

ARTICLE IX

SPECIFIC USE REGULATIONS

SECTION 9.0 SPECIFIC USE REGULATIONS

The purpose of this article is to provide regulations pertaining to specific development types. The development approval process within certain sections of this article is intended to provide an incentive to property owners and developers who are willing to develop in a particular form. Development in such cases is development “by-right” which entails only an administrative review carried out by NKAPC and/or the legislative body. Those wishing to submit plans for development review and approval under this Article must do so in accordance with the provisions of Article X (Zones) which specifies in which zones such developments may occur.

SECTION 9.1 PLANNED UNIT DEVELOPMENT (PUD) REGULATIONS

A. PURPOSE

1. To establish mixed use developments and to promote flexibility in design and permit planned diversification in the relationships between location of and types of uses and structures
2. To enhance subdivision value and reduce development costs through promoting the advantages of modern large scale site planning through the efficient use of land, facilitating a more economic arrangement of buildings, circulation systems, mixed land uses, and utilities.
3. To ensure the preservation of the existing landscape features and amenities, and to utilize such features in a harmonious fashion and as a nonstructural stormwater runoff and watershed protection measure.
4. To ensure the preservation of interconnected and contiguous green space as a habitat protection measure and a water quality protection measure.
5. To ensure a means whereby mixed land uses may be constructed in order to promote environmentally sensitive and efficient uses of land, including:
 - a. Clustering on less environmentally sensitive soils, which will reduce the amount of infrastructure, including paved surfaces and utility easements.
 - b. Reducing erosion and sedimentation by minimizing land disturbance and removal of vegetation.
6. To preserve unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes over twenty (20) percent, woodlands, and wildlife habitats.
7. To promote interconnected and contiguous green space throughout the community and with adjacent jurisdictions, and to promote convenient walking and/or biking paths to reduce reliance on automobiles.
8. To ensure interconnected street designs that reduce traffic speeds and reliance on main streets.

9. To promote community character and diversity through a mixture of uses, housing types, and lot sizes locating within close proximity to each other.
- B. AREA AND LOCATION REQUIREMENTS: PUDs shall only be permitted within Residential (R) zones and no PUD shall be permitted on less than five (5) acres of land. However, an area of less than five (5) acres may be developed as a PUD, provided it is adjacent to an area with an existing approved Stage II Development Plan and is currently developed as a PUD.

A Stage II Development Plan may be submitted for an area less than five (5) acres, provided it is consistent with any plan officially adopted by the legislative body for the area in question, and said Stage II Development Plan is in agreement with all other requirements of the PUD regulations.

C. APPLICATION AND PROCESSING:

1. Pre-application meeting - Prior to filing for development plan review, the developer, petitioner, applicant or property owner must attend a pre-application meeting with NKAPC staff to confer about the proposed PUD and be informed of the PUD regulations and to the application and review process.
2. No person may rely upon any comment concerning a proposed development plan, or any expression of any nature about the proposal made by any participant at the pre-application meeting as a representation or implication that the proposal will be ultimately approved or rejected in any form. This meeting is intended to review the development plan and identify any issues in applying the PUD regulations.
3. Stage II Development Plan - A Stage II Plan shall be prepared in accordance with the requirements of Section 14.5, and submitted to the planning commission's duly authorized representative, for its review and approval. The planning commission's duly authorized representative, shall take final action to approve, approve with conditions, or disapprove the Stage II Development Plan. This action letter shall be forwarded to the legislative body's administrative official, or his/her duly authorized representative.
4. The planning commission's duly authorized representative, shall review the submitted Stage II Development Plan with regard to its compliance with the required elements of Section 14.5, for Stage II plans, and other applicable elements of this ordinance, and other applicable regulations. Upon approval of the Stage II Development Plan by the planning commission's duly authorized representative, a copy of said plan shall be forwarded to the legislative body's zoning administrator, who shall grant permits only in accordance with the approved Stage II Development Plan and other regulations, as may be required by this ordinance.

- D. **REQUIRED COMMON OPEN SPACE AREA:** At least thirty (30) percent of the total area of a PUD development must be retained as common open space. The following may not be counted toward satisfying common open space requirements: required perimeter setbacks around the development, streets, parking areas, driveways, or development lots.
1. **Passive Open Space:** A minimum of fifty (50) percent of the required common open space area shall be passive open space. Such open space areas shall be used to protect natural resource areas on the site. Natural resource protection areas may be counted towards the required passive open space.
 2. **Active Open Space:** The remaining required common open space may be improved with active or semi-active recreational amenities available to, and usable by all residents of the development. Amenities may include, for example, swimming pools, play areas, ball fields, picnic tables and shelters, or fitness or walking/biking trails. Active uses may also include outdoor public squares.
 3. Prior to the recording of a plat or the issuance of a grading/zoning/building permit, whichever occurs first, the developer shall submit documentation that the required open space property will be accepted by the legislative body or other responsible entity as approved by the legislative body. An easement document pertaining to the use of the passive open space area shall be included on the plat and in each owner's deed.
- E. **PERMITTED USES:** Residential, commercial and public and civic uses are permitted within a PUD as listed below. A minimum of two (2) different types of residential housing units are required within a PUD. The density of dwelling units in a PUD shall be determined by the density (dwelling units per net acre) as calculated from the Residential (R) Zone the PUD is located within. Each PUD shall contain a commercial component, not to exceed twenty-five (25) percent of the total land area of the PUD. Commercial uses shall be grouped in complexes within a PUD.

Residential Use Group

1. Single, two, and multi-family residential dwelling units (attached or detached). The density shall be applied to the total project area exclusive of land devoted to commercial uses and streets (public or private).

Public and Civic Use Group

1. Cultural Exhibits and Libraries
2. Day Care
 - a. Type 1
 - b. Type 2
3. Recreation and Open Space
 - a. High-Intensity
 - b. Low-Intensity

4. Postal Services
5. Safety Services

Commercial Use Group

1. Animal Services
 - a. Sales and Grooming
 2. Entertainment
 - a. Small
 - b. Medium
 - c. Large
 - d. Bingo Hall
 3. Eating/Drinking Establishment
 - a. Restaurant, excluding drive-ins
 4. Financial Services
 6. Food and Beverage Sales, Retail
 7. Gasoline Stations
 8. Medical Service
 9. Office
 10. Personal Improvement Service
 11. Retail Sales and Service
- F. **ACCESSORY USES:** Accessory uses shall be as specified within the zone the PUD is being applied.
- G. **CONDITIONAL USES:** Conditional uses, including customary accessory structures and uses, shall be as specified within the zone the PUD is being applied, subject to the approval of the Board of Adjustment, as set forth in Article XIV of this ordinance
- H. **HEIGHT, YARD, AND SETBACK REGULATIONS:** Maximum building height shall be as specified within the zone the PUD is being applied. All other requirements shall be as approved in the plan.
- I. **NATURAL RESOURCE PROTECTION:** The submitted development plan shall be planned and applied in accordance with Article X of this ordinance.
- J. **TRAFFIC STUDY REGULATIONS:** Regulations regarding the completion of traffic studies within the limits of the proposed development shall be provided in accordance with Section 4.5 of this ordinance.
- K. **NEW STREET CONSTRUCTION:** PUD developments within R-1D, R-1E, R-1F, R-2, R-3 or R-4 Zones which can demonstrate the characteristics of a Traditional Neighborhood Development as defined in Article II may utilize the Traditional Neighborhood Development Street Cross Sections contained within the Kenton County Subdivision Regulations.

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- L. **OFF-STREET PARKING AND LOADING AND/OR UNLOADING:** Off-street parking and, when applicable, loading and/or unloading facilities, shall be provided in accordance with Articles XI of this ordinance.
- M. **FENCES, WALLS, AND SIGNS:** The location, height, and type of all fences, walls, and signs, shall be as approved in the plan.
- N. **SCREENING:** Screening shall be provided in accordance with Section 10.5 of this ordinance.
- O. **CRITERIA:** Evaluation of the proposed development plan shall be based upon the following criteria:
1. Agreement with the various elements of the Kenton County Comprehensive Plan and where applicable, any plan officially adopted by the legislative body for the area in question.
 2. Extent to which the proposed development plan is consistent with the purpose of the PUD Zone.
 3. Adequacy of the proposed site, considering such factors as the configuration of the site, and the extent to which the site is formed by logical boundaries (based on topography, natural features, streets, relationship to adjacent uses, etc.).
 4. Extent to which the proposed design, as indicated on the Stage II Development Plan, is compatible and coordinated with existing and/or proposed development contiguous to the site. Compatibility and coordination existing and/or proposed development shall be reviewed in terms of intensity of land use type in relation to the general character of the surrounding areas, including coordination of vehicular and pedestrian circulation; the scale (e.g., height and mass of structures) of the proposed development; location of open spaces and size of setbacks; provisions of screening areas or utilization of natural features; the transition of land use types based on the proposed design; and the impact of the proposed development on adjacent land uses, such as noise, visual impact, hours of operation, traffic circulation, etc.
 5. Extent to which the commercial components of a PUD relate to and serve the residential components of the PUD.
 6. Amount of traffic that would be generated by the proposed operation and the ability of the existing highway system to adequately handle said traffic. Where deficiencies exist, proposed traffic improvements that would correct such deficiencies may be considered.
 7. Extent to which non-traditional street designs (i.e. roundabouts, alleys, etc.) are used to provide for the efficient and safe movement of traffic within and adjacent to the site.
 8. Extent to which all necessary public utilities and facilities are available to service the development including police and fire protection, water and sewer services, and other services normally provided within the area. Where deficiencies exist, improvements that would correct such deficiencies may be considered.

P. **AMENDMENTS:** Any amendments to plans shall be made in accordance with the procedure required by Subsection C., subject to the same limitations and requirements as those under which such plans were originally approved.

Q. **UTILITIES:** All utilities in a PUD shall be underground.

SECTION 9.2 RETIREMENT COMMUNITY DEVELOPMENT REGULATIONS

A. **PURPOSE:** The purpose of retirement community development regulations are:

1. To provide appropriate housing alternatives for active adults age fifty-five (55) years and older and elderly persons living independently.
2. To provide an opportunity for people age fifty-five (55) years of age and older to live in a residential neighborhood designed specifically for their needs, equipped with the appropriate amenities and located within reasonable proximity to public transportation services.
3. To permit flexibility in the design, location and siting of buildings in order to provide for, to the greatest extent possible, the preservation of the existing landscape features and amenities, and also provide for accessible and suitably located open space and recreation amenities, and other public and common facilities than would otherwise be provided under conventional residential land development procedures.

B. **DISTRICT LOCATIONS:** Retirement communities shall only be permitted within Residential (R) zones in accordance with the permitted uses listed in Article V, provided that all conditions or provisions of this section of the ordinance, the applicable requirements of the subdivision regulations, and any additional requirements, as may be determined necessary to provide for the most efficient layout of the retirement community and its proper integration with the surrounding development, are met. Retirement communities may be established on any parcel, or combination of parcels that meet the following additional requirements:

1. A conceptual circulation plan shall be required, including the layout of the entire area of the retirement community, taking into consideration internal and external pedestrian connectivity, vehicular access and the functional relationship of uses within the retirement community.
2. Proximity of the retirement community to within no more than ¼ mile from public transportation services.

C. **APPLICATION AND PROCESSING:** Stage II Development Plan - A Stage II Plan shall be prepared in accordance with the requirements of Section 14.5, and submitted to the planning commission for its review and approval. The planning commission shall take final action to approve, approve with conditions, or disapprove the Stage II

Development Plan. This action letter shall be forwarded to the city's administrative official, or his/her duly authorized representative.

- a. The planning commission shall review the submitted Stage II Development Plan with regard to its compliance with the required elements of Section 14.5, for Stage II plans, and other applicable elements of this ordinance, and other applicable regulations. Upon planning commission approval of the Stage II Development Plan, a copy of said plan shall be forwarded to the city's zoning administrator, who shall grant permits only in accordance with the approved Stage II development plan and other regulations, as may be required by this ordinance.
- D. **PERMITTED USES:** As defined and regulated herein, retirement communities may include the following uses and facilities:
1. All types of residential housing units (attached or detached) may be permitted including but not limited to, single-family, two-family, and multi-family residential units but only in accordance with the density requirements of the applicable zoning district.
 2. Common areas for use principally by residents and their guests. Such areas may include, dining facilities (with ancillary kitchen facilities), social rooms, chapels, overnight guest accommodations, and indoor and outdoor recreational facilities.
 3. Personal services and limited retail facilities principally intended for the use of residents and their guests, including craft and hobby shops, gift shops, hair stylists and similar activities.
 4. Administrative offices for the management of the senior housing community and ancillary services.
 5. Public and semi-public structures and uses may be permitted within a retirement community upon the approval of the legislative body. These uses shall be delineated on any development plan and shall be limited to one or more of the following uses:
 - a. Churches
 - b. Community centers
 - c. Country clubs
 - d. Fire or police stations
 - e. Libraries
 - f. Parks and open spaces
- E. **AREA REQUIREMENTS:** No retirement community shall be permitted on less than ten (10) acres of land.

- F. **COMMON OPEN SPACE/RECREATION AREA:** At least twenty percent (20%) of the total acreage of the proposed retirement community development shall be retained as common open space/recreation area, and dedicated to a public and/or private entity for operation and maintenance. Such open space/recreation areas shall be physically situated so as to be readily accessible, available to, and usable by all residents of the retirement community. Common open space/recreation areas shall be that part of the total project exclusive of dwellings, streets, parking areas, and other non-open space and indoor recreational facilities.
- G. **EVALUATION CRITERIA:** In considering applications submitted under this section, the planning commission shall take into consideration the public, health, safety and general welfare and the comfort and convenience of the public in general and the residents of the adjoining areas in particular and shall make any appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance and particularly in regard to achieving:
1. Maximum safety of traffic ingress and egress, minimum impact on the capacity of existing roads and sufficient parking areas to provide for adequate off-street parking.
 2. A site layout which would not have an adverse effect upon any properties in adjoining residential zones by impairing the established character or the potential use of properties in such zones.
 3. The reasonable screening of all parking lots, service areas, and multi-family housing developments from the view of adjacent residential properties and streets.
 4. Conformance of the proposed plan with the Goals and Objectives and Development Concepts as contained within the adopted Comprehensive Plan.
 5. Conformance of the building and all related signs and structures to the properties of the aesthetic character of the area, as determined by consideration of architecture, building size and type, scale of lot coverage, and consistency of uses in the immediate area.
- H. **PARKING REQUIREMENTS:** The parking ratios for retirement communities shall be as follows:
- | | |
|----------------------------------|--|
| Single and two-family dwellings: | Two (2) spaces per unit |
| Multi-family dwellings: | One (1) space per one (1) bedroom unit plus one (1) space per five (5) units for visitor parking, or one and one half (1.5) spaces for each two (2) or more bedrooms plus 1 space for each five (5) units for visitor parking. |
| Offices/Service facilities: | One (1) space per 200 square feet of gross floor area |

Common areas: One (1) space per four (4) seats in the main assembly area, plus one (1) space for each two (2) employees.

- I. **RESTRICTIONS:** Retirement communities designed for exclusive occupancy by senior citizens, as a minimum, must meet federal regulations for such facilities. In addition, the tenure of residential units within a retirement community shall be at the discretion of the managing entity. All facilities within a single retirement community, including all residential units, shall be under the management of a single entity.

