

# **SECTION 1. TITLE, PURPOSE AND APPLICABILITY**

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## **1.1 TITLE**

This Ordinance shall be known, referred to and cited as "The Zoning Ordinance of the City of Hendersonville and the Hendersonville Planning Region."

## **1.2 PREFACE AND INTENT**

Hendersonville has grown rapidly since it incorporated in 1969. It has benefited greatly due to Old Hickory Lake and the proximity to downtown Nashville. Substantial investments have been made in Hendersonville. Individuals have invested much in homes. Companies have invested much in new businesses.

The implementation of design standards and other planning and growth management strategies has resulted in attractive residential and commercial areas. This provides a comfort level which encourages further investment. Individuals and companies have developed a trust that, if they build here, their investment will be protected. They can expect that new development will be held to the same high standards. They can expect their investment in Hendersonville to pay off for many years to come.

However, the City is aging, and the City will soon reach "build-out". At that point, there will be little new development. At the same time, Hendersonville will be competing with new, modern development with the latest and most popular home styles and amenities. Under these circumstances, it will become more and more difficult to sustain property values and to protect the investments which have been made in homes and businesses and to avoid the fate of similar cities which have failed to adequately plan and manage its growth and development. The City must trust that it has built-in a lasting value which will compensate for the age and condition of its homes, businesses and infrastructure. The lake is a great benefit and "hedge", but this alone will not guarantee that the City will be sustained in the long term.

With this in mind, it is the intent of this document to:

- A. Protect investments which have been made in the homes and businesses of Hendersonville.
- B. Preserve property values and even to enhance these values.

- C. Avoid the fate of other cities which have failed to adequately plan and manage growth.

In specific and layman terms, it is the intent of this document to protect private property from adjacent uses and activities which are not in character with surrounding development and which are not suitable for a dense urban setting – activities which would harm the enjoyment of one’s property and make it more difficult to sell, if desired or necessary. This intent is in recognition of the fact that such an occurrence would have a “domino effect” on the value of other properties in the neighborhood. Such a decrease in value erodes the tax base and requires a tax increase or else a decrease in services. This, in turn, leads to further decline.

In consideration of the above stated intent, this document will establish comprehensive land use standards to serve the City of Hendersonville and the Hendersonville Planning Region. The standards and regulations enumerated are based upon the City's Land Use and Transportation Plan, and the overall City policies and objectives. These standards are intended to serve the City and Planning Region as it deals with future growth. Furthermore, this Ordinance is enacted by the Board of Mayor and Aldermen of the City of Hendersonville pursuant to the authority granted them under Tennessee Code Annotated. Any reference to this Ordinance shall include amendments to this Ordinance.

### **1.3 PURPOSE**

The purpose of this Ordinance is to:

- A. Promote and protect the public health, safety and general welfare of the people.
- B. Secure adequate natural light, air and open space, and safety from fire and other dangers.
- C. Lessen or reduce congestion in public streets.
- D. Facilitate the adequate provision of transportation, utility systems, parks and other public facilities and services.
- E. Protect the air, water and land resources of the City from the hazards of pollution.
- F. Insure and facilitate the preservation of sites, areas, and buildings and structures of historical, architectural and aesthetic importance.
- G. Preserve and maintain the essential character of the City as it exists as of the date of the adoption of this Ordinance. To preserve and protect the natural features and historic locations of buildings and groups of buildings as neighborhoods and communities of distinguished architectural character and appearance.
- H. Regulate and limit the height and bulk of buildings.
- I. Establish, regulate and limit the building or setback lines on, or along, any street, traffic-way, drive, parkway, or storm or floodwater runoff channel or basin.

- J. Regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings.
- K. Classify, regulate and restrict the location of commercial and industrial business, and the location of buildings designed for specified commercial, industrial, residential and other uses.
- L. Divide the entire municipality into districts of such number, shape and area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, density, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Ordinance.
- M. Fix standards to which buildings or structures shall conform.
- N. Provide for design review of development to ensure that it is compatible with the character of its surroundings.
- O. Prohibit uses, buildings or structures incompatible with the character of the districts in which they are located.
- P. Provide for the gradual elimination of nonconforming uses of land, buildings and structures.
- Q. Conserve the taxable value of land and buildings throughout the City and Planning Region.
- R. Promote the economic diversity of the community and enhance opportunities for participation in the economic and social systems of the community.
- S. Define the powers and duties of administrative officers and bodies.
- T. Prescribe penalties for the violation of the provisions of this Ordinance.

#### **1.4 APPLICABILITY**

##### **A. Territorial Application**

This Ordinance shall apply to all land, uses, buildings and structures within the corporate limits of the City and the Planning Region. To the extent allowed by State law, it shall also apply to municipal corporations, government bodies and utility districts.

##### **B. General Application**

In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety, convenience, comfort and general welfare, and shall be construed to achieve the purposes for which this Ordinance was adopted.

### **C. General Prohibition**

Except as otherwise provided by this Ordinance, no portion or whole of any building, structure or land shall be used or occupied, and no building or structure, in whole or in part, shall be erected, constructed, reconstructed, moved, enlarged or structurally altered unless it conforms with the provisions of this Ordinance.

### **D. Private Agreements**

This Ordinance is not intended to nullify any private agreement or covenant. However, where this Ordinance is more restrictive than a private agreement or covenant, this Ordinance shall control.

