

ARTICLE IX

GENERAL REGULATIONS

SECTION 9.0 PURPOSE: General regulations shall apply to all districts. Where requirements of a general regulation and a district regulation differ, the more restrictive requirement shall prevail.

SECTION 9.1 REDUCTION IN BUILDING SITE AREA: Notwithstanding other provisions of this ordinance, no lot, in any zone, may be reduced in area below the minimum lot area as specified herein for the zone within which said lot is located, except where such reduction has been brought about by the expansion or acquiring of rights-of-way for a street. If, however, by some means (e.g., misinterpretation of law, erroneous lot descriptions, etc.) the lot area is reduced below the minimum required lot area as specified herein for the zone, all of the uses and structures contained on the remaining portion of the area shall be subject to compliance with all other provisions of this ordinance. In the event that the uses and structures cannot comply in such circumstances, the property owner shall seek relief from the board of adjustment, as provided for in Section 18.5 of this ordinance.

SECTION 9.2 INTERFERENCE WITH TRAFFIC SIGNALS: Notwithstanding other provisions of this ordinance, in any zone, no sign, structure, tree, planting, or vegetation, or any portion thereof, shall protrude over or into any street so as to create confusion around, or otherwise interfere with, traffic signals of any kind.

SECTION 9.3 VISION CLEARANCE AT CORNERS, CURB CUTS, AND RAILROAD CROSSINGS: Notwithstanding any part of this ordinance or any permit granted, or any variance granted by the board of adjustment, no type of structure, vehicle, tree, planting, vegetation, sign, or fence, or any type of obstacle, or any portion thereof, shall be placed or retained in such a manner which would create a traffic hazard or would obstruct the vision clearance at corners, curb cuts, or railroad crossings in any zone.

SECTION 9.4 FRONTAGE ON CORNER LOTS AND DOUBLE FRONTAGE LOTS: On lots having frontage on more than one street, in any zone, the minimum front yard shall be provided for each street, road, or highway, in accordance with the provisions of this ordinance.

SECTION 9.5 UTILITIES LOCATION: Electrical transformer stations, gas regulator stations, sewage and water treatment plants, pumping stations, standpipes for public water supply, and other similar utility uses, may be located in any zone subject to the approval of the board of adjustment, as set forth in Section 9.14 of this ordinance. The location of such facilities shall be in accordance with Kentucky Revised Statutes, and all other pertinent regulations, and the following requirements:

- A. Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which the element is a part.
- B. A building or structure, except an enclosing fence, shall be set back at least fifty (50) feet from any property line.
- C. Such facilities shall be enclosed by a protective fence as regulated by Article XIII.
- D. Open spaces on the premises shall be suitably landscaped and maintained and a screening area according to Section 9.17 of this ordinance may be required in and along any yard.
- E. The storage of vehicles and equipment on the premises, unless enclosed or screened, shall be prohibited.
- F. The surrounding area shall not be adversely affected by, and shall be protected from, noise, odor, glare, dust, gas, smoke, and vibration, by such suitable means and conditions as the board of adjustment may specify.

SECTION 9.6 RAILROAD RIGHTS-OF-WAY LOCATION: Railroad rights-of-way, exclusive of such uses as marshaling yards, spur lines, passenger and freight terminals, maintenance shops, fueling facilities, and round houses, may be located in any zone of this ordinance providing said railroad rights-of-way meet the requirements of those sections of the Kentucky Revised Statutes and other pertinent state regulations.

SECTION 9.7 EXCAVATION OR MOVEMENT OF SOIL: Notwithstanding other provisions of the ordinance, no governmental entity or other person or entity shall strip, excavate, fill, or otherwise move soil, trees, or other vegetation for sale, or any other purpose, except for minor changes such as the filling of small pockets in lots, flower beds, and other similar operations, in any zone set forth in this ordinance without first insuring that all requirements of the subdivision regulations of the city, if applicable, have been fulfilled and then obtaining a permit from the building department for such stripping, excavating, filling, or other means of soil movement including removal of trees and other vegetation. The building department shall issue the required permit only after being informed by letter from the city's engineering department that the resulting change in grade or removal of trees and other vegetation in the affected area will not be against the best interests of the local area. The provisions of this section shall not be construed to prohibit normal excavation or grading incidental to the construction or alteration of a building on the premises for which a building permit has been granted as required otherwise in this ordinance, but shall include all road cuts thereto.