SECTION 9.3: DEVELOPMENT REGULATIONS FOR CONSERVATION SUBDIVISIONS

A. PURPOSE

1. To enhance subdivision value and reduce development costs through conservation and cluster designs.
2. To promote and preserve interconnected green space as a nonstructural stormwater runoff and watershed protection measure, and a means to promote convenient walking and/or biking paths to reduce reliance on automobiles.
3. To preserve interconnected and contiguous green space as habitat and water quality protection measures.
4. To promote environmentally-sensitive and efficient uses of land by clustering houses on less environmentally-sensitive soils, reducing the need for infrastructure such as paved surfaces and utility easements, and reducing erosion and sedimentation by minimizing land disturbance and removal of vegetation.
5. To preserve unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, slopes, woodlands, and wildlife habitats.
6. To ensure interaction within the community by orienting houses closer to the street and providing public gathering spaces, parks, and community facilities.
7. To ensure interconnected street designs that reduce traffic speeds and reliance on more highly-classified streets.
8. To promote community character and diversity through a mixture of housing types and lot sizes.

- B. **AREA AND LOCATION REQUIREMENTS:** Conservation subdivisions shall only be permitted on five (5) acres of land or more. An area of less than five (5) acres may be developed as a conservation subdivision, provided it is adjacent to an area with an

existing approved Stage II Development Plan and is currently developed as a conservation subdivision.

C. HOUSING DENSITY DETERMINATION

The number of lots to be permitted within a conservation subdivision shall be determined through the development of a yield plan. Yield plans illustrate the maximum number of lots that can be created in a conventional subdivision based on the existing zone. Yield plans do not have to meet formal design plan requirements but must be capable of being constructed given site features and all applicable regulations.

D. APPLICATION AND PROCESSING

1. Pre-application meeting - Prior to filing for development plan review, the developer, petitioner, applicant or property owner must attend a pre-application meeting with NKAPC staff to discuss the yield plan, the development review process, the traffic study, be informed of the Conservation Subdivision regulations and to confer about the application.
2. No person may rely upon any comment concerning a proposed development plan, or any expression of any nature about the proposal made by any participant at the pre-application meeting as a representation or implication that the proposal will be ultimately approved or rejected in any form. This meeting is intended to review the development plan and identify any issues in applying the regulations of the Conservation Subdivision regulations.
3. Stage II Development Plan - A Stage II Plan shall be prepared in accordance with the requirements of Section 14.5, and submitted to the planning commission's duly authorized representative, for its review and approval. The planning commission's duly authorized representative, shall take final action to approve, approve with conditions, or disapprove the Stage II Development Plan. This action letter shall be forwarded to the legislative body's administrative official, or his/her duly authorized representative.
4. The planning commission's duly authorized representative, shall review the submitted Stage II Development Plan with regard to its compliance with the required elements of Section 14.5, for Stage II plans, and other applicable elements of this ordinance, and other applicable regulations. Upon approval of the Stage II Development Plan by the planning commission's duly authorized representative, a copy of said plan shall be forwarded to the legislative body's zoning administrator, who shall grant permits only in accordance with the approved Stage II Development Plan and other regulations, as may be required by this ordinance.

- E. RESIDENTIAL USES AND DENSITIES: The base density of dwelling units in a conservation subdivision shall be determined from the yield plan.

1. Density Bonus: A density bonus shall be granted if any of the following criteria are met, collectively up to a maximum of a 30 percent density bonus:
 - a. Density Bonus for Open Space - a density bonus shall be permitted for providing:
 - (1) An additional five percent (5%) open space - an additional two percent (2%) in dwelling units per net acre;
 - (2) An additional ten percent (10%) open space - an additional five percent (5%) in dwelling units per net acre;
 - (3) An additional 15 percent (15%) open space - an additional ten percent (10%) in dwelling units per net acre; and
 - (4) An additional 20 percent or more (20%>) open space - an additional 20 percent (20%) in dwelling units per net acre.
 - b. Density bonus for affordable housing - A density bonus may be permitted if an RCD development contains:
 - (1). A minimum of ten (10) percent affordable housing - Additional (10) percent dwelling units per net acre.
 - (2). Above ten (10) percent affordable housing - Same as above, plus an additional one (1) percent dwelling units per net acre for every percent above the minimum ten (10) percent affordable housing provided, up to a maximum of fifteen (15) percent.
 - (3). Affordable housing shall be evenly distributed (no more than two such dwelling units adjacent to, on top or below, or across the street/hall from each other) through the entire project area, so as to avoid concentrated areas of affordable housing and have a similar exterior to market-rate housing in the development.
 - (4). An Affordable Housing Development Agreement shall be made between an applicant for a development and the city/county containing specific requirements to ensure the continuing affordability of housing included in the development.
 - (5). Affordable housing means - A sales price that is within the means of a moderate-income household.

In the case of dwelling units for sale, housing that is affordable is housing for which the mortgage, taxes, insurance, and fees are no more than thirty (30) percent of the adjusted income for a household whose gross annual income is at or below one hundred (100) percent of the area median income, adjusted for the household size.
 - c. Density Bonus For Increased Setbacks Along Street Frontage - an increase of five percent (5%) in dwelling units per net acre shall be permitted if the

setback along a collector, arterial, or interstate, as identified in the Area-wide Comprehensive Plan, is increased to a minimum of 100 feet.

Additional open space provided may count towards additional open space/recreational area, but not areas contained within the original required perimeter setbacks around the development.

- d. Density Bonus For Public Access To Common Open Space - an additional five percent (5%) in dwelling units per net acre shall be permitted if access to the required common open space areas is granted to the general public.
- e. Density Bonus For Preserving/Reusing Historic Structures Or Buildings - an additional five percent (5%) in dwelling units per net acre shall be permitted for preserving/reusing historic structures or buildings.

Examples of Density Bonuses within the R-1C Zone:

Total acres	Mandatory open space	# of lots	Additional Open Space	Density bonus	Additional lots	Total lots
100	30	348	-	-	-	348
100	30	348	10	5%	17	365
100	30	348	20	20%	70	418
100	30	348	-	Affordable Housing (10%)	35	383

E. **REQUIRED COMMON OPEN SPACE AREA:** At least 30 percent (30%) of the total area of a conservation subdivision shall be retained as common open space. Natural resource protection areas may be counted towards the common open space requirement. Required perimeter setbacks around the development shall only count towards 60% of the common open space requirement and they shall be active open space uses.

Passive Open Space: a minimum of 50 percent (50%) of the required common open space area shall be passive open space. Such open space areas shall be used to protect natural resource areas on the site. Riparian and viewshed protection areas may be counted towards the required passive open space.

Active Open Space: the remaining required common open space may be improved with active or semi-active recreational amenities available to, and usable by all residents of the development. Amenities may include swimming pools, play areas, ball fields, picnic tables and shelters, or fitness or walking/biking trails. They may also include small public squares or outdoor rooms.

Prior to recording the plat or issuing a grading/zoning/building permit, whichever occurs first, the developer shall submit documentation that the required open space will be accepted by the legislative body or other responsible entity for operation and management. An easement document pertaining to the use of the passive open space area shall be included on the plat and in each owner's deed.

- G. ACCESSORY USES: Accessory uses shall be as specified within the existing zone.
- H. CONDITIONAL USES: Conditional uses, including customary accessory structures and uses, shall be as specified within the existing zone and subject to the approval of the Board of Adjustment, as set forth in Article XIX of this ordinance.
- I. HEIGHT, YARD AND SETBACK REGULATIONS:
1. Minimum Building Site Width - 100 feet
 2. Minimum site perimeter setback - 50 feet.
 3. Maximum building height shall be as specified in the existing zone.
- All other requirements shall be as approved in the plan.
- J. NATURAL RESOURCE PROTECTION: The submitted development plan shall be planned and applied in accordance with Article X of this ordinance.
- K. TRAFFIC STUDY REGULATIONS: Regulations regarding the completion of traffic studies within the limits of the proposed development shall be provided in accordance with Section 4.5 of this ordinance.
- K. FENCES, WALLS, AND SIGNS: The location, height, and type of all fences, walls, and signs, shall be as approved in the plan.
- N. CRITERIA: Evaluation of the proposed development plan shall be based upon the following criteria:
1. Extent to which the proposed development complies with the various elements of the Comprehensive Plan and where applicable any plan officially adopted by the legislative body.
 2. Extent to which the proposed development plan is consistent with the purpose of these conservation subdivision regulations.
 3. Extent to which the proposed site is adequate considering such factors as its configuration and the extent to which it is formed by boundaries based on topography, natural features, streets, and relationship to adjacent uses.
 4. Extent to which the proposed development is coordinated with existing and/or proposed contiguous development in terms of intensity, coordination of vehicular and pedestrian circulation, scale, open space and setbacks, screening or utilizing natural features, and impact on adjacent land uses.

5. Extent to which non-traditional street designs (i.e. roundabouts, alleys, etc.) are used to provide for the efficient and safe movement of traffic.
 6. Extent to which necessary public utilities and facilities are available to serve the development. Where deficiencies exist, the extent to which improvements shall be considered.
- O. AMENDMENTS: Amendments to plans shall be made in accordance with the procedure required by Subsection D.
- N. UTILITIES: All utilities in a conservation subdivision shall be underground.

SECTION 9.4 REGULATIONS OF SEXUALLY ORIENTED BUSINESSES – ALTERNATIVE (1) ONE

- A. The Fiscal Court of Kenton County, after consultation among the mayors, councils, commissioners and staffs of the municipalities and the county within the County, found that a substantial need exists to revise significantly the ordinances regarding sexually oriented businesses within Kenton County.
- B. The Fiscal Court, in association with the Northern Kentucky Area Planning Commission and the Fiscal Court of adjacent Campbell County its cities in the Northern Kentucky Community, retained Duncan Associates to conduct a study of existing sexually oriented uses and related businesses in Kenton and Campbell Counties, which is part of a single, larger community.
- C. Duncan Associates assigned two nationally-known planners, Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP, to conduct that study
- D. Kelly and Cooper have completed that study, including the following elements:
1. Field study, involving visits to all identified existing sexually oriented businesses in Kenton and Campbell Counties;
 2. Meetings with stakeholder groups involved in these businesses;
 3. Consultation with the Kenton County, Campbell County Attorney, and the city attorneys for certain cities, and the community at large on this issue;
 4. Consultation with the professional staff of the Northern Kentucky Area Planning Commission on this issue;
 5. Review of studies and litigation concerning sexually oriented businesses in other communities;
 6. Investigation of regulatory approaches to massage therapy;
 7. Review of existing ordinances in Kenton and Campbell Counties;
 8. Review of similar ordinances in a number of communities outside the Commonwealth of Kentucky;
 9. Review of Kentucky statutes related to regulating sexually oriented businesses.

- E. Duncan Associates has summarized this work and presented recommendations to the Northern Kentucky Area Planning Commission and Kenton and Campbell Counties and their cities in an August 2003 report entitled "Site Visit Analysis: Sexually Oriented and Related Businesses in Kenton and Campbell Counties" (hereinafter called simply the "Kelly and Cooper Study").
- F. That study has also been made available to the legislative bodies of Kenton and Campbell Counties for their consideration and use.
- G. That study has been accepted and used by the Fiscal Court of Kenton County in adopting the countywide licensing ordinance, Kenton County Ordinance No. 451.9, as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus in 2004.
- H. The United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that local governments may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses;
- I. The United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities.
- J. The study by Kelly and Cooper found extensive physical interaction between patrons and dancers at many of the establishments in both Kenton and Campbell Counties.
- K. Covington, the only municipality in Kenton County that has had sexually oriented businesses within its border, from January 1, 2002, to February 11, 2004, the police made a total of 469 calls to sexually oriented businesses in the city. The crimes committed at these establishments during this time period included robbery, assault, fraud, malicious mischief, public intoxication, and possession of illegal drugs. In addition, on June 13, 2003, Covington police arrested three individuals for prostitution-related charges at Liberty's Show Lounge, a sexually oriented cabaret in the city.
- L. As the Sixth Circuit Court of Appeals noted in a decision addressing issues related to the Adult Entertainment ordinance in the City of Newport (Campbell County), there is a long history underlying efforts to regulate sex businesses in Northern Kentucky:

Defendant City of Newport ("City" or "Newport") long ago gained a reputation as home to a veritable smorgasbord of vice, attracting patrons from across the nation. For decades, the small city was considered the Midwest's answer to Las Vegas, and leaders of organized crime were said to operate its gambling casinos and nightclubs.

In the 1960's, public pressure began to demand that Newport be cleaned up. This pressure has continued until the present, with varying degrees of success.

A 1986 report generated by the Newport Alcoholic Beverage Control Administrator indicated that of 28 adult bars opened since 1978 (including successive bars at the same site), 21 had had at least one prostitution-related conviction, and 18 had had multiple convictions. Def. Ex. K, p. 2. The report explained that "all of the prostitution in businesses with adult entertainment involved an alcoholic beverage as the median [sic] of exchange and the solicitation of such drinks by 'mixers.'" Id. In all, 98% of prostitution arrests in Newport occurred in the vicinity of these bars. Id. Adult entertainment establishments, which constituted 12% of all businesses serving alcohol, accounted for 17% of all police runs. Def. Ex. K, p. 21.

A later review, conducted in 1990 by the Newport License Inspector, documented the continued prostitution arrests occurring at several adult dancing establishments. Def. Ex. G. Moreover, the City determined that over \$ 70,000 was expended in 1990 to target, patrol and prosecute the illicit behavior occurring in and around the bars. Def. Ex. H.

Several of Newport's citizens, merchants and church groups also opposed the presence of the semi-nude dancing clubs. These groups generally believed that the adult entertainment clubs were "clouds over [the] neighborhood that keep [it] from growing in the [right] direction." See Def. Ex. I (letter to Mayor from Taylors Landing Business District). Complaints commonly expressed were that the seamy establishments deterred other merchants from locating in Newport's business district, deterred shoppers, served a poor example for the City's youth, and generally tarnished the City's image. Id.

Bright Lights, Inc., v. City of Newport, 830 F. Supp. 378, 380-81 (E. D. Ky. 1993).

Based on those findings, the court went on to hold in relevant part:

Having considered the matter carefully, the court concludes that some leeway must be afforded the reform efforts of the City Council of Newport. This body has been elected by the citizens to attempt to "clean up the image" of the City.

To do this, it must overcome the sleazy impression of Newport and Northern Kentucky that survives from "the heyday" when things ran wide open; reform candidates were literally drugged and framed for morals offenses by public officials and police officers; the members of reform citizens groups were vilified and harassed; and a "liberal" in local parlance was a person favoring the continued open and notorious violation of the gambling and morals laws.

To illustrate that the Council's perception of a need to clean up the image of the City is not paranoid, the court notes the following statements in a national magazine's satirical Chapter on Newport's big sister, the city of Cincinnati.

"The city's streets fairly shine; the odd litterer draws a scornful stare. Wide avenues, bosky side streets, the most inviting of thoroughfares. And clean. So clean. No X-rated movie theaters, no adult-book stores, no bare-breasted night joints soil these streets, all of them long ago jettisoned over to the Kentucky side of the river."

Peter Richmond, "Town Without Pity," *Gentlemen's Quarterly*, July 1993, at 102, 104.

This court holds that the City of Newport has the right to secede as Cincinnati's combat zone.

The court holds that the City has "an important and substantial governmental interest" in advancing these reform goals, which interest is furthered by the ordinances in question. Barnes, 111 S. Ct. at 2461. The court further finds and holds that in the case of the City of Newport, given its unique history, the ordinances' "incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.* (quoting O'Brien, 391 U.S. at 376-77, 88 S. Ct. at 1678-79).

