

**ORDINANCE NO. 920.105**

**AN ORDINANCE OF SIMPSON COUNTY, KENTUCKY APPROVING AN INTERLOCAL AGREEMENT REGARDING PLANNING AND ZONING AND AUTHORIZING THE COUNTY JUDGE EXECUTIVE TO SIGN**

WHEREAS, the City of Franklin, Franklin-Simpson Planning and Zoning Commission and County of Simpson have reached an agreement with regard to the operation of the Franklin-Simpson Planning and Zoning Commission entitled "Interlocal Agreement Regarding Planning and Zoning," a copy of which is attached hereto and incorporated herein by reference; and,

WHEREAS, the County of Simpson and the parties to the Interlocal Agreement require the passage of an Ordinance approving said interlocal agreement and authorizing the County Judge Executive for Simpson County, Kentucky to execute said interlocal agreement; and,

WHEREAS, it is in the best interest of the citizens and residents of Simpson County, Kentucky that the County of Simpson adopt this Ordinance.

NOW, THEREFORE, be it ordained by the Fiscal Court of Simpson County, Kentucky, as follows:

1. The Fiscal Court of Simpson County, Kentucky hereby approves the terms and conditions of the Interlocal Agreement Regarding Planning and Zoning by and between the Planning and Zoning Commission, County of Simpson, and the City of Franklin, Kentucky, a copy of which is attached hereto and incorporated herein by reference.
2. The County Judge Executive of Simpson County, Mason Barnes, is hereby authorized to execute any and all documents necessary and appropriate to effectuate the intent of this Ordinance and the Interlocal Agreement including, but not limited to the Interlocal Agreement.

If any section, subsection, sentence, clause, or phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

March 5, 2019                      FIRST READING

March 19, 2019                    SECOND READING

At a meeting held on March 19, 2019, on motion made by Magistrate Myron Thurman and seconded by Magistrate Scott Poston, the foregoing ordinance was adopted, after full discussion, by the following vote:

YES    MYRON THURMAN  
YES    SCOTT POSTON  
YES    NATHANIEL DOWNEY  
YES    MARTY CHANDLER  
YES    MASON BARNES, COUNTY JUDGE EXECUTIVE

SIMPSON COUNTY  
**MC8 PG799**

APPROVED BY:



MASON BARNES, COUNTY JUDGE EXECUTIVE  
SIMPSON COUNTY, KENTUCKY

ATTEST:



PAM ROHRS, FISCAL COURT CLERK  
SIMPSON COUNTY, KENTUCKY

DOCUMENT NO: 1191391  
RECORDED ON: 5/10/2019 3:24:00 PM  
COUNTY CLERK: JOLENE S THURMAN  
COUNTY: SIMPSON COUNTY  
BOOK: MC8 PAGE: 785 - 800 MISC  
Signed: MH

SIMPSON COUNTY  
MC8 PG800

**INTERLOCAL AGREEMENT  
REGARDING PLANNING AND ZONING**

THIS AGREEMENT, made and entered into on the dates indicated hereinbelow, as evidenced by the dates executed by the parties, by and between the City of Franklin, Kentucky, a municipality and home rule city validly existing under the constitution, statutes, and laws of the Commonwealth of Kentucky, acting by and through its duly authorized Mayor, hereinafter called "City;" and the County of Simpson, a County and political subdivision validly existing under the constitution, statutes, and laws of the Commonwealth of Kentucky, by and through the County Judge Executive, hereinafter called "County" and the Franklin-Simpson Planning & Zoning Commission, a planning commission duly authorized by and under the Kentucky Revised Statutes, by and through its Chairperson, hereinafter referred to as "P & Z."

**W I T N E S S E T H:**

WHEREAS, the governing bodies of the City and County and P & Z have the power, pursuant to the Kentucky Revised Statutes, Section 65.210 et seq. to enter into agreements in order to provide for the use of property on the basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and,

WHEREAS, the governing bodies of the City and County and P & Z have determined and hereby determine that it is in the best interests of the citizens and residents of Franklin and Simpson County that these entities enter into this Agreement for the joint financial contribution/operation of the Franklin-Simpson Planning & Zoning Commission to be operated under the terms and conditions set forth in this Agreement; and,

WHEREAS, the execution, delivery, and performance of this Agreement have been authorized, approved, and directed by the governing bodies of the City and County and P & Z by an ordinance or resolution finally passed and adopted by the governing bodies of the City and County.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

**ARTICLE I: PURPOSE FOR THIS AGREEMENT**

It is necessary for the efficient and consistent operation of the Franklin-Simpson Planning & Zoning Commission that the individual, specific, and special needs of each of the parties hereto be considered and that their unique and specialized services be used in a manner that best responds to the needs of the general public. It is also necessary that the cost of operation and maintenance of the Franklin-Simpson Planning & Zoning Commission (hereinafter referred to as "P & Z") be shared in a fair and equitable manner by the parties hereto.