SECTION 9.8 UNSIGHTLY OR UNSANITARY STORAGE: No rubbish, salvage materials, junk, or miscellaneous refuse shall be openly stored or kept in the open, and weeds shall not be allowed to go uncut within any zones, when the same may be construed to be a menace to public health and safety by the appropriate health

department, or have a depressing influence upon property values in the neighborhood, in the opinion of the zoning administrator. Salvage and junkyards shall be adequately enclosed with a solid fence or wall, as regulated by Article XIII, and an approved permanent planting screen may be required as regulated by Section 9.17 of this ordinance.

SECTION 9.9 JUNKYARD LOCATION: No person shall operate any junkyard which is situated closer than two thousand (2,000) feet from the centerline of any county, state, federal, or limited access highway or turnpike, including bridges and bridge approaches, unless a permit for such operation shall have been obtained from the Kentucky Department of Transportation, Bureau of Highways, in accordance with KRS 177.905 to 177.950.

SECTION 9.10 APPLICATION OF ZONING REGULATIONS

- A. Except as hereinafter provided, no public or private structure, except the service facilities of public utilities operating under the jurisdiction of the Public Service Commission or the Department of Motor Transportation or federal Power Commission and common carriers by rail, shall be erected, reconstructed, or structurally altered, nor shall any public or private structures or land, except the service facilities of public utilities operating under the jurisdiction of the Public service Commission or the Department of Motor Transportation or federal Power Commission and common carriers by rail, be used for any purpose other than that permitted in the zone in which such structures or land is to be located or is located. All of the required lot area shall be in one (1) zone.
- B. Except as hereinafter provided, no public or private structures except the service facilities of public utilities operating under the jurisdiction of the Public Service Commission or the Department of Motor Transportation or federal Power Commission and common carriers by rail, shall be erected, reconstructed, or structurally altered to exceed the height or bulk limit herein established for the zone in which such structure is to be located or is located.
- C. Except as hereinafter provided, no lot areas shall hereafter be so reduced or diminished that the yards or other open spaces shall be smaller than described by this ordinance and no building shall be occupied by more families than prescribed for such building, structure or premises for the zone in which it is located.
- D. Except as herein provided, no part of any yard, or other open space, or off-street parking or loading and/or unloading space about or in connection with any building, structure, or use permitted by this ordinance shall be considered to be part of a required yard, or other open space, or off-street parking or loading and/or unloading space for any other building, structure, or use.

-
- E. Every public or private building or other structure hereafter erected shall be located on a lot as herein defined and in no case shall there be more than one (1) principal building and permitted accessory structures on one (1) lot, except as hereinafter provided, nor shall any building be erected on any lot which does not abut at least twenty-five (25) feet on a deeded and accepted public right-of-way.
- F. Accessory structures and uses (excluding off-street parking, loading and unloading areas, fences, and signs) shall not be permitted within any required minimum front yard or side yard (on each side of the lot) in any zone. Accessory structures and uses (excluding off-street parking, loading and unloading areas, fences, and signs) shall be permitted to be extended into the minimum rear yard, as defined herein, in all zones, but must be set back from the rear lot line a minimum of ten (10) feet, and required minimum side yard clearances shall be maintained. Location of off-street parking, loading and unloading areas, fences, and signs are governed by their respective sections as provided herein.
- G. Permitted Obstructions in Minimum Required Yards or Courts: Except as herein provided, the following shall not be considered to be obstructions when located in the minimum required yards or courts specified:
1. In All Minimum Required Yards - Awnings and canopies; driveways, providing they are not closer than two (2) feet to the property line to which they run approximately parallel to; steps, four (4) feet or less above grade, projecting not more than four (4) feet into the minimum required yards which are necessary for access to a lot from a street or alley; fire escapes; chimneys; and air conditioning equipment projecting not more than eighteen (18) inches or less into the minimum required yards; arbors and trellises; flag poles; bird baths; fences and walls, subject to the requirements in Article XIII of this ordinance.
 2. In Minimum Front Yard Depths - One story bay windows, projecting three (3) feet or less into the minimum required yard; overhanging eaves and gutters, projecting not more than three (3) feet into the minimum required front yard.
 3. In Minimum Rear Yard Depths - One story bay windows, projecting three (3) feet or less into the minimum required yard; overhanging eaves and gutters, projecting not more than three (3) feet or less into the minimum required rear yard.
 4. In Minimum Side Yard Width - Overhanging eaves and gutters, projecting not more than eighteen (18) inches or less into the minimum required side yard.
 5. Off-street parking as provided for in Section 11.0, C.