Newport's image affects that of all of Northern Kentucky, a community of nearly 300,000 people. That City and its community have the right to project a progressive and decent image. The nudity ordinances contribute to the enhancement of this interest and will be upheld. 830 F.Supp. at 384;

- M. The Supreme Court had earlier noted in upholding another regulation in Newport, "it is plain that, as in *Bellanca*, the interest in maintaining order outweighs the interest in free expression by dancing nude." *Newport v. Iacobucci*, 479 U.S. 92, 97, 93 L. Ed. 2d 334, 340, 107 S. Ct. 383, 386 (1986). Although the significance of the opinion itself is now questionable (see *J&B Social Club # 1 v. City of Mobile*, 966 F. Supp. 1131, 1135 (S.D. Ala. 1996)), the quoted part of the opinion stands unchallenged.
- N. The cities of Covington and Newport continue their efforts to improve their image. Since 1985, Covington has redeveloped its riverfront, creating several new office towers, high-end condominiums, hotels, and a convention center. In Newport, in conjunction with private development and Southbank Partners, Inc., the City has built a major entertainment center along the river. This initiative has promoted improved pedestrian and transit connections in Northern Kentucky's river cities to and from the stadiums and other attractions along the Cincinnati riverfront.
- O. Despite these efforts, the areas of downtown Covington and Newport away from the riverfront continue to suffer in many ways. The study by Kelly and Cooper found in the area near to existing sexually oriented uses a number of building vacancies and building maintenance falling far short of that found in the revitalized areas near the river.
- P. The (*insert legislative body name*) respects the Constitutional rights of its citizens, including the right to present certain types of entertainment that may not appeal to the entire population. Through this ordinance, it is the desire of the (*insert legislative body name*) to balance the Constitutional rights of businesses that present sexually oriented

entertainment with the (*insert legislative body name*) interests in ensuring that this community not suffer from the same sorts of adverse effects that Covington and Newport have long suffered.

- Q. From long experience in Covington and Newport, as well as from the following studies and others not listed, the (*insert legislative body name*) also finds that such businesses may have primary and secondary effects involving crimes related to the activities in the establishments, of which prostitution and crimes of violence are those of greatest concern. See for example:
1. “Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard,” Richard W. McCleary, Ph.D., James W. Meeker, J.D., Ph.D., October 23, 1991.
 2. “Survey of Appraisers: Fort Worth and Dallas – Effects of Land Uses on Surrounding Property Values,” Duncan Associates, Eric Damian Kelly, FAICP, and Connie B. Cooper, FAICP, September 2004.
 3. “Adult Entertainment Businesses in Indianapolis, An Analysis,” 1984.
 4. “Adult Business Study,” by City of Phoenix Planning Department, May 25, 1979.
 5. “Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul,” June 1978, City of Saint Paul Division of Planning, Department of Planning and Management; and Community Crime Prevention Project, Minnesota Crime Control Planning Board.
 6. “Staff Report, Whittier City Planning Commission; Subject: Adult Business Regulations,” July 11, 1994.
 7. “Adult Entertainment Study,” Department of City Planning, City of New York, Second Printing, November 1994.
 8. “Adult Use Study,” Newport News Department of Planning and Development, March 1996.
 9. “A Report on the Secondary Impact of Adult Use Businesses in the City of Denver,” prepared by multiple city departments for Denver City Council, January 1998.
 10. “Survey of Appraisers in Monroe County, New York,” Summer 2000. For detailed results of the survey, see Kelly and Cooper, Everything You Always Wanted to Know about Regulating Sex Businesses, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.
 11. The Tucson “study” consisting of two memos: one from the Citizens Advisory Planning Committee, addressed to the Mayor and City Council, and dated May 14, 1990; and the other from an Assistant Chief of Police to the City Prosecutor, regarding “Adult Entertainment Ordinance,” dated May 1, 1990.
- R. The (*insert legislative body name*) recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the (*insert legislative body name*) finds, nevertheless, that addressing the establishments that have live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, for three reasons:

1. Bars in Kentucky are already regulated by the Commonwealth, and those state regulations directly address many of the concerns that arise with the service of alcohol;
 2. The local history of prostitution and sex-related crimes has largely been related to businesses with live, sexually oriented entertainment, and not with other establishments that serve alcohol; and
 3. The interaction between dancers who are paid to work with very limited clothing and the customers who pay to see them work in the establishments with live entertainment creates a sexually charged environment and the opportunity to negotiate for the provision of additional services that do not involve dancing or other protected expression and that are simply unacceptable under the standards of the County and its citizens.
- S. As noted earlier in these findings, there is a long local history of prostitution and sex-related crimes at or incident to the operation of establishments with live, sexually oriented entertainment. Further, the studies shown herein provide further evidence of the potential crime-related secondary effects from such businesses. Although the methodologies and quality of these studies vary somewhat, local experience has demonstrated to the (*insert legislative body name*) that the relationship between crime and such establishments is a fact in Northern Kentucky and not just a theory published in a study.
- T. The (*insert legislative body name*) has reviewed evidence and testimony presented at public meetings before the County, and information based on the past experiences of the Kenton and Campbell Counties and the cities of Covington and Newport, the experiences of the County Attorneys' offices prosecuting numerous and varied offenses that have occurred in and around the sexually oriented entertainment establishments, and based upon the documented experiences of other governmental units within Kentucky and elsewhere in dealing with the impact of sexually oriented entertainment, that such businesses can, if not properly regulated, be deleterious to said community.
- U. The (*insert legislative body name*) finds that the countywide licensing ordinance related to sexually oriented businesses and service oriented escort bureaus adopted by the Fiscal Court of Kenton County is an effective tool for addressing the many operational issues that can arise with such businesses.
- V. The (*insert legislative body name*) finds that amendments to the (*city's/county's*) Zoning Ordinance regarding the location and design of such businesses are important variables in the nature and extent of adverse secondary effects of sexually oriented businesses on the community, and further finds that location and design are among the types of issues that are typically addressed through zoning.
- W. Based on the recommendations of Kelly and Cooper, which are based on their experience in other communities and their review of the studies cited above and other local efforts to address such secondary effects, the (*insert legislative body name*) finds that the following principles are essential to effective zoning controls of sexually oriented businesses:

1. Sexually oriented businesses should, to the maximum extent practicable, be separated from one another by a distance that is greater than a convenient walking distance, because experience elsewhere has shown that the location of such businesses near one another may increase the adverse secondary effects, particularly those related to crime, by a greater than arithmetic factor;
 2. Although there are currently several such businesses located near one another in Covington's downtown area, the Covington City Commission has determined that the City will not attempt to require these existing businesses be relocated;
 3. Sexually oriented businesses have the greatest adverse effect on residential neighbourhoods and should thus be separated to the maximum extent practicable from residential neighbourhoods;
 4. Sexually oriented businesses are likely to attract criminal elements that prey on "soft targets," including children, and it is thus important to separate sexually oriented businesses from schools, parks, recreation centers, and religious institutions, all of which are places where children are likely to congregate, often without parental protection;
 5. Also because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people and others who are vulnerable, are likely to walk in going about their day-to-day business. Thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented business;
 6. Experiences in other communities show that private booths, back rooms, "VIP" rooms and other small and private spaces in sexually oriented businesses create the opportunity for casual sexual activity and create logistical difficulties and risks of physical endangerment for police officers responsible for dealing with such activities. For that reason, it is essential that movies, performances and other activities at sexually oriented businesses should be permitted only in large rooms that are open and visible to management, other patrons and code and police officers who may visit the establishment during operating hours.
- X. FINDINGS: The facts and other matters set forth in the previous clauses that form the preamble to this ordinance are hereby adopted as findings of fact in support of the legislative action of the (*insert legislative body name*) in adopting this amendment to the Zoning Ordinance. Upon adoption of this zoning amendment, these shall be incorporated into the Zoning Code by reference as if fully set forth therein to the adopting Resolution.
- Y. DEFINITIONS:
1. CABARET OR THEATER, SEXUALLY ORIENTED – a building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to

sexual stimulation or gratification or by references to “adult entertainment,” “strippers,” “showgirls,” “exotic dancers,” “gentleman’s club,” “XXX” or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.

2. CUSTOMER – any person who:
 - a. Is allowed to enter a business in return for the payment of an admission fee or any other form of consideration or gratuity; or
 - b. Enters a business and purchases, rents, or otherwise partakes of any material, merchandise, goods, entertainment, or other services offered therein; or
 - c. Enters a business other than as an employee, vendor, service person, or delivery person.
3. DAY CARE CENTER – a licensed facility providing care, protection and supervision for children 12 years old or younger or for any individual who is deemed mentally challenged.
4. DISPLAY PUBLICLY – the act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others or from any portion of the premises where items and material other than sexually oriented media are offered for sale or rent to the public.
5. ENCOUNTER CENTER, SEXUALLY ORIENTED – a business or enterprise that, as one of its principal purposes, offers: physical contact between two or more persons when one or more of the persons is in a state of nudity or semi-nudity.
6. ENTERTAINER, SEXUALLY ORIENTED – any person paid as an employee, contractor, subcontractor, or agent of the operator of a cabaret who frequently appears in a state of semi-nudity at any establishment regulated by this chapter.
7. ENTERTAINMENT, SEXUALLY ORIENTED – any of the following activities, when performed by a sexually oriented entertainer at a sexually oriented business that is required to be licensed: dancing, singing, talking, modeling (including lingerie or photographic), gymnastics, acting, other forms of performing, or individual conversations with customers for which some type of remuneration is received.
8. ESCORT – a person who is held out to the public to be available for hire for monetary consideration in the form of a fee, commission, or salary, and who for said consideration consorts with or accompanies or offers to consort with or accompany, another or others to or about social affairs, entertainments, or places

of amusement or within any place of public resort or within any private quarters, and shall include a “service oriented escort;” for purposes of this ordinance, the term “escort” shall not include any person who would be understood by a reasonably prudent person as providing “babysitting” services or working as an assisted living companion to the elderly, infirm, disabled, or handicapped, and shall further not include licensed health professionals.

9. ESCORT, SERVICE ORIENTED – an escort that:
 - a. operates from an open office;
 - b. does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and
 - c. does not offer to provide sexual conduct.

10. ESCORT BUREAU, SERVICE ORIENTED – an escort bureau that
 - a. maintains an open office at an established place of business;
 - b. otherwise operates in full accordance with the countywide licensing ordinance, Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus, as such ordinance may be amended from time to time.

11. ESCORT, SEXUALLY ORIENTED – an escort who:
 - a. works for (either as an agent, employee, or independent contractor), or is referred to a patron by a sexually oriented escort bureau; or,
 - b. either advertises that sexual conduct will be provided, or works for (either as an employee, agent, or independent contractor), or is referred to a patron by an escort bureau that so advertises; or,
 - c. offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee from an escort patron or a prospective escort patron.

12. ESCORT BUREAU, SEXUALLY ORIENTED – an escort bureau that operates in any of the following manners:
 - a. engages in fraudulent, misleading, or deceptive advertising that is designed to make the prospective client believe that acts of prostitution (as defined under Kentucky law) will be provided; or,
 - b. collects money (whether paid in advance or paid after the promised proscribed act) for the promise of acts of prostitution by its escorts; or,
 - c. uses as escorts persons known to have violated the law regarding prostitution, and refuses to cease the use of such a person; or,
 - d. operates an escort bureau as a “call girl” prostitution operation; or,

- e. advertises that sexual conduct will be provided to a patron or customer, or that escorts which provide such sexual conduct will be provided, referred, or introduced to a patron or customer; or,
 - f. solicits, offers to provide, or does provide acts of sexual conduct to an escort patron or customer; or,
 - g. employs or contracts with a sexually oriented escort, or refers or provides to a patron a sexually oriented escort.
13. ESTABLISHMENT – any business regulated by this Section.
14. EXPLICIT SEXUAL MATERIAL – any pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation of unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or material of anthropological significance shall not be deemed to fall within the foregoing definition.
15. FLOOR AREA, GROSS PUBLIC – the total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled “public”), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways, and entryways serving such areas.
16. FREQUENTLY – two or more times per month.
17. MASSAGE – touching, stroking, kneading, stretching, friction, percussion, and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).
18. MASSAGE PARLOR – any business offering massages that is operated by a person who is not a state licensed “massage therapist” or that provides massages by persons who are not state licensed massage therapists.
19. MASSAGE THERAPY – the profession in which a certified massage therapist applies massage techniques with the intent of positively affecting the health and well being of the client.
20. MASSAGE THERAPIST – a person licensed as a massage therapist in accordance with the provisions of Kentucky Rev. Statues §309.350 et seq.
21. MEDIA – anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not

necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, DVDs, other magnetic media, and undeveloped pictures.

22. MEDIA, SEXUALLY ORIENTED – magazines, books, videotapes, movies, slides, CDs, DVDs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.”
23. MEDIA STORE WITH SOME SEXUALLY ORIENTED MEDIA – a retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area.
24. MEDIA STORE, SEXUALLY ORIENTED – an establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests:
 - a. More than forty percent (40%) of the gross public floor area is devoted to sexually oriented media; or
 - b. More than forty percent (40%) of the stock in trade consists of sexually oriented media; or
 - c. It advertises or holds itself out in any forum as a “XXX,” “adult” or “sex” business, or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater, or sexually oriented cabaret.
25. MODELING STUDIO, SEXUALLY ORIENTED – an establishment or business that provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples, or small groups in a space smaller than 600 feet.
26. MOTEL, SEXUALLY ORIENTED – a hotel, motel, or similar commercial establishment that meets any of the following criteria:
 - a. Offers accommodations to the public for any form of consideration and provides patrons with sexually oriented entertainment or transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;”
 - b. Marketed as or offered as “adult,” “XXX,” “couples,” or “sexually oriented.”
27. MOTION PICTURE ARCADE, SEXUALLY ORIENTED – a building or portion of a building wherein coin-operated, slug-operated, or for any other form of consideration, electronically, electrically, or mechanically controlled still or

motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images of “specified sexual activities” or “specified anatomical areas.”

28. **MOTION PICTURE ARCADE BOOTH, SEXUALLY ORIENTED** – any booth, cubicle, stall, or compartment that is designed, constructed, or used to hold or seat customers and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital, or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, CD-ROMs, books, DVDs, magazines or periodicals) to show images of “specified sexual activities” or “specified anatomical areas” for observation by customers therein. The term “booth,” “arcade booth,” “preview booth,” and “video arcade booth” shall be synonymous with the term “motion picture arcade booth.”
29. **MOTION PICTURE THEATER, SEXUALLY ORIENTED** – a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are frequently shown that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” or that are marketed as or offered as “adult,” “XXX,” or sexually oriented. Frequently shown films, motion pictures, videocassettes, slides or other similar photographic reproductions as characterized herein do not include sexually oriented speech and expressions that take place inside the context of some larger form of expression.
30. **NUDE MODELING STUDIO** – any place where a person who appears in a state of nudity or semi-nudity and is to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. “Nude model studio” shall not include a proprietary school licensed by the Commonwealth of Kentucky or a college, junior college, or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
31. **NUDITY OR STATE OF NUDITY** – the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernibly turgid state. See, also, Semi-nude.
32. **OPERATOR** – any person operating, conducting, or maintaining a business regulated under this Chapter.
33. **OWNER(S)** – the individual owner of an establishment, or if the legal owner is a corporation, partnership, or limited liability company, the term shall include all general partners, any limited partner with a financial interest of ten percent (10%)

or more, all corporate officers and directors, and any shareholder or member with a financial interest of ten percent (10%) or more. "Owner" includes the spouse(s) of any of the above individuals.

