisions to Article 18 of the Owensboro Metropolitan Zoning Ordinance are related to flood plain regulations and have been initiated to maintain and/or improve the current Community Rating System (CRS) classification level of Owensboro, Daviess County and the City of Whitesville in regard to the National Flood Rate Insurance Program (NFIP).

**Proposed Text Amendments**

The proposed text amendments include the following:

1. Amend the definitions of Substantial Damage, Substantial Improvement and Substantially Improved Existing Manufactured Housing Park Complex or Subdivision to decrease the percentage from 50% to 49% of the fair market value when evaluating the damage or improvement.
2. Remove the requirement for a manufactured home chassis supported by reinforced piers or other foundation elements to be no less than 36 inches in height above grade under Standards for Manufactured Homes and Recreational Vehicles.

See the attached draft of the proposed Article 18 revisions.

**Conclusions**

The purpose of revising Article 18 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.
- Housing, Goal 4.9 – Preserve existing housing and neighborhoods.
- Housing, Goal 4.10 – Identify the housing needs of the community.
- Environment, Goal 7.1 – Protect the natural environment and preserve our natural resources.
- Environment, Objective 7.1.10 – Discourage urban development in flood plains

**Findings of Fact**

The staff recommends approval of the proposed text amendments to Article 18 because the proposal is in compliance with the community's adopted Comprehensive Plan. The findings supporting this recommendation follow:

1. These amendments to Article 18 will help maintain Owensboro, Daviess County and the City of Whitesville as a viable economic unit;
2. These amendments to Article 18 will help preserve existing housing and neighborhoods;
3. These amendments to Article 18 endeavor to identify the housing needs of the community;
4. These amendments to Article 18 encourage the protection of our natural environment and the preservation of our natural resources; and,
5. These amendments to Article 18 discourage urban development in the flood plains.

Article amendments approved unless noted:	OMPC	Owensboro	Daviess Co.	Whitesville
Flood plain regulations established	08-Nov-1980	05-Dec-1980	13-Jan-1981	not applic.
Flood plain regulations amended	14-May-1987	16-Jun-1987	24-Jun-1987	not applic.
Flood plain regulations amended	21-Apr-1994	07-Jun-1994	01-Jun-1994	not applic.
Limited expansion of existing use in floodway {18-6(b)(2)(h)}	18-Apr-1996	21-May-1996	22-May-1996	not applic.
2003 Review Committee: Format changes only	11-Dec-2003	02-Mar-2004	05-Feb-2004	not applic.
Flood plain regulations amended in conjunction with 2009 maps	12-Mar-2009	5-May-2009	7-May-2009	not applic.
Definitions of Substantial Damage, Substantial Improvement, Substantially Improved Existing Manufactured Housing Park Complex or Subdivision, Standards for Manufacture homes and recreational vehicles {18-5(b)(5)(b)(ii)}				
				13-Feb-2025

## 18-1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

**18-1(a) Statutory Authorization.** The legislature of the State of Kentucky has in KRS Chapter 100 delegated the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Commission of the City of Owensboro and the Fiscal Court of Daviess County, Kentucky hereby adopt the following floodplain management ordinance, as follows:

### 18-1(b) Findings of Fact.

**(1) Flood Losses Resulting From Periodic Inundation.** The flood hazard areas of Daviess County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

**(2) General Causes of These Flood Losses.** These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the locations in flood hazard areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damages.

**18-1(c) Statement of Purpose.** It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

**(1)** restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

**(2)** require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

**(3)** control the alteration of natural flood plains, stream channels, and natural protective barriers which accommodate or channel flood waters;

**(4)** control filling, grading, dredging and other development which may increase erosion or flood damage; and,

**(5)** prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other areas

**18-1(d) Objectives.** The objectives of this article are:

**(1)** to protect human life and health;

**(2)** to minimize expenditure of public money for costly flood control projects;

**(3)** to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

**(4)** to minimize prolonged business interruptions;

**(5)** to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in flood plains;

**(6)** to help maintain a stable tax base by providing for the sound use and development of special hazard or other flood-prone areas in such a manner as to minimize future flood blighted areas caused by flooding; and,



**"Remedy a Violation"** means the process by which a community brings a structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impact of non-compliance. Reduced impact may include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing state or federal financing exposure with regard to the structure or other development

**"Repair"** means the reconstruction or renewal of any part of an existing structure.

**"Repetitive Loss"** means flood-related damages sustained by a structure on two or more separate occasions during a 10-year period where the value of damages equals or exceeds an average of 50% of the current value of the structure, beginning on the date when the damage first occurred, or, four or more flood losses of the value determined by FEMA or more, over the life of the structure, or, three or more flood losses over the life of the structure that are equal to or greater than the current value of the structure.