SECTION 9.11 SPECIAL REQUIREMENTS GOVERNING HOME OCCUPATIONS:

The following requirements shall apply to home occupations when permitted herein:

- A. No persons other than members of the family residing in the premises shall be engaged in such operation in connection with which there is no group instruction, assembly, or activities.
- 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 building or premises, or other visible evidence of the conduct of such home occupation, such as utilization of trucks, that will indicate from the exterior that the building is being utilized, in part, for any purpose other than that of a dwelling unit, except that a name plate, as regulated by Article XIV of this ordinance, shall be permitted.
- D. No home occupation shall be conducted in any accessory building, 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 or than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and not located in any required yard except as herein provided.
- 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.

Home occupations shall include the use of the premises 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 in other than that location).

SECTION 9.12 NONCONFORMING LOTS, NONCONFORMING USES, NONCONFORMING STRUCTURES, REPAIRS AND MAINTENANCE, AND NONCONFORMING SIGNS**A. NONCONFORMING LOTS OF RECORD:**

1. Any lot of record which does not meet the requirements of this ordinance shall be considered a nonconforming lot of record.
2. If two (2) or more unimproved lots or combinations of lots and portions of lots with continuous frontage are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area, as established by this ordinance, the land involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be sold for purposes of building which does not meet lot width and area development requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance.

B. NONCONFORMING USES

1. **CONTINUANCE:** Except as herein provided, the lawful use of any structure or land existing at the time of the adoption of this ordinance may be continued although such use does not conform to the provisions of this ordinance. However, no nonconforming use or structure may be enlarged or extended beyond its area of use at the time it becomes a legal nonconforming use, unless and until the use is brought into conformance with all provisions of this ordinance.
2. **CHANGE FROM ONE NONCONFORMING USE TO ANOTHER:** Any nonconforming use may be changed to another nonconforming use, providing the new nonconforming use is in the same or a more restrictive classification (i.e., providing that, in the opinion of the board of adjustment, the new nonconforming use will be more in conformance with the intent of the regulations of the zone affected, than the old nonconforming use).
3. **TERMINATION:** Except for Section 9.12, B., 3., c., any of the following activities or conditions shall terminate, immediately, the right to operate a public or private nonconforming use.
 - a. Changing to a conforming use. In the case of section 9.12, B., 3., c., the board of adjustment shall hold a public hearing in accordance with the applicable requirements of section 18.2 of this ordinance, prior to termination of the nonconforming use.

- b. Abandonment.
- c. Nonoperative or nonused for a period of twelve (12) or more consecutive calendar months.
- d. Whenever the structure, in which the nonconforming use is operated, is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure in which the nonconforming use is operated and a determination is made by the board of adjustment that this structure should not be reconstructed.
- e. Whenever the structure, in which the nonconforming use is operated, becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such structure as of the date of the official order under the applicable ordinance and a determination is made by the board of adjustment that this structure should not be reconstructed.
- f. Whenever said nonconforming use becomes illegal, a nuisance, or a hazard to the public safety, health, or welfare.
- g. Whenever said nonconforming use becomes the property of the city, or any other governmental entity.

Following their hearing, the board may allow the continuation of a nonconforming use provided it is determined that conditions exist that are not the result of actions taken by the operator of the nonconforming use

4. ZONE CHANGE: The foregoing provisions shall apply to uses which become nonconforming due to zone changes which take place hereafter.

C. NONCONFORMING STRUCTURES

1. CONTINUANCE: Except as herein specified, any public or private nonconforming structure may be occupied, operated, and maintained in a state of good repair, but no nonconforming structure shall be enlarged or extended unless the enlargement or extension can be, and is, made in compliance with all of the provisions of this ordinance.