34. **PERSON** – an individual, firm, partnership, joint-venture, association, independent contractor, corporation (domestic or foreign), limited liability company, trust, estate, assignee, receiver or any other group or combination acting as a unit.
35. **PREMISES** – the physical location at which a business operates; as used in this Chapter, the term shall include all parts of that physical location, both interior and exterior, which are under the control of the subject business, through ownership, lease or other arrangement.
36. **PRIMARY ENTERTAINMENT** – entertainment that characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.
37. **PROTECTED LAND USE** – residential zoning district, school, religious institution, park, library, public recreation area, or day care center.
38. **PUBLIC AREA** – a portion of a sexually oriented business, excluding sexually oriented motels, that is accessible to the customer, excluding restrooms, while the business is open for business.
39. **SADOMASOCHISTIC PRACTICES** – flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.
40. **SEMI-NUDE OR IN A SEMI-NUDE CONDITION** – the showing of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other apparel, provided the areola is not exposed in whole or in part.
41. **SEX SHOP** – an establishment offering goods for sale or rent and that meets any of the following tests:
 - a. It offers for sale items from any two (2) of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; sexually oriented novelties; and the combination of such items constitute more than ten percent (10%) of its stock in trade or occupies more than 10 percent (10%) of its floor area;

- b. More than five percent (5%) of its stock in trade consists of sexually-oriented toys or novelties; or
 - c. More than five percent (5%) of its gross public floor area is devoted to the display of sexually oriented toys or novelties.
42. **SEXUALLY ORIENTED BUSINESS** – an inclusive term used to describe collectively the following businesses: sexually oriented cabaret or theater; sexually oriented entertainment; sexually oriented motion picture theater; sexually oriented motion picture arcade; sexually oriented encounter center; sexually oriented media store; sexually oriented escort bureau; bathhouse; massage parlor; sex shop; sexually oriented modeling studio; or any other such business establishment whose primary purpose is to offer sexually oriented entertainment or materials. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the County or any applicable municipal zoning code or other applicable ordinances.
43. **SEXUALLY ORIENTED BUSINESS LICENSE** – any license applied for under the countywide licensing ordinance, Kenton County Ordinance No. 451.9 as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus, adopted in 2004.
44. **SEXUALLY ORIENTED TOYS OR NOVELTIES** – instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs.
45. **SPECIFIED ANATOMICAL AREAS** – include:
- a. Less than completely and opaquely covered human genitals, pubic region, or the areola or nipple of the female breast; and
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and
 - c. Areas of the human anatomy included in the definitions of “nude” or “nudity.”
46. **SPECIFIED SEXUAL ACTIVITIES** – Acts of human masturbation, sexual intercourse, or sodomy. These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This definition shall include apparent sexual stimulation of another person’s genitals whether clothed or unclothed.
- Z. **PROHIBITED USES:** The following uses are prohibited in the (*insert legislative body name*) and county-wide under Kenton County Ordinance No. 451.9, establishing

licensing requirements for sexually oriented businesses and service oriented escort bureaus. No Zoning Permit shall be issued for the following prohibited businesses:

1. Sexually oriented motion picture arcade or booth;
2. Sexually oriented encounter center;
3. Sexually oriented motel;
4. Sexually oriented massage parlor or any business offering massages that is operated by a person who is not licensed as a massage therapist in accordance with the provisions of Kentucky Rev. Statues §309.350 et seq.;
5. Sexually oriented modeling studio;
6. Sexually oriented nude modeling studio; and
7. Sexually oriented escort bureau.

AA. PERMITTED USES: The following uses are permitted if they hold an approved Zoning Permit and a valid License approved under the county-wide Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus:

1. Media store with some sexually oriented media (not subject to licensing);
2. Sexually oriented media store;
3. Sex shop;
4. Service oriented escort bureau;
5. Sexually oriented motion picture theatre; and
6. Sexually oriented cabaret or theatre.

AB. PERMITTED ZONING DISTRICTS:

1. A media store carrying some sexually oriented media is permitted in any zoning district where other retail establishments are permitted.
2. A sexually oriented media store, sex shop or service oriented escort bureau is permitted in the following zoning districts if it holds an approved Zoning Permit and a valid License approved under the county-wide Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus:
 - a. SC (Shopping Center) Zone
3. A sexually oriented business featuring on-premise entertainment such as sexually oriented motion picture theatre, cabaret or theatre is permitted in the following zoning districts if it holds an approved Zoning Permit and a valid Kenton County Sexually Oriented Business License:
 - a. HC-1 (Highway Commercial One) Zone
 - b. HC-3 (Highway Commercial Three) Zone
 - c. LHS (Limited Highway Service) Zone
 - d. LSC (Limited Service Commercial) Zone

- e. SC (Shopping Center) Zone
- f. All Industrial (I) Zones, except for the IP (Industrial Park) Zone

AC. ZONING PERMIT: Any application for a sexually oriented business Zoning Permit shall be processed in accordance with Article XVI of the Zoning Ordinance with the following additional requirements:

1. Zoning Permit and License Required

- a. Permit and license required. Each sexually oriented business or service oriented escort bureau is required to obtain a Zoning Permit under the City of Covington's Zoning Code and License under the countywide licensing ordinance, Kenton County Ordinance No. 451.9 as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus. However, no license is required for a media store with some sexually oriented media.
- b. Order of submissions. For a new sexually oriented business or service oriented escort bureau, the process is designed for the applicant to apply for a Zoning Permit first and Kenton County License second.
- c. Application Contents: In addition to the other requirements of an application for a Zoning Permit, the applicant shall submit to the Zoning Administrator at least the following:
 - (1) A complete description of the exact nature of the business to be conducted;
 - (2) A location plan, showing the location of the property and the applicant's identification of any school, religious institution, public recreation area, park or day care center within 1,500 feet of the property;
 - (3) A sketch of the exterior and interior of the premises, showing all areas that will be open to the public and their purposes, the dimensions of such areas, all entrances and exits, the location of the screen for a motion picture theatre, the location and dimensions of the stage for a cabaret or theatre;
 - (4) A parking plan; and
 - (5) A lighting and signage plan, showing fixtures that are adequate in number, design and location to meet the lighting requirements and applicable provisions of the countywide licensing ordinance, Kenton County Ordinance No. 451.9 as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus.

AD. GENERAL STANDARDS:

- 1. General Standards related to sexually oriented businesses and service oriented escort bureaus.

- a. Separation distances. No retail-only sexually oriented business (sexually oriented media store or sex shop) or service oriented escort bureau shall be located within 500 feet of any area within the zoning districts having the designation of “residential” as the district classification or within 500 feet of any parcel of land occupied by a school, religious institution, park, library, public recreation area, or day care center (considered “protected uses”) in any other district.
 - b. Separation distances. No sexually oriented business offering on-premise entertainment (sexually oriented motion picture theatre, cabaret or theatre) shall be located within 1000 feet of any area within the zoning districts having the designation of “residential” as the district classification or within 1000 feet of any parcel of land occupied by a school, religious institution, park, library, public recreation area, or day care center in any other district.
 - c. Separation distances. No sexually oriented business shall be located within 1,000 feet of any other sexually oriented business or service oriented escort bureau; this restriction shall require such a separation regardless of whether it is located within the city or within the county.
 - d. Single use. There shall be no more than one type of sexually oriented business or service oriented escort bureau at any one location.
 - e. Nonconformity. No legally established and permitted sexually oriented business or service oriented escort bureau shall become nonconforming through subsequent establishment of a school, religious institution, park, library, public recreation area, or day care center (protected uses); nor shall a Zoning Permit for a sexually oriented business or service oriented escort bureau be denied based on the filing of a Zoning Permit application for a protected use after the filing of such application for a sexually oriented business.
 - f. Measurement method. Where this section requires that one use be separated from another use, measurements shall be made in accordance with this subsection. For a use which is the only use or the principal use on a lot or parcel, the measurement shall be made from property line to property line from a point nearest to the use for which the measurement is being made. If the use is located in a multi-tenant building, then the distance shall be measured from the portion of the building of the leasehold or other space actually controlled or occupied that is nearest to the use for which the measurement is being made. Measurements between properties or spaces under this section shall be made by the shortest distance between the two properties and/or spaces.
2. Standards for Parking: An Off-Street Parking Plan shall be submitted as a part of the application for a Zoning Permit. All off-street parking shall be in accordance with Article XI with specific standards related as follows:

- a. A sexually oriented media store, sex shop or service oriented escort bureau: 5.5 spaces per 1,000 square feet of gross public floor area.
 - b. A sexually oriented cabaret or theatre: 1 parking space for each 100 square feet of floor area used for dancing or assembly, or 1 space for each 4 persons based on design capacity, whichever is greater, plus 1 space for each 2 employees on shift of largest employment.
 - c. A sexually oriented motion picture theatre: 1 parking space for each 4 seats, based on a maximum seating capacity, plus 1 additional space for each 2 employees on shift of largest employment.
3. Standards for Exterior Lighting and Signage: An Exterior Lighting and Signage Plan shall be submitted with the application for a Zoning Permit. The required lighting shall be as follows:
- a. Exterior lighting of the entries and private parking areas shall be a minimum of 15 footcandles as measured 3 feet from the ground or paving.
 - b. For a business on a single lot or parcel, no lighting shall illuminate any property not in control of the business by more than 5 footcandles as measured at the nearest adjacent property.
 - c. All signage shall be in accordance with the Article XIV.

AE. INDIVIDUAL BUSINESS STANDARDS:

1. Standards for a Service Oriented Escort Bureau: A service oriented escort bureau shall be subject to the following additional standards:
 - a. Room size. The establishment shall operate all business in an open area of at least 600 square feet of floor area. No walls, dividers, curtains, screens, shades or other similar devices shall be used to obscure any part of the room where customers are located.
 - b. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.
2. Standards for a Media Store with Some Sexually Oriented Media: A retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area shall not be classified as a sexually oriented business but shall be subject to the following standards:
 - a. Separate room. The sexually explicit media shall be kept in a separate room from the rest of the inventory of the store and shall not visible outside the room;
 - b. Age limit. Sexually explicit media shall be available only to persons 18 years or older;

- c. Access. Access to the room shall be through a solid door, accessed by an electronic control device monitored by the clerk or manager on duty through direct visual control;
 - d. Visibility. Customers and activities in the room shall be visible at all times to the clerk or manager on duty through a video system located at the clerk's or manager's counter; and
 - e. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.
3. Standards for a Sexually Oriented Media Store or Sex Shop: A sexually oriented media store or sex shop shall be subject to the following additional standards:
 - a. Room size. The establishment shall operate all business in an open area of at least 600 square feet of floor area. No walls, dividers, curtains, screens, shades or other similar devices shall be used to obscure any part of the room where customers are located;
 - b. Displays. No displays of sexually explicit media or images shall be visible from the exterior of the buildings; and
 - c. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.
4. Standards for a Sexually Oriented Motion Picture Theatre: A sexually oriented motion picture theater shall be subject to the following additional standards:
 - a. Presentation area. All screenings and presentations of motion pictures, videos or other media shall occur in a room open to all customers of the establishment and containing at least 1000 square feet of floor area. No walls, dividers, curtains, screens, shades or other similar devices shall be used to obscure any part of the room.
 - b. Lighting. The lighting level in the area occupied by customers shall be at least 5 footcandles as measured at the floor.
 - c. Seating. Seating shall consist of individual, theater-style chairs, with solid arms separating the chairs. No couches, benches, portable chairs, beds, loose cushions or mattresses, or other forms of seating may be provided. Separate spaces for wheelchairs shall be provided in accordance with the applicable provisions of the building code and the Americans with Disabilities Act.
5. Standards for a Sexually Oriented Cabaret or Theatre: A sexually oriented cabaret or theater shall be subject to the following additional standards:
 - a. Presentation area. All entertainment shall occur in an unobstructed room of at least 600 square feet of floor area with a person in any part of such room having a clear view of all entertainment areas;
 - b. Performance stage. All entertainment shall take place on stage elevated at least 24 inches above the surrounding floor area, with a minimum area of

100 square feet, and with a horizontal separation of at least 60 inches between the edge of the stage and the nearest space to which customers have access—the horizontal separation shall be physically enforced by a partial wall, rail, or other physical barrier, which may be located either on the stage (to keep the entertainers back from the edge) or on the floor (to keep the customers back from the stage);

- c. Lighting. The lighting level in the area occupied by customers shall be at least 15 footcandles as measured 3 feet from the floor.
- d. Seating. Seating shall consist of chairs or open booths; no couches, beds, or loose cushions or mattresses, or of any form shall be provided.

AF. ZONING ADMINISTRATOR REVIEW AND EXPIRATION OF ZONING PERMIT:

1. Determination of Completeness: Within 5 business days of submission of the sexually oriented land use permit application, the Zoning Administrator shall determine if the application is complete. If the application is incomplete, the Zoning Administrator shall return the application to the applicant with a letter or form specifying the items that are missing. The application shall not be further processed unless and until the applicant submits a complete application.
2. Review, Decision: If the Zoning Administrator determines that an application is complete, the Zoning Administrator shall review the application and, within 20 calendar days of submittal of the complete application, grant or deny the permit. If the permit is denied, the denial shall be made in writing, by letter or on a form, and shall specify the reasons why the application was denied, citing the specific provisions of this ordinance or other provisions of the City's ordinances that provide the basis for such denial. If the Zoning Administrator fails to act on a complete application within the 20-day period, the application is deemed denied. Upon denial or deemed denial, the applicant may appeal that denial to the Board of Adjustment.
3. The applicant may, at its option, pursue other or additional administrative remedies available under the zoning ordinance; by doing so, applicant shall be deemed to have waived any right to a decision within a particular time period and shall be subject to all of the terms, conditions and timelines applicable to such administrative remedies under the zoning ordinance.
4. Expiration of Zoning Permit: The issuance of the Zoning Permit shall be conditioned on the applicant obtaining and retaining a Kenton County Occupational License for the use represented by the Zoning Permit. If a no license has been granted within 6 months after the issuance of the Zoning Permit, then the Zoning Permit shall expire; provided, however, that the expiration date for the Zoning Permit shall be extended until 30 days after the end of any administrative or judicial appeal of the Zoning Permit.

AG. APPEAL PROCEDURES:

1. Appeals to Board of Adjustment

- a. Appeals to the Board of Adjustment may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of the Zoning Administrator. Such appeal shall be taken within 10 calendar days after such action, order, requirement, interpretation, grant, refusal, or decision of the Zoning Administrator, by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. A fee, as required by § 158.007, shall also be paid to the Zoning Administrator at this time. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record on which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At the public hearing on the appeal held by the Board, an interested person may appear and enter his or her appearance, and all shall be given an opportunity to be heard.
- b. The Board of Adjustment shall hear the appeal within 30 calendar days of its filing with the Zoning Administrator and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the Zoning Administrator at least 7 calendar days prior to the hearing. The affected parties may appear at the hearing in person or by an attorney. The Board of Adjustment shall hear the matter and render a decision within 36 days after the filing of the appeal. If the Board of Adjustment fails to act within such time, the application is deemed denied.

2. Appeals from the Board of Adjustment

- a. Any person or entity claiming to be injured or aggrieved by any final action of the Board of Adjustment shall appeal from the action to the circuit court of the county in which the property which is the subject of the action of the Board of Adjustment lies. Such appeal shall be taken within 30 calendar days after the final action of the Board of Adjustment. The Board of Adjustment shall be a party in any such appeal filed in the circuit court. All final actions which have not been appealed within 30 days shall not be subject to judicial review and shall become final.
- b. After the appeal is taken, the procedure shall be governed by the Rules of Civil Procedure. When an appeal has been filed, the Clerk of the Circuit Court shall issue a summons to all parties, including the Board of Adjustment in all cases, and shall cause it to be delivered for service as in any other law action.