In order to accomplish these purposes, it is the intent of this agreement to provide for the following:

1. All employees of the Franklin-Simpson Planning & Zoning Commission shall be County employees and shall receive county benefits, subject to the terms of this Agreement.
2. All fees and revenues generated by the Franklin-Simpson Planning & Zoning Commission shall go to the County of Simpson, with the Franklin-Simpson Planning & Zoning Commission having their expenses paid by the County from the fees generated.
3. There shall be established, as provided in this agreement, an "Employment Recommendation Committee," the duties, responsibilities and membership of which shall be as provided herein.
4. Contributions to the cost and expenses of the operation, maintenance, and other related costs and expenses of the P & Z shall be divided and paid by each of the parties hereto in the amounts and in the manner provided herein, and annual budgets with respect to the P & Z shall be prepared, approved and followed as provided in this Agreement.
5. Withdrawal from this agreement by a party hereto shall only be as provided in this Agreement.
6. The parties will continue to appoint the board members and approve zone changes in the manner in which these issues are currently being handled.
7. The City of Franklin shall have the right to approve changes in personnel with respect to the employees of Franklin-Simpson Planning & Zoning.

## **ARTICLE II: DEFINITIONS**

All words and phrases will have the meanings specified below unless the context clearly requires otherwise.

"Agreement" means this Interlocal Agreement Regarding Planning & Zoning and any amendments or supplements hereto entered into in accordance with the provisions hereof, including the exhibits attached hereto.

"City" means the City of Franklin, Kentucky, or any successor thereto acting by and through this Agreement.

"County" means the County of Simpson, Kentucky, or any successor thereto acting by and through this Agreement.

“Employees” shall mean hourly or salaried employees of the Franklin-Simpson Planning & Zoning Commission and independent contractors including, but not limited to the building and/or electrical inspector.

“ERRC” means the Employment Recommendation and Resolution Committee, the composition and duties of which are set forth more fully hereinbelow.

“Fiscal Year” means the period from and including July 1 through and including the next June 30.

“Personal property” means any item or items of tangible or intangible property used, held or managed for the benefit of and/or in the Franklin-Simpson Planning & Zoning Commission and includes, but is not limited to monetary or other funds, supplies, inventory and equipment.

“P & Z” or “Franklin-Simpson Planning & Zoning Commission” means the Franklin-Simpson Planning & Zoning Commission and/or the Board of Adjustments and/or the employees/contractors that conduct work or duties relating to Planning & Zoning, or any successor thereto acting by and through this Agreement.

“Term” means the term of this Agreement as determined pursuant to Article IV hereto.

### **ARTICLE III: REPRESENTATIONS, COVENANTS AND WARRANTIES**

Article 3.1. Representations, Covenants and Warranties of the County. The County represents, covenants and warrants for the benefit of the remaining parties hereto as follows:

(a) The County is a county and political subdivision, validly organized and existing in good standing under the laws of the Commonwealth of Kentucky, has full power and authority to enter into and perform its obligations under this Agreement, and has duly taken the necessary acts required prior to (including all required approvals) the execution and delivery of this Agreement. The County warrants this Agreement to be a valid, legal and binding obligation of the County, enforceable against it in accordance with its terms.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the County is now a party or by which the County is bound, or constitutes a default under any of the foregoing, or conflicts with or results in a violation of any provision of law or regulation applicable to the County or results in the creation or imposition of any lien or encumbrance whatsoever upon the property or assets of the County or City (except for any purchase money security interests); and no representation, covenant and warranty herein is false, misleading or erroneous in any material respect.

(c) To the best of County’s knowledge and belief, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body, pending or known to be threatened against or affecting the County nor to the best of the knowledge of the

County is there any basis therefrom, wherein an unfavorable decision, ruling, or finding would materially and adversely affect the transactions contemplated by this Agreement or which would adversely affect, in any way, the validity or enforceability of this Agreement or any material agreement or instrument to which the County is a party, used or contemplated for use in the consummation of the transactions contemplated hereby, or the authority or ability of the County to perform its obligations hereunder or thereunder.