-
2. **TERMINATION:** Any one of the following acts or conditions shall terminate, immediately, the right to operate a public or private nonconforming structure:
- a. Changing to a conforming structure.
 - b. Abandonment.
 - c. Whenever the nonconforming structure is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure and a determination is made by the board of adjustment that the structure should not be reconstructed.
 - d. Whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such nonconforming structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such nonconforming structure as of the date of the official order under the applicable ordinance and a determination is made by the board of adjustment that the structure should not be reconstructed.
 - e. Whenever said nonconforming structure becomes a nuisance or a hazard to the public safety, health, or welfare.
 - f. Whenever the city, or any other governmental entity, acquires title to said nonconforming structure or the land upon which it is located.
3. **ZONE CHANGE:** The foregoing provisions shall apply to structures which become legally nonconforming due to zone changes which take place hereafter.
- D. **REPAIRS AND MAINTENANCE:** On any building devoted in whole, or in part, to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the market value of the building, provided that the cubic content of the building, as it existed at the time of passage or amendment of this ordinance which rendered it nonconforming, shall not be increased.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring, to a safe condition, of any building, structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, except for the conditions as stated in Section 9.12, B., 3., e.

E. NONCONFORMING SIGNS

1. **CONTINUANCE:** Except as herein specified, any nonconforming sign may be continued in operation and maintained after the effective date of this ordinance, provided, however, that no such sign shall be changed in any manner that increases the noncompliance of such sign with the provisions of this ordinance for the zone in which such sign is located.
2. **TERMINATION:** Any one of the following acts or conditions shall terminate, immediately, the right to operate or maintain a nonconforming sign:
 - a. Not meeting the time compliance requirements for sign regulations, as regulated in Section 14.1 of this ordinance.
 - b. Changing to a conforming sign.
 - c. Abandonment.
 - d. Nonoperative or nonuse of said nonconforming sign.
3. **ZONE CHANGE:** The foregoing provisions shall also apply to signs which become legally nonconforming due to zone changes which take place hereafter.

SECTION 9.13 EXCEPTIONS AND MODIFICATIONS**A. EXCEPTIONS TO HEIGHT LIMITS**

1. The height limitations of this ordinance shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy; monuments, water towers, observation towers, transmission towers, chimneys, smoke stacks, radio and TV towers, conveyors, flag poles, masts and aerials, pent houses, scenery lofts, stand pipes, parapet walls, outdoor theater screens, and other related structures and necessary mechanical appurtenances, provided their construction is in accordance with existing or hereafter adopted ordinances of the city, and is acceptable to the Federal Aviation Agency and the Federal Communication Commission.
- B. AREA EXCEPTIONS:** For the purpose of side yard regulations, the following dwellings with common party walls shall be considered as one (1) building occupying one (1) lot: Two-family and multi-family dwellings.

- C. OTHER EXCEPTIONS: Service stations or gasoline filling stations shall be so constructed that the centerlines of the pumps shall be at least twenty-five (25) feet from any street right-of-way line.
- D. FRONT YARD VARIANCE
1. In any zone where the average depth of existing front yards within three hundred (300) feet of the lot in question and within the same block front, is greater than the minimum front yard depth prescribed elsewhere in this ordinance, the required minimum front yard depth on such lot shall be modified to be the average depth of said existing front yards provided, however, that the depth of the front yard on any such lot shall not be greater than sixty (60) feet.
 2. In any residential zone, no front yard shall be required to exceed the average depth of existing front yards on lots abutting on each side of the street, or the average depth of existing front yards on the same side of the street within the same block and within two hundred (200) feet, when fifty-one (51) percent or more of said lots are improved with residential buildings, whichever is greater, provided that in no case shall a front yard depth be less than twelve (12) feet.