**"Riverine"** means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**"Section 1316"** is that section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

**"Sheet Flow Area"** means **"Area of Shallow Flooding"**.

**"Special Flood Hazard Area (SFHA)"** is that portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zone A, AE, A 1 A30, AH, AO, or AR.

**"Start of Construction"** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the

placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"Structure"** (for the purposes of this article) means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures. The term "structure" herein is synonymous with the term "building."

**"Subdivision"** means any division, for the purposes of sale, lease, or development, either on the installment plan or upon any and all other plans, terms and conditions, of any tract or parcel of land into two (2) or more lots or parcels.

**"Subrogation"** means an action brought by FEMA to recover insurance money paid out where all or part of the damage can be attributed to acts or omissions by a community or other third party.

**"Substantial Damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed ~~fifty (50)~~ **forty nine (49)** percent of the market value of the structure before the damage occurred. This term includes structures that are categorized as repetitive loss.

For the purposes of this definition, "repair" is considered to occur when the first repair or reconstruction of any wall, ceiling, floor, or other structural part of the building commences. The term does not apply to:

Any project for improvement of a building required to comply with existing health, sanitary, or safety.

1) code specifications which have been identified by the Building Inspector and which are solely necessary to assure safe living conditions, or

2) any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**"Substantial Improvement"** means any combination of



repairs, reconstruction, alteration, or improvements to a structure, taking place during a five (5) year period, in which the cumulative cost equals or exceeds ~~fifty (50)~~ **forty nine (49)** percent of the market value of the structure. For the purposes of this definition, an improvement occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building.

The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. For the purposes of this definition, "substantial improvements" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

(1) any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by code enforcement official(s) and which are solely necessary to assure safe living conditions, or

(2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure", or

(3) any building that has been damaged from any source or is categorized as repetitive loss.

**"Substantially Improved Existing Manufactured Housing Park Complex or Subdivision"** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities, and pads equals or exceeds ~~fifty (50)~~ **forty nine (49)** percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**"Suspension"** means the removal of a participating community from the NFIP for failure to enact and/or enforce floodplain management regulations required for participation in the NFIP. New or renewal flood insurance policies are no longer available in suspended communities.

**"Utilities"** includes electrical, heating, ventilation, plumbing, and air conditioning equipment.

**"Variance"** is a grant of relief from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship. Procedures and conditions for variances are described in Subsection 18-4(e) of this article.

**"Violation"** means the failure of a structure or other development to fully comply with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**"Watercourse"** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically.

**"Water Surface Elevation"** means the height, in relation to the North American Vertical Datum of 1988 (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplain of coastal or riverine areas.

**"Watershed"** means all the area within a geographic boundary from which water, sediments, dissolved materials, and other transportable materials drain or are carried by water to a common outlet, such as a point on a larger stream, lake, or underlying aquifer.

**"X Zone"** is the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2-percent probability of being equaled or exceeded (the 500-year flood) in any year. Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

**"Zone"** is a geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

### 18-3 GENERAL PROVISIONS.

**18-3(a) Lands to Which This Ordinance Applies.** This article shall apply to all Special Flood Hazard Areas (SFHA), areas applicable to KRS 151.250 and, as determined by the Floodplain Administrator or other delegated, designated, or qualified community official as determined by the County of Daviess, KY and the City of Owensboro, KY from available technical studies, historical information, and other available and reliable

park or subdivisions, or (vii) on individual lots or parcels.

(b) All manufactured homes placed or substantially improved in an existing manufactured housing park complex or subdivision must be elevated on a permanent foundation so that:

(i) the lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation, or

~~(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above grade,~~

(iii) The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement.

~~(iii)~~ (iv) In an existing manufactured housing park complex or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, any manufactured home placed or substantially improved must meet the standards of Subsection 18-5(b)(5)(b)(i) and (iii) above.

(c) All recreational vehicles placed on sites located within A, A1-30, AO, AH, and AE on the community's Flood Insurance Rate Map (FIRM) must either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the permit requirements for new construction of this ordinance, including anchoring and elevation requirements for "manufactured homes".

A recreational vehicle is ready for highway use if it is licensed and insured in accordance with the State of Kentucky motor vehicle regulations, is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

**18-5(c) Standards for Areas of Shallow Flooding (AO Zones).** Located within the areas of special flood hazard established in Section 18-3(b) are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (1'-3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the applicable Flood Insurance Rate Map. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade.

(2) All new construction and substantial improvements of nonresidential structures shall:

(a) have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified on the applicable Flood Insurance Rate Map. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade, or

(b) together with attendant utility and sanitary facilities be completely flood-proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

**18-5(d) Standards for All Subdivision Proposals and Development Plans.**

(1) All subdivision proposals and development plans shall identify the flood hazard area and the elevation of the base flood and be consistent with the need to minimize flood damage.

(2) All subdivision proposals and development plans shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(3) All subdivision proposals and development plans shall have adequate drainage provided to reduce exposure to flood hazards.