(d) The terms and conditions set forth in this Agreement are in furtherance of the County's governmental purposes, serve a public purpose and are in the best interest of the County and at the time of the execution and delivery of the Agreement, the County intends to annually appropriate the operational expenses, maintenance expenses, utility expenses, insurance expenses and any and all required capital improvement expenses that County is otherwise required to make under the term of this Agreement.

Article 3.2. Representations, Covenants and Warranties of City. The City represents, covenant and warrants for the benefit of the remaining parties hereto as follows:

(a) The City is a municipality and home rule city, validly organized and existing in good standing under the laws of the Commonwealth of Kentucky, has full power and authority to enter into and to perform its obligations under this Agreement, and has duly taken the necessary acts required prior to (including all required approvals) the execution and delivery of this Agreement. The City warrants this Agreement to be a valid, legal and binding obligation of the City, enforceable against the City in accordance with its terms.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or conflicts with or results in a violation of any provision of law or regulation applicable to the City or results in the creation or imposition of any lien or encumbrance whatsoever upon the property or assets of the County or City (except for any purchase money security interests); and no representation, covenant and warranty herein is false, misleading or erroneous in any material respect.

(c) To the best of City's knowledge and belief, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body, pending or known to be threatened against or affecting the City nor to the best of the knowledge of the City is there any basis therefore, wherein an unfavorable decision, ruling, or finding would materially and adversely affect the transaction contemplated by this Agreement or which would adversely affect, in any way, the validity or enforceability of this Agreement or any material agreement or instrument to which the City is a party, used or contemplated for use in the consummation of the transactions contemplated hereby, or the authority or ability of the City to perform its obligations hereunder or thereunder.

(d) The terms and conditions set forth in this Agreement are in furtherance of the City's governmental purposes, serve a public purpose and are in the best interest of the City and at the

time of the execution and delivery of the Agreement, the City intends to annually appropriate the operational expenses, maintenance expenses, utility expenses, insurance expenses and any and all required capital improvement expenses that City is otherwise required to make under the term of the Agreement.

#### **ARTICLE IV: TERM**

Article 4.1 Duration of Agreement Term; Right to Terminate. The initial term of this Agreement shall be ten (10) years beginning April 1, 2019, and shall be automatically renewable for successive five (5) year terms unless terminated by any party hereto. The City or County shall have the right to terminate this Agreement by giving one hundred eighty (180) days' notice, in writing, to the other parties of its intent to terminate this Agreement. The notice shall be dated and shall state specifically the date upon which the Agreement shall terminate, so long as the termination date is at least one hundred eighty (180) days after delivery of the notice to terminate.

Termination of this Agreement will terminate all obligations of the party seeking to terminate this Agreement to pay any obligation under this Agreement, except the payment of any and all monies owed under this Agreement accrued to the date of termination of this Agreement, and will terminate the rights of the party seeking to terminate this Agreement to use, possess, participate in and/or occupy the Project under this Agreement except as provided herein.

#### **ARTICLE V: PERSONNEL AND BOARD MEMBERS AND APPROVALS**

Article 5.1. Employees of P & Z. All employees of the P & Z shall become County employees and shall be eligible for all benefits afforded all other County employees if approved by the City and County. Provided, however, that the electrical and building inspectors shall be paid by the County and may be independent contractors which may be eligible for benefits as if an employee of P & Z if approved by the City and County. Further, all employees of the P & Z shall adhere to all County policies and procedures relating to employment and shall be subject to the disciplinary measures contained within said policies and procedures to the extent violated by an employee of P & Z.

Article 5.2. Selection of Replacement Employees/Inspectors. In the event any employee or the building and/or electrical inspector(s) is/are replaced due to termination, retirement, resignation or, if for any other reason there is a vacancy in one or more of the positions, or if any employee or inspector is not performing his/her assigned tasks to the extent that termination of the employee/inspector is contemplated, the ERRC or the County (in conjunction with the City) shall make the ultimate decision to terminate an employee and/or interview qualified and appropriate candidates to fill the position(s); provided, however, that the City and County must both approve the person(s) recommended for termination or to hire for any and all positions. New positions for the P & Z may be created and a job description prepared by the ERRC, with any new employee hiring being subject to the approval of the Fiscal Court and City Commission.

Article 5.3. Selection/Appointment of P & Z / Board of Adjustment Members. Nothing in this Agreement or any ordinance adopting this Agreement shall be construed to change or alter, in any way, the number or composition of the current Boards nor shall this Agreement or any

ordinance adopting this Agreement change or alter the manner in which the City or County appoints their respective members to said Boards. Further, nothing in this Agreement or any ordinance adopting this Agreement shall change or alter, in any way, the manner in which the City or County approves or shall approve any matter decided or recommended by the P & Z or Board of Adjustments.