AH. SEVERABILITY: It is hereby declared to be the intention of the (*insert legislative body name*) that the sections, paragraphs, sentences, clauses and phrases of this Chapter are severable, and if any phrase clause, sentence, paragraph or section of this Chapter shall

be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Chapter, since the same would have been enacted by the (*insert legislative body name*) without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

**SECTION 9.5 REGULATIONS OF SEXUALLY ORIENTED BUSINESSES –
ALTERNATIVE TWO (2)**

- A. The (*insert legislative body name*), together with the other cities in Kenton County together with the Kenton County Fiscal Court, after consultation among the mayors, councils, commissioners and staffs of the municipalities and the county within the County, found that a substantial need exists to revise significantly the ordinances regarding sexually oriented businesses within Kenton County.
- B. The (*insert legislative body name*), in association with the Northern Kentucky Area Planning Commission and the Fiscal Court of adjacent Campbell County its cities in the Northern Kentucky Community, retained Duncan Associates to conduct a study of existing sexually oriented uses and related businesses in Kenton and Campbell Counties, which is part of a single, larger community.
- C. Duncan Associates assigned two nationally-known planners, Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP, to conduct that study
- D. Kelly and Cooper have completed that study, including the following elements:
1. Field study, involving visits to all identified existing sexually oriented businesses in Kenton and Campbell Counties;
 2. Meetings with stakeholder groups involved in these businesses;
 3. Consultation with the Kenton County, Campbell County Attorney, and the city attorneys for certain cities, and the community at large on this issue;
 4. Consultation with the professional staff of the Northern Kentucky Area Planning Commission on this issue;
 5. Review of studies and litigation concerning sexually oriented businesses in other communities;
 6. Investigation of regulatory approaches to massage therapy;
 7. Review of existing ordinances in Kenton and Campbell Counties;
 8. Review of similar ordinances in a number of communities outside the Commonwealth of Kentucky;
 9. Review of Kentucky statutes related to regulating sexually oriented businesses.
- E. Duncan Associates has summarized this work and presented recommendations to the Northern Kentucky Area Planning Commission and Kenton and Campbell Counties and their cities in an August 2003 report entitled “Site Visit Analysis: Sexually Oriented and

Related Businesses in Kenton and Campbell Counties” (hereinafter called simply the “Kelly and Cooper Study”).

- F. That study has also been made available to the legislative bodies of Kenton and Campbell Counties for their consideration and use.
- G. That study has been accepted and used by the Fiscal Court of Kenton County in adopting the countywide licensing ordinance, Kenton County Ordinance No. 451.9, as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus in 2004.
- H. The United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that local governments may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses;
- I. The United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities.
- J. The study by Kelly and Cooper found extensive physical interaction between patrons and dancers at many of the establishments in both Kenton and Campbell Counties.
- K. Covington, the only municipality in Kenton County that has had sexually oriented businesses within its border, from January 1, 2002, to February 11, 2004, the police made a total of 469 calls to sexually oriented businesses in the city. The crimes committed at these establishments during this time period included robbery, assault, fraud, malicious mischief, public intoxication, and possession of illegal drugs. In addition, on June 13, 2003, Covington police arrested three individuals for prostitution-related charges at Liberty's Show Lounge, a sexually oriented cabaret in the city.
- L. As the Sixth Circuit Court of Appeals noted in a decision addressing issues related to the Adult Entertainment ordinance in the City of Newport (Campbell County), there is a long history underlying efforts to regulate sex businesses in Northern Kentucky:

Defendant City of Newport ("City" or "Newport") long ago gained a reputation as home to a veritable smorgasbord of vice, attracting patrons from across the nation. For decades, the small city was considered the Midwest's answer to Las Vegas, and leaders of organized crime were said to operate its gambling casinos and nightclubs.

In the 1960's, public pressure began to demand that Newport be cleaned up. This pressure has continued until the present, with varying degrees of success.

A 1986 report generated by the Newport Alcoholic Beverage Control Administrator indicated that of 28 adult bars opened since 1978 (including successive bars at the same site), 21 had had at least one prostitution-related conviction, and 18 had had multiple convictions. Def. Ex. K, p. 2. The report explained that "all of the prostitution in businesses with adult entertainment involved an alcoholic beverage as the median [sic] of exchange and the solicitation of such drinks by 'mixers.'" Id. In all, 98% of prostitution arrests in Newport occurred in the vicinity of these bars. Id. Adult entertainment establishments, which constituted 12% of all businesses serving alcohol, accounted for 17% of all police runs. Def. Ex. K, p. 21.

A later review, conducted in 1990 by the Newport License Inspector, documented the continued prostitution arrests occurring at several adult dancing establishments. Def. Ex. G. Moreover, the City determined that over \$ 70,000 was expended in 1990 to target, patrol and prosecute the illicit behavior occurring in and around the bars. Def. Ex. H.

Several of Newport's citizens, merchants and church groups also opposed the presence of the semi-nude dancing clubs. These groups generally believed that the adult entertainment clubs were "clouds over [the] neighborhood that keep [it] from growing in the [right] direction." See Def. Ex. I (letter to Mayor from Taylors Landing Business District). Complaints commonly expressed were that the seamy establishments deterred other merchants from locating in Newport's business district, deterred shoppers, served a poor example for the City's youth, and generally tarnished the City's image. Id.

Bright Lights, Inc., v. City of Newport, 830 F. Supp. 378, 380-81 (E. D. Ky. 1993).

Based on those findings, the court went on to hold in relevant part:

Having considered the matter carefully, the court concludes that some leeway must be afforded the reform efforts of the City Council of Newport. This body has been elected by the citizens to attempt to "clean up the image" of the City.

To do this, it must overcome the sleazy impression of Newport and Northern Kentucky that survives from "the heyday" when things ran wide open; reform candidates were literally drugged and framed for morals offenses by public officials and police officers; the members of reform citizens groups were vilified and harassed; and a "liberal" in local parlance was a person favoring the continued open and notorious violation of the gambling and morals laws.

To illustrate that the Council's perception of a need to clean up the image of the City is not paranoid, the court notes the following statements in a national magazine's satirical Chapter on Newport's big sister, the city of Cincinnati.

"The city's streets fairly shine; the odd litterer draws a scornful stare. Wide avenues, bosky side streets, the most inviting of thoroughfares. And clean. So clean. No X-rated movie theaters, no adult-book stores, no bare-breasted night joints soil these streets, all of them long ago jettisoned over to the Kentucky side of the river."

Peter Richmond, "Town Without Pity," *Gentlemen's Quarterly*, July 1993, at 102, 104.

This court holds that the City of Newport has the right to secede as Cincinnati's combat zone.

The court holds that the City has "an important and substantial governmental interest" in advancing these reform goals, which interest is furthered by the ordinances in question. *Barnes*, 111 S. Ct. at 2461. The court further finds and holds that in the case of the City of Newport, given its unique history, the ordinances' "incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.* (quoting *O'Brien*, 391 U.S. at 376-77, 88 S. Ct. at 1678-79).

Newport's image affects that of all of Northern Kentucky, a community of nearly 300,000 people. That City and its community have the right to project a progressive and decent image. The nudity ordinances contribute to the enhancement of this interest and will be upheld. 830 F.Supp. at 384;

- M. The Supreme Court had earlier noted in upholding another regulation in Newport, "it is plain that, as in *Bellanca*, the interest in maintaining order outweighs the interest in free expression by dancing nude." *Newport v. Iacobucci*, 479 U.S. 92, 97, 93 L. Ed. 2d 334, 340, 107 S. Ct. 383, 386 (1986). Although the significance of the opinion itself is now questionable (see *J&B Social Club # 1 v. City of Mobile*, 966 F. Supp. 1131, 1135 (S.D. Ala. 1996)), the quoted part of the opinion stands unchallenged.
- N. The cities of Covington and Newport continue their efforts to improve their image. Since 1985, Covington has redeveloped its riverfront, creating several new office towers, high-end condominiums, hotels, and a convention center. In Newport, in conjunction with private development and Southbank Partners, Inc., the City has built a major entertainment center along the river. This initiative has promoted improved pedestrian and transit connections in Northern Kentucky's river cities to and from the stadiums and other attractions along the Cincinnati riverfront.
- O. Despite these efforts, the areas of downtown Covington and Newport away from the riverfront continue to suffer in many ways. The study by Kelly and Cooper found in the area near to existing sexually oriented uses a number of building vacancies and building maintenance falling far short of that found in the revitalized areas near the river.
- P. The (*insert legislative body name*) respects the Constitutional rights of its citizens, including the right to present certain types of entertainment that may not appeal to the entire population. Through this ordinance, it is the desire of the (*insert legislative body name*) to balance the Constitutional rights of businesses that present sexually oriented entertainment with the (*insert legislative body name*) interests in ensuring that this community not suffer from the same sorts of adverse effects that Covington and Newport have long suffered.

- Q. From long experience in Covington and Newport, as well as from the following studies and others not listed, the (*insert legislative body name*) also finds that such businesses may have primary and secondary effects involving crimes related to the activities in the establishments, of which prostitution and crimes of violence are those of greatest concern. See for example:
1. “Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard,” Richard W. McCleary, Ph.D., James W. Meeker, J.D., Ph.D., October 23, 1991.
 2. “Survey of Appraisers: Fort Worth and Dallas – Effects of Land Uses on Surrounding Property Values,” Duncan Associates, Eric Damian Kelly, FAICP, and Connie B. Cooper, FAICP, September 2004.
 3. “Adult Entertainment Businesses in Indianapolis, An Analysis,” 1984.
 4. “Adult Business Study,” by City of Phoenix Planning Department, May 25, 1979.
 5. “Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul,” June 1978, City of Saint Paul Division of Planning, Department of Planning and Management; and Community Crime Prevention Project, Minnesota Crime Control Planning Board.
 6. “Staff Report, Whittier City Planning Commission; Subject: Adult Business Regulations,” July 11, 1994.
 7. “Adult Entertainment Study,” Department of City Planning, City of New York, Second Printing, November 1994.
 8. “Adult Use Study,” Newport News Department of Planning and Development, March 1996.
 9. “A Report on the Secondary Impact of Adult Use Businesses in the City of Denver,” prepared by multiple city departments for Denver City Council, January 1998.
 10. “Survey of Appraisers in Monroe County, New York,” Summer 2000. For detailed results of the survey, see Kelly and Cooper, Everything You Always Wanted to Know about Regulating Sex Businesses, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.
 11. The Tucson “study” consisting of two memos: one from the Citizens Advisory Planning Committee, addressed to the Mayor and City Council, and dated May 14, 1990; and the other from an Assistant Chief of Police to the City Prosecutor, regarding “Adult Entertainment Ordinance,” dated May 1, 1990.
- R. The (*insert legislative body name*) recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the (*insert legislative body name*) finds, nevertheless, that addressing the establishments that have live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, for three reasons:
1. Bars in Kentucky are already regulated by the Commonwealth, and those state regulations directly address many of the concerns that arise with the service of alcohol;

2. The local history of prostitution and sex-related crimes has largely been related to businesses with live, sexually oriented entertainment, and not with other establishments that serve alcohol; and
 3. The interaction between dancers who are paid to work with very limited clothing and the customers who pay to see them work in the establishments with live entertainment creates a sexually charged environment and the opportunity to negotiate for the provision of additional services that do not involve dancing or other protected expression and that are simply unacceptable under the standards of the County and its citizens.
- S. As noted earlier in these findings, there is a long local history of prostitution and sex-related crimes at or incident to the operation of establishments with live, sexually oriented entertainment. Further, the studies shown herein provide further evidence of the potential crime-related secondary effects from such businesses. Although the methodologies and quality of these studies vary somewhat, local experience has demonstrated to the *(insert legislative body name)* that the relationship between crime and such establishments is a fact in Northern Kentucky and not just a theory published in a study.
- T. The *(insert legislative body name)* has reviewed evidence and testimony presented at public meetings before the County, and information based on the past experiences of the Kenton and Campbell Counties and the cities of Covington and Newport, the experiences of the County Attorneys' offices prosecuting numerous and varied offenses that have occurred in and around the sexually oriented entertainment establishments, and based upon the documented experiences of other governmental units within Kentucky and elsewhere in dealing with the impact of sexually oriented entertainment, that such businesses can, if not properly regulated, be deleterious to said community.
- U. The *(insert legislative body name)* finds that the countywide licensing ordinance related to sexually oriented businesses and service oriented escort bureaus adopted by the Fiscal Court of Kenton County is an effective tool for addressing the many operational issues that can arise with such businesses.
- V. The *(insert legislative body name)* finds that amendments to the *(city's/county's)* Zoning Ordinance regarding the location and design of such businesses are important variables in the nature and extent of adverse secondary effects of sexually oriented businesses on the community, and further finds that location and design are among the types of issues that are typically addressed through zoning.
- W. Based on the recommendations of Kelly and Cooper, which are based on their experience in other communities and their review of the studies cited above and other local efforts to address such secondary effects, the *(insert legislative body name)* finds that the following principles are essential to effective zoning controls of sexually oriented businesses:
1. Sexually oriented businesses should, to the maximum extent practicable, be separated from one another by a distance that is greater than a convenient walking

- distance, because experience elsewhere has shown that the location of such businesses near one another may increase the adverse secondary effects, particularly those related to crime, by a greater than arithmetic factor;
2. Sexually oriented businesses have the greatest adverse effect on residential neighbourhoods and should thus be separated to the maximum extent practicable from residential neighbourhoods;
 3. Sexually oriented businesses are likely to attract criminal elements that prey on “soft targets,” including children, and it is thus important to separate sexually oriented businesses from schools, parks, recreation centers, and religious institutions, all of which are places where children are likely to congregate, often without parental protection;
 4. Also because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people and others who are vulnerable, are likely to walk in going about their day-to-day business. Thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented businesses.
- X. In examining Kenton County for available sites that would be suitable for sexually oriented businesses that meet the above criteria, Kelly and Cooper identified a number of such sites in the County, none of which were located in *(insert legislative body name)*.
- Y. *(insert legislative body name)* currently has no sexually oriented businesses in the community.
- Z. *(insert legislative body name)* currently has no area zoned for any type of commercial use.
- AA. *(insert legislative body name)* currently has only limited areas zoned for commercial use, and those areas are small and adjacent to residential areas.
- AB. *(insert legislative body name)* has within its limited commercial areas only small, local businesses generally serving the convenience needs of residents.
- AC. *(insert legislative body name)* residents in these jurisdiction with limited commercial areas must go to larger, nearby cities for most of their retail purchases and entertainment.
- AD. Staff of *(insert legislative body name)* can not recall ever receiving any applications for or inquiries about the establishment of any sexually oriented business in the *(insert legislative body name)*.
- AE. *(insert legislative body name)* thus finds that the physical context and experience of the City of ***** support the findings by Kelly and Cooper.

- AF. *(insert legislative body name)* finds that, in reliance on the Kelly and Cooper study, other municipalities in the County, including specifically Covington, Erlanger and Taylor Mill, all of which have large and diverse commercial or industrial areas with suitable sites that would be potentially available locations where sexually oriented businesses could legally locate.
- AG. *(insert legislative body name)* acknowledges that it can re-evaluate these findings if, in the future, there is a substantial change in the character of the community and the potential for suitable sites for sexually oriented businesses within the community.
- AH. *(insert legislative body name)* therefore finds that there are no suitable locations for sexually oriented businesses in the *(insert legislative body name)* and such businesses should therefore be prohibited.
- AI. FINDINGS: The facts and other matters set forth in the previous clauses that form the preamble to this ordinance are hereby adopted as findings of fact in support of the legislative action of the *(insert legislative body name)* in adopting this amendment to the Zoning Ordinance. Upon adoption of this zoning amendment, these shall be incorporated into the Zoning Code by reference as if fully set forth therein to the adopting Resolution.
- AJ. DEFINITIONS:
1. CABARET OR THEATER, SEXUALLY ORIENTED – a building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to “adult entertainment,” “strippers,” “showgirls,” “exotic dancers,” “gentleman’s club,” “XXX” or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.
 2. CUSTOMER – any person who:
 - a. Is allowed to enter a business in return for the payment of an admission fee or any other form of consideration or gratuity; or
 - b. Enters a business and purchases, rents, or otherwise partakes of any material, merchandise, goods, entertainment, or other services offered therein; or
 - c. Enters a business other than as an employee, vendor, service person, or delivery person.
 3. DAY CARE CENTER – a licensed facility providing care, protection and supervision for children 12 years old or younger or for any individual who is deemed mentally challenged.