### **E. Other Laws and Regulations**

Unless otherwise specifically provided, the Ordinance shall control over less restrictive statutes, ordinances or regulations, and more restrictive statutes, ordinances or regulations will control over the provisions of this Ordinance.

Where State Law specifically overrides local zoning authority, in particular in regard to farms and agriculture, and in regard to manufactured homes, the conflicting terms of this ordinance shall not apply or be enforced.

## **1.5 TRANSITION RULES**

In determining the applicability of this Ordinance, with respect to the previously applicable zoning regulations, the following rules shall apply.

### **A. Existing Illegal Uses and Structures**

A structure or use that is illegal at the time of the adoption of, but is made legal by the provisions of this Ordinance, is deemed lawful as of the effective date of this Ordinance. However, if that structure or use does not conform with each and every requirement of this Ordinance, then that structure or use shall remain unlawful.

### **B. Existing Permitted Uses**

If property is used in a manner that was classified as a permitted use prior to the effective date of this Ordinance and that use is classified as a conditional use by this Ordinance, that use shall be deemed a lawful conditional use as if a conditional use permit has been approved. However, any subsequent addition, enlargement or expansion of that use shall be required to conform to any applicable substantive requirements for conditional uses pursuant to this Ordinance.

### **C. Certain Uses Rendered Nonconforming**

If property is used in a manner that was a lawful use before the effective date of this Ordinance, and this Ordinance no longer classifies that use as either a permitted or conditional use in the zoning district in which it is located, that use shall be deemed a

legal nonconforming use and shall be controlled by the provisions of Section 14.3 (Nonconforming Uses).

**D. Certain Buildings, Structures and Property Rendered Nonconforming**

If a building, structure or property existing on the effective date of this Ordinance does not meet all standards set forth in this Ordinance, that building, structure or property shall be deemed nonconforming and shall be controlled by the provisions of Section 14.4(Nonconforming Buildings).

**E. Existing Nonconforming Lots of Record**

Existing nonconforming lots of record shall be governed by Section 14.6 (Nonconforming Lots of Record).

**F. Previously Granted Conditional Uses and Variances**

All conditional uses and variances granted prior to the effective date of this Ordinance shall remain in full force and effect. The recipient of the conditional use or variance may proceed to develop the property in accordance with the plans approved by the Board of Zoning Appeals and any applicable conditions. However, if the recipient has failed to act on the conditional use or variance before the approval expires, including any periods of extension granted, the provisions of this Ordinance shall govern.

**G. Previously Approved Preliminary and Final Development Plans**

Preliminary and Final Development Plans approved under a prior Zoning Ordinance shall remain valid and shall continue to govern the development of the property unless the property has not developed and the plan has expired as per the terms of the ordinance in effect when the new plan was approved. For zoning matters for which these Plans are silent or unclear, as determined by the Planning Department, the provisions of this Ordinance shall apply. Amendments to these plans shall be in accordance with the provisions of the Ordinance under which the plan was approved, or, at the discretion of the owner, in accordance with the terms of this Ordinance.

**H. Previously Approved Alternate Open Space Developments**

Site Development Plans approved under section 3-403 (Alternate Provisions for the Location of Open Space and Placement of Buildings) of the 1985 Zoning Ordinance shall remain in effect and shall continue to govern the development of the property. Any amendment shall be in accordance with the 1985 Ordinance.

**I. Previously Approved Site Plans**

Site plans approved prior to the effective date of this ordinance shall remain valid provided a building permit is secured within one (1) year from the date the Planning Commission approved or granted an extension of the Site Plan.

## **J. Pending Applications**

Even though an application may have been submitted prior to the effective date of the Ordinance, if the application has not been approved and, if applicable, the permit issued, the provisions of this Ordinance shall govern that application.

## **K. Previously Issued Building Permits**

If a building permit for a building or structure was lawfully issued prior to the effective date of this Ordinance, and if construction has begun within one-hundred eighty (180) days of the issuance of that permit and diligently pursued to completion, the building or structure may be completed in accordance with the plans on the basis of which the building permit was issued and may, upon completion and issuance of a Use and Occupancy Permit, be occupied for the use originally intended.

## **L. Previously Issued Sign Permits**

See Section 13.2D (Transitional Provision)

## **M. Previously Issued Use and Occupancy Permits**

If a Use and Occupancy Permit was lawfully issued prior to the effective date of this Ordinance, and the building and/or land has not yet been occupied for the purpose for which the permit has been issued, the permittee has six (6) months from the date of the issuance of the permit to occupy the building and/or land for the purpose for which the permit was issued; otherwise, a new Use and Occupancy Permit shall be required and shall only be issued if the proposed use conforms to the provisions of this Ordinance.

## **1.6 SEVERABILITY**

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, invalidate or nullify the remainder of this Ordinance. The effect of the judgment shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which judgment or decree was rendered.

## **1.7 EFFECTIVE DATE**

The effective date of this Ordinance is September 24, 2015. The effective date of amendments to this Ordinance shall be the date the Ordinance amending this Ordinance is adopted or any future date specified within the amending ordinance, which date shall be considered the effective date of this ordinance in regard to the provisions amended.

## **1.8 REPEAL OF PREVIOUS ZONING ORDINANCE**

After the effective date of this Ordinance, the Zoning Ordinance of the City and Planning Region, as adopted on February 25, 2014, and which took effect March 28, 2014, is expressly repealed in its entirety.