**ARTICLE VI: ESTABLISHMENT OF EMPLOYMENT RECOMMENDATION AND RESOLUTION COMMITTEE**

Article 6.1. Name. The parties hereto agree to the establishment of a committee entitled the "Employment Recommendation and Resolution Committee" (hereinafter "ERRC"), with said committee having the powers and duties as set forth herein.

Article 6.2. Composition of the ERRC. The ERRC shall have two (2) voting members as follows:

- (a) Voting Members:
  - 1. City Manager of the City of Franklin; and,
  - 2. County Judge Executive of the County of Simpson.

Article 6.3. Powers and Duties of the ERRC. The powers and duties of the ERRC shall be as follows:

- (a) Elect one member to act as Chairperson and one member as Secretary.
- (b) Create/approve job descriptions for employment positions at P & Z, review applications and make recommendations on creating new employment positions, make recommendations on hiring personnel for P & Z, subject to approval by the City Commission and Fiscal Court, make recommendations regarding pay and compensation plans to the Fiscal Court and City Commission (if necessary but this shall not include annual cost of living or "across the board" raises to all employees of the County), and review and evaluate personnel performance and receive and review complaints regarding the personnel at P & Z, and make recommendations for disciplinary/corrective actions and/or recommendations to take no action to the Simpson Fiscal Court and City Commission. All hiring and termination of employment of employees of the P & Z shall only occur after a majority vote of the Fiscal Court and City Commission.
- (c) Review revenue and expenditures of P & Z and make recommendations for budgetary and/or revenue enhancement for P & Z including recommendations for rate increases, subject to approval of the City Commission and Fiscal Court.
- (d) Review and recommend resolutions to or for any errors or omissions committed by P & Z staff or members of any P & Z related board.



Article 6.4. Meetings. The ERRC shall hold meetings on an as needed basis in accordance with the Open Meetings Act. Special meetings may be called in accordance with the Open Meetings Act.

**ARTICLE VII: FUNDING**

Article 7.1. Funding. All funds necessary for the operation of the P & Z shall be derived from the fees and revenues generated from the building and electrical inspectors' fees, fees for variances and zone changes, permits issued by the P & Z, and any and all future sources of revenue(s) approved by the Kentucky legislature and/or levied or funded by the Simpson Fiscal Court and City Commission (except each party hereto shall not be assessed any costs in addition to the amounts assessed by and through this Agreement without the prior approval of said party), and the parties' contribution as set forth in the allocation of costs section hereinbelow.

Article 7.2. Fee/Rate Increases. As of the date of this Agreement, the City and County each have fee/rate structure ordinances that have been duly adopted by each body politic setting the fees and/or rates for all aspects of P & Z including, but not limited to variances, zone changes and inspections. After the adoption/approval of this Agreement, the ERRC shall review and recommend changes to the budgets/finances of the P & Z including, but not limited to rate changes subject to the City and County approving and adopting fee/rate changes by motion, resolution or ordinance affecting P & Z; provided, however, that the City shall approve any rate/fee changes, by motion, resolution or ordinance, prior to the County's final adoption of any motion, resolution, or ordinance changing the rates/fees, subject to the provisions of Article VIII below.

**ARTICLE VIII: ALLOCATION OF COSTS AND BUDGETS**

Article 8.1. Costs Allocated to the Parties. Each of the parties hereto agree to pay said party's allocated share of costs which are as follows:

- (a) One-half of the difference of total fees and revenues generated from the operation of P & Z and the inspection programs minus the total of expenses incurred by or on behalf of P & Z and the inspection programs.

Article 8.2. Budgeting/Budget Approval. P & Z shall prepare, submit, and approve an annual budget to the City and County by or before February 15 of each year. The budget shall include, but not be limited to all projected revenues and expenses, as well as all capital expenditures for the next fiscal year. The City and the County shall both have the right to approve said budget, whether by motion or otherwise, and once approved, City and/or County agree to budget and fund such amounts as are necessary and appropriate to fund P & Z for each fiscal year. In the event that either City or County do not approve the budget of P & Z, all parties agree that a joint meeting shall be conducted by or before June 1 of the year that the budget is submitted in an effort to reach an agreement concerning the budget issues. All surpluses of revenues over expenses shall be carried over, in a separate account, to the next fiscal year, and shall be used solely for P & Z and/or inspection program expenses. If P & Z and/or the inspection program requires an amendment to the budget during any fiscal year in excess of \$5,000.00 for any one budget item or, if the aggregate of additional expenses exceed \$5,000.00, the City and County shall each have the

right to approve said budget amendment expense(s) prior to the P & Z incurring said additional expenditures.