4. DISPLAY PUBLICLY – the act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others or from any portion of the premises where items and material other than sexually oriented media are offered for sale or rent to the public.
5. ENCOUNTER CENTER, SEXUALLY ORIENTED – a business or enterprise that, as one of its principal purposes, offers: physical contact between two or more persons when one or more of the persons is in a state of nudity or semi-nudity.
6. ENTERTAINER, SEXUALLY ORIENTED – any person paid as an employee, contractor, subcontractor, or agent of the operator of a cabaret who frequently appears in a state of semi-nudity at any establishment regulated by this chapter.
7. ENTERTAINMENT, SEXUALLY ORIENTED – any of the following activities, when performed by a sexually oriented entertainer at a sexually oriented business that is required to be licensed: dancing, singing, talking, modeling (including lingerie or photographic), gymnastics, acting, other forms of performing, or individual conversations with customers for which some type of remuneration is received.
8. ESCORT – a person who is held out to the public to be available for hire for monetary consideration in the form of a fee, commission, or salary, and who for said consideration consorts with or accompanies or offers to consort with or accompany, another or others to or about social affairs, entertainments, or places of amusement or within any place of public resort or within any private quarters, and shall include a “service oriented escort;” for purposes of this ordinance, the term “escort” shall not include any person who would be understood by a reasonably prudent person as providing “babysitting” services or working as an assisted living companion to the elderly, infirm, disabled, or handicapped, and shall further not include licensed health professionals.
9. ESCORT, SERVICE ORIENTED – an escort that:
 - a. operates from an open office;
 - b. does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and
 - c. does not offer to provide sexual conduct.
10. ESCORT BUREAU, SERVICE ORIENTED – an escort bureau that
 - a. maintains an open office at an established place of business;
 - b. otherwise operates in full accordance with the countywide licensing ordinance, Kenton County Ordinance No. 451.9, establishing licensing

requirements for sexually oriented businesses and service oriented escort bureaus, as such ordinance may be amended from time to time.

11. **ESCORT, SEXUALLY ORIENTED** – an escort who:
 - a. works for (either as an agent, employee, or independent contractor), or is referred to a patron by a sexually oriented escort bureau; or,
 - b. either advertises that sexual conduct will be provided, or works for (either as an employee, agent, or independent contractor), or is referred to a patron by an escort bureau that so advertises; or,
 - c. offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee from an escort patron or a prospective escort patron.

12. **ESCORT BUREAU, SEXUALLY ORIENTED** – an escort bureau that operates in any of the following manners:
 - a. engages in fraudulent, misleading, or deceptive advertising that is designed to make the prospective client believe that acts of prostitution (as defined under Kentucky law) will be provided; or,
 - b. collects money (whether paid in advance or paid after the promised proscribed act) for the promise of acts of prostitution by its escorts; or,
 - c. uses as escorts persons known to have violated the law regarding prostitution, and refuses to cease the use of such a person; or,
 - d. operates an escort bureau as a “call girl” prostitution operation; or,
 - e. advertises that sexual conduct will be provided to a patron or customer, or that escorts which provide such sexual conduct will be provided, referred, or introduced to a patron or customer; or,
 - f. solicits, offers to provide, or does provide acts of sexual conduct to an escort patron or customer; or,
 - g. employs or contracts with a sexually oriented escort, or refers or provides to a patron a sexually oriented escort.

13. **ESTABLISHMENT** – any business regulated by this Section.

14. **EXPLICIT SEXUAL MATERIAL** – any pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation of unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or material of anthropological significance shall not be deemed to fall within the foregoing definition.

15. **FLOOR AREA, GROSS PUBLIC** – the total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled “public”), areas used for

cabaret or similar shows (including stage areas), plus aisles, hallways, and entryways serving such areas.

16. FREQUENTLY – two or more times per month.
17. MASSAGE – touching, stroking, kneading, stretching, friction, percussion, and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).
18. MASSAGE PARLOR – any business offering massages that is operated by a person who is not a state licensed “massage therapist” or that provides massages by persons who are not state licensed massage therapists.
19. MASSAGE THERAPY – the profession in which a certified massage therapist applies massage techniques with the intent of positively affecting the health and well being of the client.
20. MASSAGE THERAPIST – a person licensed as a massage therapist in accordance with the provisions of Kentucky Rev. Statutes §309.350 et seq.
21. MEDIA – anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, DVDs, other magnetic media, and undeveloped pictures.
22. MEDIA, SEXUALLY ORIENTED – magazines, books, videotapes, movies, slides, CDs, DVDs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.”
23. MEDIA STORE WITH SOME SEXUALLY ORIENTED MEDIA – a retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area.
24. MEDIA STORE, SEXUALLY ORIENTED – an establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests:
 - a. More than forty percent (40%) of the gross public floor area is devoted to sexually oriented media; or

- b. More than forty percent (40%) of the stock in trade consists of sexually oriented media; or
 - c. It advertises or holds itself out in any forum as a “XXX,” “adult” or “sex” business, or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater, or sexually oriented cabaret.
25. **MODELING STUDIO, SEXUALLY ORIENTED** – an establishment or business that provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples, or small groups in a space smaller than 600 feet.
26. **MOTEL, SEXUALLY ORIENTED** – a hotel, motel, or similar commercial establishment that meets any of the following criteria:
- a. Offers accommodations to the public for any form of consideration and provides patrons with sexually oriented entertainment or transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;”
 - b. Marketed as or offered as “adult,” “XXX,” “couples,” or “sexually oriented.”
27. **MOTION PICTURE ARCADE, SEXUALLY ORIENTED** – a building or portion of a building wherein coin-operated, slug-operated, or for any other form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images of “specified sexual activities” or “specified anatomical areas.”
28. **MOTION PICTURE ARCADE BOOTH, SEXUALLY ORIENTED** – any booth, cubicle, stall, or compartment that is designed, constructed, or used to hold or seat customers and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital, or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, CD-ROMs, books, DVDs, magazines or periodicals) to show images of “specified sexual activities” or “specified anatomical areas” for observation by customers therein. The term “booth,” “arcade booth,” “preview booth,” and “video arcade booth” shall be synonymous with the term “motion picture arcade booth.”
29. **MOTION PICTURE THEATER, SEXUALLY ORIENTED** – a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are frequently shown that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” or that are marketed as or offered as “adult,” “XXX,” or sexually oriented. Frequently shown films, motion pictures,

videocassettes, slides or other similar photographic reproductions as characterized herein do not include sexually oriented speech and expressions that take place inside the context of some larger form of expression.

30. **NUDE MODELING STUDIO** – any place where a person who appears in a state of nudity or semi-nudity and is to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. “Nude model studio” shall not include a proprietary school licensed by the Commonwealth of Kentucky or a college, junior college, or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
31. **NUDITY OR STATE OF NUDITY** – the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernibly turgid state. See, also, Semi-nude.
32. **OPERATOR** – any person operating, conducting, or maintaining a business regulated under this Chapter.
33. **OWNER(S)** – the individual owner of an establishment, or if the legal owner is a corporation, partnership, or limited liability company, the term shall include all general partners, any limited partner with a financial interest of ten percent (10%) or more, all corporate officers and directors, and any shareholder or member with a financial interest of ten percent (10%) or more. “Owner” includes the spouse(s) of any of the above individuals.
34. **PERSON** – an individual, firm, partnership, joint-venture, association, independent contractor, corporation (domestic or foreign), limited liability company, trust, estate, assignee, receiver or any other group or combination acting as a unit.
35. **PREMISES** – the physical location at which a business operates; as used in this Chapter, the term shall include all parts of that physical location, both interior and exterior, which are under the control of the subject business, through ownership, lease or other arrangement.
36. **PRIMARY ENTERTAINMENT** – entertainment that characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.
37. **PROTECTED LAND USE** – residential zoning district, school, religious institution, park, library, public recreation area, or day care center.

38. **PUBLIC AREA** – a portion of a sexually oriented business, excluding sexually oriented motels, that is accessible to the customer, excluding restrooms, while the business is open for business.
39. **SADOMASOCHISTIC PRACTICES** – flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.
40. **SEMI-NUDE OR IN A SEMI-NUDE CONDITION** – the showing of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other apparel, provided the areola is not exposed in whole or in part.
41. **SEX SHOP** – an establishment offering goods for sale or rent and that meets any of the following tests:
- a. It offers for sale items from any two (2) of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; sexually oriented novelties; and the combination of such items constitute more than ten percent (10%) of its stock in trade or occupies more than 10 percent (10%) of its floor area;
 - b. More than five percent (5%) of its stock in trade consists of sexually-oriented toys or novelties; or
 - c. More than five percent (5%) of its gross public floor area is devoted to the display of sexually oriented toys or novelties.
42. **SEXUALLY ORIENTED BUSINESS** – an inclusive term used to describe collectively the following businesses: sexually oriented cabaret or theater; sexually oriented entertainment; sexually oriented motion picture theater; sexually oriented motion picture arcade; sexually oriented encounter center; sexually oriented media store; sexually oriented escort bureau; bathhouse; massage parlor; sex shop; sexually oriented modeling studio; or any other such business establishment whose primary purpose is to offer sexually oriented entertainment or materials. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the County or any applicable municipal zoning code or other applicable ordinances.
43. **SEXUALLY ORIENTED BUSINESS LICENSE** – any license applied for under the countywide licensing ordinance, Kenton County Ordinance No. 451.9 as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus, adopted in 2004.

44. SEXUALLY ORIENTED TOYS OR NOVELTIES – instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs.
45. SPECIFIED ANATOMICAL AREAS – include:
- a. Less than completely and opaquely covered human genitals, pubic region, or the areola or nipple of the female breast; and
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and
 - c. Areas of the human anatomy included in the definitions of “nude” or “nudity.”
46. SPECIFIED SEXUAL ACTIVITIES – Acts of human masturbation, sexual intercourse, or sodomy. These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This definition shall include apparent sexual stimulation of another person’s genitals whether clothed or unclothed.
- AK. PROHIBITED USES: The following uses are prohibited in the (*insert legislative body name*) and county-wide under Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus. No Zoning Permit shall be issued for the following prohibited businesses:
1. Sexually oriented motion picture arcade or booth;
 2. Sexually oriented encounter center;
 3. Sexually oriented motel;
 4. Sexually oriented massage parlor or any business offering massages that is operated by a person who is not licensed as a massage therapist in accordance with the provisions of Kentucky Rev. Statues §309.350 et seq.;
 5. Sexually oriented modeling studio;
 6. Sexually oriented nude modeling studio; and
 7. Sexually oriented escort bureau.
- AL. OTHER USES PROHIBITED: Because there are no suitable sites for such sexually oriented businesses or, in accordance with the recommendations of the consultants to Kenton County, the following additional uses are prohibited:
1. Sexually oriented media store;
 2. Sex shop;
 3. Service oriented escort bureau;
 4. Sexually oriented motion picture theatre; and

5. Sexually oriented cabaret or theatre.

AM. **STANDARDS FOR A MEDIA STORE WITH SOME SEXUALLY ORIENTED MEDIA:** A retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area shall not be classified as a sexually oriented business but shall be subject to the following standards:

1. Separate room. The sexually explicit media shall be kept in a separate room from the rest of the inventory of the store and shall not visible outside the room;
2. Age limit. Sexually explicit media shall be available only to persons 18 years or older;
3. Access. Access to the room shall be through a solid door, accessed by an electronic control device monitored by the clerk or manager on duty through direct visual control;
4. Visibility. Customers and activities in the room shall be visible at all times to the clerk or manager on duty through a video system located at the clerk's or manager's counter; and
5. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.

AN. **SEVERABILITY:** It is hereby declared to be the intention of the (*insert legislative body name*) that the sections, paragraphs, sentences, clauses and phrases of this Chapter are severable, and if any phrase clause, sentence, paragraph or section of this Chapter shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Chapter, since the same would have been enacted by the (*insert legislative body name*) without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

SECTION 9.6 ACCESSORY DWELLING UNIT REGULATIONS

- A. **APPLICABILITY:** These regulations apply to any dwelling unit which meets the definition of an Accessory Dwelling Unit as defined in Section 2.8 (General Terminology).
- B. **PERMITTED ZONES:** Accessory dwelling units are permitted in the A-1 (Agricultural One) Zone and any single-family Residential (R) Zones.
- C. **APPLICATION AND PROCESSING:** Applications for an accessory dwelling unit shall conform with the regulations set forth in Article XIV.
- D. **HEIGHT, YARD, AND SETBACK REGULATIONS**

1. Maximum Floor Area:
 - a. Lot size up to 7,500 square feet - five hundred (500) square feet
 - b. Lot size 7,501 to 10,000 square feet - six hundred forty (640) square feet
 - c. Lot size in excess of 10,000 square feet - eight hundred (800) square feet
 - d. In no case shall an accessory dwelling unit, and any combination of accessory structures, occupy more than thirty (30) percent of the rear yard
 2. Maximum Height: An accessory dwelling unit shall only be one (1) story in height, and in no case shall exceed the height of the principal single-family dwelling unit
 3. Setbacks:
 - a. Shall only be permitted rear yard
 - b. Shall meet the setback requirements for principal structures in the zone said structure is located
 - c. Shall be located a minimum of ten (10) feet from the principal single-family dwelling unit
- E. DEED RESTRICTIONS REQUIRED: Before a property owner obtains a building permit for an accessory dwelling unit, the property owner shall file with the county clerk a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner. Said restrictions shall state:
1. The accessory dwelling unit, or the land on which the accessory dwelling unit is located, shall not be subdivided, sold separately, or otherwise segregated in ownership from the principal dwelling unit, or the land on which the principal dwelling unit is located.
 2. The use permit for the accessory dwelling unit shall be in effect as long as either the principal single-family dwelling unit, or the accessory dwelling unit, is occupied by the owner of record as the principal residence.
 3. The above declarations are binding upon any heir, successor, beneficiary, or inheritor in ownership of the property.
- F. OTHER DEVELOPMENT CONTROLS
1. Only one (1) accessory dwelling unit shall be permitted on each lot
 2. An accessory dwelling unit may be developed as a single-use structure or in conjunction with another accessory structure (i.e. the second floor of a detached garage), provided the accessory dwelling unit meets the criteria set forth in Section 9.6, D., above.
 3. An accessory dwelling unit shall be constructed on a lot containing a principal single-family dwelling unit or in conjunction with the development of the principal single-family dwelling unit

4. Off-street parking and loading and/or unloading areas shall be provided in accordance with Article XI of this ordinance.
5. No outdoor storage of any material (usable or waste) shall be permitted, except within enclosed containers.
6. No lighting shall be permitted which would glare from any accessory dwelling unit onto any street, or into any adjacent property.
7. All utilities associated with a detached accessory dwelling unit must be underground.
8. The design of an accessory dwelling unit shall be consistent with the principal single-family dwelling unit by using similar exterior wall materials, window types, door and window trims, roofing, and roof pitch.
9. The entrance to a detached accessory dwelling unit shall face the front or interior of the lot said structure is located.
10. Access to an accessory dwelling unit shall be from the same curb cut that is used by the principal dwelling unit.

SECTION 9.7 SPECIAL REQUIREMENTS GOVERNING HOME OCCUPATIONS:

Home occupations shall include the use of a residential structure for services rendered, other than by direct contact with customers, at that location (for example, where the bulk of the business is by telephone - actual work is performed in home and customer is contacted other than at that location). The following requirements shall apply to home occupations, where permitted herein:

- A. No persons other than members of the family residing on the premises shall be engaged in such operation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. Not more than twenty-five (25) percent of the gross floor area of any one floor of the dwelling unit (including the basement or cellar) shall be used in the conduct of the home occupation.
- C. There shall be no change in the outside appearance of the structure or premises, or other visible evidence of the conduct of such home occupation, that will indicate from the exterior that the structure is being utilized, in part, for any purpose other than that of a dwelling unit, except that a name plate, as regulated by Article XIII of this ordinance, shall be permitted.
- D. No home occupation shall be conducted in any accessory structure, nor shall there be any exterior storage of any materials on the premises.
- E. There shall be no commodity sold upon the premises in connection with such home occupation.
- F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the vicinity where such home occupation is located.

- G. No equipment or process which creates noise, vibration, glare, fumes, odors, or electrical interference, detectable to the normal senses off the lot, shall be used in such home occupation. In the case of electrical interference, no equipment or process which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises, shall be used.

SECTION 9.8 GENERAL MANUFACTURED HOME REGULATIONS

The following regulations shall apply to all manufactured homes located individually or in a manufactured home park, where permitted herein. Requirements of the zone in which said manufactured homes are permitted shall also apply:

- A. The manufactured home shall, at a minimum, be equipped with plumbing and electrical connections designed for attachment to appropriate external systems.
- B. All health, sanitation (including sewers and/or private secondary sewage treatment plants approved by the Northern Kentucky District Health Department and the Sanitation District No. 1 of Campbell and Kenton Counties), and safety requirements applicable to a conventional dwelling, shall be equally applicable to a manufactured home.
- C. The manufactured home shall be set and adequately anchored on a concrete or hard surfaced slab in accordance with the Kentucky Manufactured Home and Recreational Vehicle Park regulations, and the open space between the ground and the floor of the manufactured home shall be enclosed with some material such as concrete block, corrugated metal, or other durable and suitable material.
- D. Any person, firm, or corporation desiring to locate a manufactured home shall apply for a zoning/building permit and an occupancy permit. Applicable permits must be approved prior to the installation and occupancy of any manufactured home. The proper permits must be displayed in a conspicuous location in each manufactured home, signifying that all permits have been approved by the building inspector and zoning administrator.

SECTION 9.9 COMPATIBILITY STANDARDS FOR QUALIFIED MANUFACTURED HOUSING

- A. **PURPOSE:** The purpose of compatibility standards for manufactured housing is to permit local governments to adopt and enforce, as part of its zoning regulations, compatibility standards governing the placement of qualified manufactured homes in residential zones, within the local government's jurisdiction, designed to ensure that when a qualified manufactured home is placed in a residential zone, it is compatible, in terms of assessed value, with existing housing located immediately adjacent to (1) either side of the proposed site within the same block front; (2) adjacent to the rear, or (3) within a one-eighth (1/8) mile radius or less from the proposed location of the qualified manufactured home.

- B. A qualified manufactured home that meets the compatibility standards as set forth in Subsections D. 5., and D. 6., of this section, as well as the regulations of the zone in which it is proposed, shall be allowed as a permitted use and as a primary family residence in any residential zone permitting detached single-family residential uses.
- C. Applications must be submitted to the zoning administrator demonstrating that the compatibility standards as set forth in Subsections D., 5. and D. 6., have been met and contending that the proposed construction, installation, or relocation of the qualified manufactured home is similar and comparable in exterior appearance, building materials, and living area to other dwelling units that have been constructed on adjacent tracts, lots, and parcels.
- D. The procedures for approval shall be in accordance with the requirements of Article XVI and the following:
1. Applications for the placement of qualified manufactured homes shall be submitted with a nonrefundable application fee on a form or forms developed for that purpose to the city zoning administrator. Qualified manufactured homes that have been illegally placed upon a tract, lot, or parcel shall be first removed before an application for approval of placement shall be accepted.
 2. The application shall include (1) only information reasonably necessary to make determination as to conformity with the provisions of this Section of this ordinance; (2) recent photographs of the front, side and rear of the qualified manufactured home exterior finish (whichever is applicable); (3) pictures taken from the proposed site of the dwelling unit in the northerly, easterly, southerly, and westerly directions, and pictures of any adjacent dwelling units. The photographs shall be taken within 30 days prior to the submittal of the application. In addition, each application shall be accompanied by a site plan or plot plan containing appropriate information including, but not limited to, the following:
 - a. Location of all existing buildings, structures, easements, and boundary lines;
 - b. North arrow, scale, city and land lot;
 - c. Existing use of adjacent property
 - d. Location of all proposed buildings, structures, and land uses.
 3. Applications shall be first reviewed for completeness. If the application is rejected for not being complete, the applicant shall be notified of the reasons for the rejection. The applicant shall be responsible for the satisfaction of all of the comments prior to the resubmission of the revised application.
 4. The application shall be reviewed for compatibility with architectural appearance and similarity with:
 - a. adjacent development or surrounding developments;

- b. development within the same zone or general area;
 - c. proposed development permitted in the same zone or general area; and,
5. Compatibility with architectural appearance shall be based on the following:
- a. floor living space and setbacks;
 - b. siding and exterior materials;
 - c. roof pitch;
 - d. square footage;
 - e. general aesthetic appearance.
6. Compatibility with the orientation and location of existing structures shall be based on the following:
- a. building height;
 - b. building width;
 - c. building depth;
 - d. building setbacks.
7. A decision of approval, conditional approval or disapproval of a complete application shall be made and the applicant shall be notified in writing. Conditional approval shall require that the specific conditions and the reasons therefore be stated in writing and be agreed to by the applicant; such conditions shall be binding upon the applicant upon agreement. In the case of disapproval, the reasons therefore shall be specifically stated in writing by designating each specific provision of this section or other applicable ordinance that is not met and an explanation as to the reason or reasons why each such provision is not met.

SECTION 9.10 LAND USED FOR AGRICULTURAL PURPOSES: Pursuant to KRS 100, any land which is used for agricultural purposes (exclusive of land and building used for residences), shall have no regulations, except that:

- A. Setback lines shall be required for the protection of existing and proposed streets and highways, as required for the zone in which the use is located;
- B. That all buildings or structures in a designated floodway or floodplain, or which tend to increase flood heights, or obstruct the flow of flood waters shall be in accordance with this ordinance; and
- C. All dwellings to be constructed or provided as part of land used for agricultural purposes shall meet all requirements of the zone in which said use is located and all other requirements of this ordinance.

SECTION 9.11 REGULATIONS FOR BED AND BREAKFAST ESTABLISHMENTS: Bed and breakfast establishments, where permitted, shall be subject to the following regulations in addition to any imposed by the board of adjustment in approving a specific operation.

- A. The establishment shall be operated by the owner of the dwelling unit, who shall live in the unit
- B. Food service may be provided for resident guests only.
- C. No exterior alterations and/or additions shall be permitted for the purpose of increasing the number of guest rooms.
- D. Interior alterations should maintain the unique characteristics of the structure, if possible.
- E. One parking space per guest room and two parking spaces for the owner shall be provided on site. Parking shall be limited to the side and rear yards, screened from adjacent properties with a six (6) foot high masonry or wood fence, or dense vegetation.
- F. A site plan, as regulated by Article XV of this ordinance, shall be required.

SECTION 9.12 PERFORMANCE STANDARDS FOR INDUSTRIAL ZONES

- A. **APPLICATION OF PERFORMANCE STANDARDS:** After the effective date of this ordinance, any use established or changed to, and any building, structure, or tract of land, developed, constructed, or used for any permitted use or accessory use in all industrial zones, shall comply with all of the performance standards herein set forth for the district involved. If any existing use, building, or other structure is extended, enlarged, or reconstructed, the performance standards for the district involved shall apply with respect to such extended, enlarged, or reconstructed portion, or portions, of such use, building, or other structure.
- B. **TIME SCHEDULE FOR COMPLIANCE OF PERFORMANCE STANDARDS:** Except for standards regulated and enforced by the state of Kentucky, compliance with the provisions of this article of the ordinance shall be according to the following time schedule:
 - 1. All new installations shall comply as of going into operation.
 - 2. All existing installations not in compliance, as of the effective date of this ordinance, shall be in compliance within one (1) calendar year of the effective date of this ordinance, unless the owner or person responsible for the operation of the installation shall have submitted to the zoning administrator a program and schedule for achieving compliance. Such program and schedule shall contain a date on or before which full compliance will be attained and such other information as the zoning administrator may require. If approved by the zoning administrator, such date will be the date on which the installation shall comply.

The zoning administrator may require persons submitting such program to submit subsequent periodic reports on progress in achieving compliance.

C. PERFORMANCE STANDARDS

1. **BUILDING ENCLOSURES:** Every permitted use in the Industrial Park or Eco Commerce Park (ECP) zone shall be operated in its entirety within a completely enclosed building. In all other industrial zones, permitted uses shall be operated either within a completely enclosed building or within an area screened from view at the nearest zone boundary, as regulated by Section 10.5 and Article XII of this ordinance.
2. **NOISE:** For the purpose of measuring the intensity and frequencies of a sound, the “A” scale of a ANSI S1.4 Type 2 sound level meter shall be employed. In the enforcement of the regulation, noises produced by the operation of motor vehicles or other transportation facilities shall not be included in determining the maximum permitted decibel level.

The sound pressure of noise radiated from any activity shall not exceed the values given in Table 9-1 of this section in any octave band frequency at any point on or beyond any property line for any industrial park or Eco Commerce Park zone and beyond the zone boundary for all the other industrial zones. If the noise is not smooth and continuous, one or more of the corrections in Table 9-2 of this section of this ordinance shall be added to or subtracted from each of the decibel levels given in Table 9-1.

D. EXTERIOR LIGHTING:

1. All luminaries utilized shall be designed to have full cutoff type fixtures to shield light from direct view of an observer at ground level at property line.
2. The maximum permitted height of luminaries shall be 20 feet.
3. The maximum permitted illumination at the property line shall be 0.5 foot candles except when adjacent to a residential zone it shall be 0.2 foot candles.
4. All outdoor lighting which contain a minimum of four (4) parking lot light poles, parking lot lighting levels for ground surface parking lots and the top levels of parking decks or parking structures shall be reduced by a least fifty (50) percent of full operational levels within thirty (30) minutes after the close of business. This reduced lighting level shall be achieved by extinguishing at least fifty (50) percent of the total number of pole mounted lamps, by dimming lighting levels to no more than fifty (50) percent of the levels used during business or activity hours, or by some combination thereof; provided, however, that this provision shall not require parking lot lighting levels to be reduced to less than 0.2 footcandles as measured horizontally at the surface on which the light pole is mounted.
5. Any lights used for exterior illumination, except for overhead street lighting, warning, or traffic signals shall direct light away from adjoining zones.

- E. **HUMIDITY AND HEAT:** No heat shall be generated or transmitted that causes an increase above the ambient temperature in excess of five degrees Fahrenheit at or directly beyond the lot lines of the site from which the heat source is located.
- F. **VIBRATION:** No activity shall cause a vibration which is discernible without instruments on any adjoining lot or property.
- G. **ELECTRICAL RADIATION:** Any electrical radiation shall not adversely affect, at any point on or beyond the lot line, any operation or equipment, other than those of the creation of the radiation. Avoidance of adverse effects from electrical radiation by appropriate single or mutual scheduling of operations is permitted.
- H. **STORAGE:** The storage of any materials, supplies, or products outside of a completely enclosed building shall be prohibited within any industrial park or urban industrial zone. In any of the other industrial zones, outdoor storage of materials, supplies, and products is permitted in side and rear yards, provided that the storage of materials, supplies, and products are within an area screened from view at the nearest zone boundary, as regulated by Section 10.5 of this ordinance.
- I. **EMISSIONS AND OPEN BURNING:** No emission of particulate matter, sulphur, compound, carbon monoxide, hydrocarbon, nitrogen oxide, and open burning shall be allowed in excess of regulations adopted by the Kentucky Environmental Public Protection Cabinet, Division for Air Quality, Cincinnati Air Quality Region.
- J. **ODOROUS MATTER:** No emission of odorous matter shall be allowed in excess of ambient air quality standards, as set forth by regulations adopted by the Kentucky Environmental and Public Protection Cabinet, Division for Air Quality, Cincinnati Air Quality Region.
- K. **RADIATION:** All sources of ionizing radiation shall be registered or licensed by the Kentucky Cabinet for Health and Family Services, Department of Public Health, Radiation Health Branch and operated in accordance with their regulations in all industrial zones.
- K. **FIRE AND EXPLOSIVE HAZARDS:** In the I-1, I-2, and I-3 zones only, storage, utilization, or manufacture of solid materials which requires free burning and intense burning may be allowed if permitted in said zones, provided that said materials or products shall be stored, utilized, or manufactured within completely enclosed buildings having incombustible walls and protected throughout by an automatic fire extinguishing system. In the I-1, I-2, and I-3 zones only, the storage, utilization, or manufacture of flammable liquids, or materials which produce flammable or explosive vapors or gases, may be allowed if permitted in said zones, provided that storage, handling, and use shall be in accordance with Standards of American Insurance Association for Storage, Handling, and Use of Flammable Liquids, "American Insurance Association", Pamphlet No. 30, June 1959, or any subsequent revision or amendment thereto.

- L. **WASTE:** No waste material or refuse shall be dumped upon, or permitted to remain upon, any part of the property outside of the buildings in an industrial park or Eco Commerce Park zone. all waste shall be disposed off in accordance with the Solid Waste Regulations of the Environmental and Public Protection Cabinet, Department of Environmental Protection, Division of Waste Management.

All sewage and industrial waste shall be treated and disposed of in such a manner so as to comply with the standards of the appropriate authority. All plans for waste disposal facilities shall be required before the issuance of any building permit.

- M. **MINING AND RECLAMATION:** All methods of operation, construction of roads, back-filling, grading, blasting, water impoundments, treatment facilities, and reclamation must be in conformance with the regulations adopted by the Environmental and Public Protection Cabinet, Division of Mine Reclamation and Enforcement. Any excavation or processing operations shall also be subject to the regulations of the Division of Mine Reclamation and Enforcement.

- N. **BLASTING AND EXPLOSIVES:** All blasting and the use of explosives must be conducted in accordance with the regulations set forth by the Department of Minesafety and licensing, Division of Explosives and Blasting, pursuant to the authority of KRS 351.310 to 351.340 and 351.990, and in accordance with the Standards of Safety for Explosives, for the state of Kentucky, prepared by the Department of Public Safety, Division of Fire Prevention, pursuant to the authority of KRS 227.300.

- O. **INTENT CONCERNING DETERMINATIONS INVOLVED IN ADMINISTRATION AND ENFORCEMENT OF PERFORMANCE STANDARDS:** It is the intent of this ordinance that:

1. Where investigation can be made by the Zoning Administrator or other designated employee, using equipment normally available to the legislative body, such investigation shall be so made before notice of violation is issued.
2. Where technical complexity or no availability of equipment, makes it unreasonable in the opinion of the Zoning Administrator to make a determination, the Zoning Administrator may seek the opinion of an expert in the field to make the determination on behalf of the Planning Commission or the legislative body. The Zoning Administrator shall notify the applicant of the complaint, the needed investigation and all other pertinent information.