**ARTICLE IX: DISBURSEMENT OF PROPERTY UPON TERMINATION OF AGREEMENT**

Article 9.1. Disbursement of Personal Property in the Event of Mutual Termination. In the event that all parties hereto agree to terminate this Agreement pursuant to the applicable provisions herein, the personal property shall remain with the P & Z unless the P & Z is no longer in existence, in which the personal property shall be divided between the parties by agreement.

**ARTICLE X: ASSIGNMENT**

Article 10.1. Assignment. This Agreement may not be assigned by any party without the prior written consent of the remaining parties hereto.

**ARTICLE XI: EVENTS OF DEFAULT AND REMEDIES**

Article 11.1. The parties hereto agree that costs and expenses shall be divided as set forth in Section VIII above. The parties further agree that the County shall bill the City monthly for the City's share of the costs associated with the operation of the P & Z. Any party failing to make payment as required by this Agreement shall be deemed to be in default and the remaining parties may seek any and all recourses available to them at law or in equity.

**ARTICLE XII: MISCELLANEOUS**

Article 12.1. Notices. All notices, certificates, requests or other communications hereunder will be sufficiently given and will be in writing and mailed (postage prepaid, and certified or registered with return receipt requested) or delivered (including delivery by courier services) as follows:

CITY: City of Franklin  
Attn: Mayor or City Manager  
117 West Cedar Street  
P. O. Box 2805  
Franklin, Kentucky 42135-2805

COUNTY: County of Simpson  
Attn: County Judge Executive  
100 Courthouse Square  
P. O. Box 242  
Franklin, Kentucky 42135-0242

PLANNING & ZONING: Franklin-Simpson Planning & Zoning  
Attn: Chairperson  
100 Courthouse Square  
P. O. Box 1025  
Franklin, Kentucky 42135-1025

Any of the foregoing may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent hereunder. All notices, certificates, requests and other communications pursuant to this Agreement will be effective when received (if given by mail) or when delivered (if given by delivery). Further, in the event of a change in personnel to any party/officer hereto, the presumption shall be that, unless the other parties are notified, in writing, the successor to that position shall be the authorized representative and shall be bound by this Agreement.

Article 12.2. Amendments, Changes and Modifications. Except as specifically provided in this Agreement, this Agreement may not be amended, changed, modified or altered, or any provision hereof waived, without the written consent of all parties hereto.

Articles 12.3. Severability. In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Article 12.4. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Article 12.5. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Article 12.6. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Agreement.

Article 12.7. Binding Effect. This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns (including, without limitation, security assigns), subject, however, to the limitations contained in this Agreement.

Article 12.8. Entire Agreement. This Agreement and all exhibits attached hereto shall constitute the entire agreement of the parties hereto and any prior agreement of the parties hereto relating to the Project, whether written or oral, is merged herein and shall be of no separate force and effect.

Article 12.9. Mutual Negotiation. This Agreement and the language contained herein have been arrived at by the mutual negotiation of the parties. Accordingly, no provision hereof shall be construed against one party in favor of another party merely by reason of draftsmanship.

Article 12.10. Waiver. No action or failure to act by one or more of the parties hereto shall constitute a waiver of a right or duty afforded it/him under the contract, nor shall such action or failure to act constitute approval or acquiescence of or in a breach hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their duly authorized representatives as of the day and year first above written.

CITY OF FRANKLIN, KENTUCKY

Larry Dixon Mayor  
Larry Dixon, Mayor  
Date Executed: March 11, 2019

ATTEST:

Cathy Dillard  
Cathy Dillard, City Clerk  
Date Executed: March 11, 2019

SIMPSON COUNTY, KENTUCKY

Mason Barnes  
Mason Barnes, County Judge Executive  
Date Executed: 3/20/19

ATTEST:

Pam Rohrs  
Pam Rohrs, Fiscal Court Clerk  
Date Executed: 3/20/2019

PLANNING & ZONING COMMISSION

Cathy Mann  
Chairperson  
Date Executed: 3/20/19

HAVE SEEN AND CONSENT TO FORM  
AND APPROVE FOR EXECUTION:

Andy Beshear  
Andy Beshear  
Office of Kentucky Attorney General  
Date Executed: 5/1/2019