If the applicant wishes to conduct an independent investigation of the problem, they may do so and submit all pertinent documentation to the Zoning Administrator, for review by the expert, within 30 days of the investigation notice. If it is determined that the applicant is exceeding the standards set forth, an agreed upon timeline may be set between the Zoning Administrator and the applicant to correct the problem.

If the applicant does not wish to conduct an investigation or if the Zoning Administrator determines the need for an independent investigation by an expert, he/she may seek the opinion of an expert in the field.

After review of all documentation, if the expert designated by the zoning administrator finds that the applicant is in violation of the standards, the applicant shall pay all the costs of the investigation.

TABLE 9-1

MAXIMUM PERMISSIBLE SOUND PRESSURE LEVEL (DECIBELS) AT SPECIFIED POINTS OF MEASUREMENT FOR NOISE RADIATED CONTINUOUSLY FROM A FACILITY

RECEIVING LAND USE	7:00 A.M. - 10:00 P.M.	10:00 P.M. - 7:00 A.M.
Residential	55	50
Commercial and Industrial Park	60	55
Industrial	65	65

TABLE 9-2

CORRECTION IN MAXIMUM PERMITTED SOUND PRESSURE LEVEL IN DECIBELS TO BE APPLIED TO TABLE 9-1

TYPE OF OPERATION OF CHARACTER OF NOISE	CORRECTION IN DECIBELS
Noise source operates less than twenty percent (20%) of any one hour period	plus 5*
Noise source operates less than five percent (5%) of any one hour period	plus 10*
Noise source operates less than one percent (1%) of any one hour period	plus 15*
Noise of impulse character (hammering, etc.)	minus 5
Noise of periodic character (hum, screech, etc.)	minus 5

* Apply one of these corrections only

SECTION 9.13 OUTDOOR SWIMMING POOLS

- A. PRIVATE SWIMMING POOLS: All private swimming pools shall be regulated according to the following requirements:
1. Shall be permitted to locate in the rear yard no closer than three (3) feet to any property line. The zoning administrator may allow pools to be located in the side yard if he determines that due to topography, unusual lot shape, or insufficient rear yard area, location of the pool in the rear yard is not possible.
 2. Swimming pools which are constructed in-ground shall be required to have a fence or wall, including a self-closing or self-latching door or gate around the pool or the property on which the pool is located. Such fence or wall shall be at least four (4) feet in height, but not more than seven (7) feet in height.
 - a. Only classes 1, 3, 4, or 5 fences are permitted, as regulated by Article XII of this ordinance.
 - (1) Class 1 - Masonry walls
 - (2) Class 3 - Woven wire (eighty percent (80%) open) and chain link
 - (3) Class 4 - Wood or other materials (more than fifty percent (50%) open)
 - (4) Class 5 - Solid fences, wood or other materials (less than fifty percent (50%) open)

Such fences or walls shall be constructed in such a manner that a child may not reach the pool from the street or any property without climbing the fence or wall or opening the gate or door.
 3. Swimming pools which are located above-ground shall be required to have a fence or wall, including a self-closing or self-latching door or gate around the pool or property upon which the pool is located. Such fence or wall shall be at least four (4) feet in height, but not more than seven (7) feet in height.
 - a. Only classes 1, 3, 4, or 5 fences are permitted, as regulated by Article XIV of this ordinance.
 - (1) Class 1 - Masonry walls
 - (2) Class 3 - Woven wire (eighty percent (80%) open) and chain link
 - (3) Class 4 - Wood or other materials (more than fifty percent (50%) open)
 - (4) Class 5 - Solid fences, wood or other materials (less than fifty percent (50%) open)

Such fences or walls shall be constructed in such a manner that a child may not reach the pool from the street or any property without climbing the fence or wall

or opening the gate or door. Said fence or wall may be the wall of the above-ground pool, providing that said wall is at least four (4) feet in height above the surrounding ground level.

Any access to above ground pools by means of a ladder or stairway shall be provided with a self-closing or self-latching door or gate, or some other device that would prevent a child from gaining access to the pool by means of a ladder.

4. Glare from lights used to illuminate the swimming pool area shall be directed away from adjacent properties.
5. All swimming pools and associated equipment shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the legislative body. Water used in the swimming pool, which is obtained from other than a public source, shall be approved by the Northern Kentucky District Health Department.
6. All swimming pools existing at the time of adoption of this ordinance, which are unprotected by a surrounding fence or wall, including gates or doors, as regulated herein, shall be required to comply with the provisions of this section within sixty (60) days after its adoption.
 - a. Only one bathhouse per dwelling unit shall be permitted.

B. PUBLIC, SEMI-PUBLIC, AND COMMERCIAL SWIMMING POOLS: All public, semi-public, and commercial swimming pools shall be regulated according to the following requirements:

1. Except as herein provided, no swimming pool and associated equipment shall be permitted within any minimum required yards or within the limits of any public right-of-way or easement.
2. The swimming pool, or the property on which the pool is located, shall be surrounded by a fence or wall, including a self-closing and self-latching door or gate
 - a. Only classes 1, 3, 4, or 5 fences are permitted, as regulated by Article XIII of this ordinance.
 - (1) Class 1 - Masonry walls
 - (2) Class 3 - Woven wire (eighty percent (80%) open) and chain link
 - (3) Class 4 - Wood or other materials (more than fifty percent (50%) open)
 - (4) Class 5 - Solid fences, wood or other materials (less than fifty percent (50%) open)

Such fences or walls shall be at least five (5) feet in height, but not exceeding the height as permitted herein, and of such construction that a child may not reach the pool from the street or from any property without climbing the wall or fence or opening the gate or door.

In lieu of providing a fence or wall, as required herein, swimming pools may be provided with a pool cover in compliance with the Kentucky Building Code and provided the following required safety criteria are met:

- a. The safety standard cover must pass the strength test and be able to withstand at least 490 pounds (equivalent to two adults and a child) on any a given 3 square foot area.
 - b. The cover must be able to drain water so that water does not accumulate and pose a drowning threat to a child.
 - c. The pool cover shall be designed to fit securely over all sides of the pool preventing a child from lifting the cover or entering the water. The cover shall also have a latch, which cannot become undone or loosened, to secure it in a closed position. If the cover is operated electrically, it shall provide for a manual override in the event of a power failure.
 - d. The power disconnect for the pool cover shall be located inside a building and shall include a visual detector or light which remains lit at all times when the pool cover is not in place.
 - e. That the pool will be kept under observation at all times while the pool cover is not in place.
3. Glare from lights used to illuminate the swimming pool area shall be directed away from adjacent properties.
 4. All swimming pools and associated equipment shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the legislative body. Water used in the swimming pool, which is obtained from other than a public source, shall be approved by the Northern Kentucky District Health Department.
 5. No mechanical device for the reproduction or amplification of sounds used in connection with swimming pools shall create a nuisance to adjacent properties.

SECTION 9.14 REGULATIONS FOR LARGE RETAIL ESTABLISHMENTS

- A. **PURPOSE:** The purposes of these regulations are to:
1. Enhance the building and site design so as to blend in with the character of the adjoining neighborhood.
 2. Encourage new development to use quality materials and innovative architectural design that is also complimentary to the existing built fabric.

3. To allow for a variation in building façade to add interest and reduce the massive scale to give the appearance of smaller stores.
4. To allow for the breakdown of the building into smaller stores to broaden the scope of future tenants in case of prolonged vacancy.

B. PRE-APPLICATION CONFERENCE

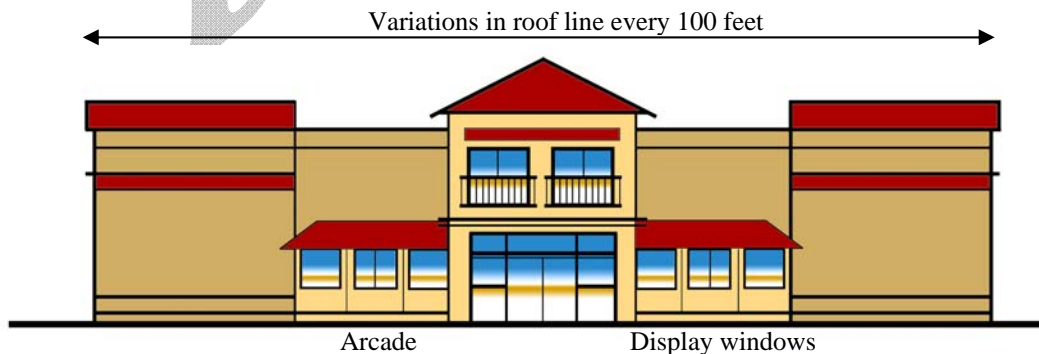
Prior to filing for development plan review or the issuance of a zoning permit, the developer, petitioner, applicant or property owner shall attend a pre-application conference with Planning Commission or its duly authorized representative to discuss the development review process, be informed of the requirements of this section, the requirements of the Zoning Ordinance and to confer about the application. No person may rely upon any comment concerning a proposed development plan, or any expression of any nature about the proposal made by any participant at the pre-application conference as a representation or implication that the proposal will be ultimately approved or rejected in any form. This conference is intended to review the development plan and flag any issues in applying these regulations.

C. APPLICABILITY

These regulations would apply to any retail sales and service use whose principal structure fits the definition of a large scale retail establishment as defined in Section 2.8 of this ordinance.

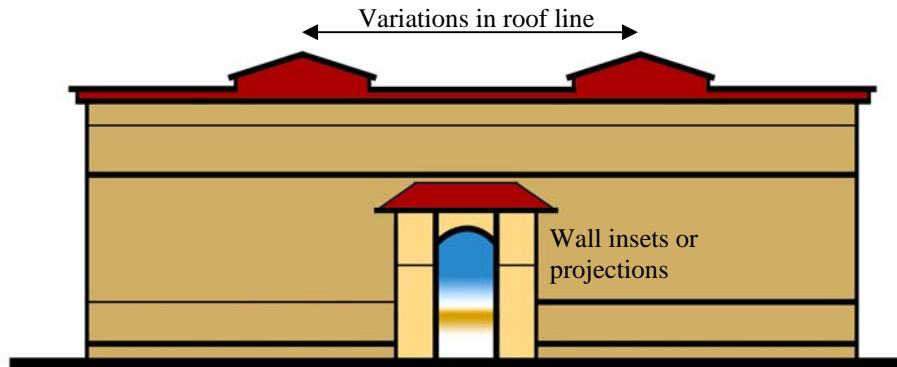
D. FACADES AND EXTERIOR WALLS

1. **FRONT FAÇADE:**
Buildings with exterior walls greater than 100 feet in horizontal length shall be constructed using a combination of materials and architectural features such as recesses, projections, wall insets, arcades, window display areas, awnings, balconies, window projections, landscape structures or other features that complement the design intent of the structure. A combination of a minimum of three of the above listed features shall be repeated every 100 feet of the front façade.



2. **SIDE OR REAR FACADES FACING PUBLIC RIGHT OF WAY:**

Side facades of buildings facing public rights-of-way shall use a combination of a minimum of two of the following listed features that shall be repeated every 100 feet of the façade: recesses, projections, wall insets or window projections.



- 3. **SIDE OR REAR FACADES NOT FACING PUBLIC RIGHT OF WAY:**
 Facades of the building not facing public rights-of-way shall have at least one of the following architectural features: Difference in color, material, projections or recesses.

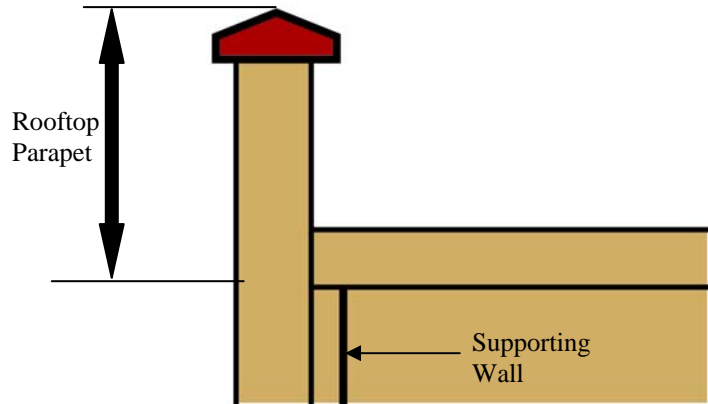
E. ENTRANCES:

- 1. Customer entrances are required along all exterior walls facing a parking area or street. Where this involves more than two sides of a building, this shall only apply to two sides of that building however more entrances may be permitted. Display windows shall be provided on either side of the entrances for a minimum of 50 feet.
- 2. Each building shall have clearly defined, highly visible customer entrances featuring no less than two of the following:
 - a. Canopies or porticos
 - b. Overhangs
 - c. Recesses/projections
 - d. Arcades
 - e. Raised corniced parapets over the door
 - f. Peaked roof forms
 - g. Arches
 - h. Architectural details such as tile work and moldings which are integrated into the building structure and design
 - i. Integral planters that incorporate landscaped areas



F. ROOFS:

1. Building front facades that exceed 100 feet in length shall have variations in roofline or rooftop parapet. Parapets shall be used to conceal flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed 15% of the height of the supporting wall and such parapets shall not at any point exceed one-third of the height of the supporting wall. Such parapets shall feature three dimensional cornice treatments.



2. Overhanging eaves, extending no less than 3 feet past the supporting walls.
3. Sloping roofs that do not exceed the average height of the supporting walls.
4. White roofs are not permitted; however, cool roof color materials may be utilized to reflect light just like that of a white roof.

G. MATERIALS AND COLORS

1. Predominant exterior building materials shall be high quality materials. These include, without limitation:
 - a. Brick
 - b. Wood
 - c. Sandstone
 - d. Other native stone
 - e. Tinted, textured, concrete masonry units
2. Building materials that are used for the front façade of the building shall be used on the side facades of the building as well to provide visual continuity.
3. Facade colors shall be low reflectance, subtle, neutral or earth tone colors. The use of high intensity colors, metallic colors, black or fluorescent colors is prohibited, however, colors may allow for national identity.

4. Neon tubing shall not be an acceptable feature for building trim or accent areas.
5. Predominant exterior building materials should not include the following:
 - a. Smooth-faced concrete block
 - b. Tilt-up concrete panels
 - c. Pre-fabricated steel panels

H. COMMUNITY SPACE REQUIREMENT

1. All large retail establishments shall provide community space in proportion to the size of the building. The required community space shall be equal to 10% of the square footage of the principal building.
3. The community space may be divided up into more than one area on the property however there shall be at least one community space of not less than 5,000 square feet.
4. The community space shall be centrally located to serve needs of visitors and employees of the building. An alternate location may be used, however, it must which meets the intent of this section. The community space shall have pedestrian connections to a transit facility and to the front of the building.

I. **OUTDOOR STORAGE AND TRASH COLLECTION:** No outdoor storage of any material (usable or waste) shall be permitted in this zone except within enclosed areas or containers. All outdoor trash storage areas shall be screened per the requirements of Section 10.5 of this ordinance.

J. **OFF STREET PARKING:** Off street parking requirements for large-scale off-street parking lots shall apply as set forth in Article XI, Section 11.2., C., of this ordinance.

K. **LANDSCAPE AND SCREENING:** Screening and landscaping shall be provided, as regulated by Article X of this ordinance.

L. **ACCESS CONTROL:** Access control shall be provided as regulated by Article XI of this ordinance.

M. **TRAFFIC STUDY:** Traffic study requirement shall be as regulated by Section 4.5 of this ordinance.

N. **SIGNS:** Signage shall be provided in accordance with Article XIII of this ordinance.

O. **LIGHTING:** Lighting shall be provided in accordance with Section 4.6 of this ordinance.