SECTION 9.14 CONDITIONAL BUILDINGS AND USES

- A. DETERMINATION: Subject to the requirements of Section 18.7, the board of adjustment may authorize a conditional building and use to be located within any zone in which the particular conditional use is permitted by the use regulations of this ordinance, if the evidence presented by the applicant is such as to establish, beyond any reasonable doubt:
1. That the proposed building and use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community;
 2. That such building and use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and
 3. That the proposed building and use will comply with any regulations and conditions specified in this ordinance for such building and use.
- B. CONDITIONAL USE PERMITS: In accordance with KRS 100.237, the board of adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are

specifically named herein which may be suitable only in specific locations in the zone only if certain conditions are met:

1. The board of adjustment may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. In addition, a certificate of Land Use Restriction shall be filed pursuant to Section 9.31 of this ordinance. The board shall have the power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the board shall have the right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.
2. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the city.
3. In any case, where a conditional use permit has not been exercised within the limit set by the board, or within twelve (12) consecutive calendar months from date of issuance, such conditional use permit shall not revert to its original designation, unless there has been a public hearing. Exercised as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement has been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
4. The zoning administrator shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permits.

If the landowner is not complying with all of the conditions listed on the conditional use permit, the zoning administrator shall report the fact in writing to the chairman of the board of adjustment. The report shall state specifically the manner in which the landowner is not complying with the

conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time it is furnished to the chairman of the board of adjustment.

The board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the board of adjustment finds that the facts alleged in the report of the zoning administrator are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the board of adjustment may authorize the zoning administrator to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

5. Once the board of adjustment has completed a conditional use permit, and all the conditions required are of such type that they can be completely and permanently satisfied, the zoning administrator, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file. Thereafter said use, if it continues to meet the other requirements of this ordinance, will be treated as a permitted use.
6. When an application is made for a conditional use permit for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, an owner of every parcel of property adjoining the property to which the application applies, and such other persons as this ordinance or board of adjustment bylaws shall direct. Written notice shall be by first class mail with certification by the board's secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the board the name and address of an owner of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

7. When any property within the required notification area for a public hearing upon a conditional use permit application is located within an adjoining city, county, or planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by first class mail, to certain public officials, as follows:
 - a. If the adjoining property is part of a planning unit, notice shall be given to that unit's commission; or
 - b. If the adjoining property is not part of a planning unit, notice shall be given to the mayor of the city in which the property is located or, if the property is in an unincorporated area, notice shall be given to the judge/executive of the county in which the property is located.

SECTION 9.15 BUILDING REGULATIONS: No structure shall be designed, erected, or altered, except in accordance with the following regulations:

- A. **PUBLIC WATER AND SANITARY SEWERS:** No building may be constructed in any zone, except the R-RE Zone, unless such building is connected to a public water and centralized sewer system of adequate capacity and design, and approved by the proper authorities. In the case of the R-RE Zone, private sewage disposal systems may be permitted, provided they are approved in accordance with the requirements of the Northern Kentucky District Board of Health.

SECTION 9.16 MOVE AND SET

- A. No building, structure, or improvement shall be moved or set from or upon land located in any area or transported upon any public street, in the legislative body, until and unless both: (1) a building permit to move and set; and (2) a transport permit, have been obtained, and said building, structure, or improvement complies with the provisions of this section.
- B. All buildings, structures, and improvements shall comply with the legislative body's housing and building code, and all other applicable codes and regulations.
- C. **PROCEDURE:**
 1. Any person who wishes to obtain a building permit, to move and set in compliance herewith shall apply at the office of the building inspector requesting an inspection of the building, structure, or improvement to be moved and set, and that an application for such permit to be filed with the building inspector.

2. The applicant shall submit, with his application for said building permit, a plot plan, footing and foundation plan, and construction plans for any new construction. Said plans shall comply with the city's building code.
3. If the building, structure, or improvement is located in the city, all outstanding property taxes shall be paid and the applicant shall submit with his application a statement from the city's director of finance showing that all past and current taxes have been paid before any permit shall be issued.
4. Upon receipt of the foregoing items, the building inspector shall inspect said building, structure, or improvements, and the proposed location where same will be set within the legislative body and determine if the proposed development will comply with all applicable codes and regulations.
5. The move and set shall be referred to the zoning administrator for approval or denial of compliance with this ordinance.
6. Upon approval by the zoning administrator and building inspector, a building permit to move and set shall be issued. The legislative body's engineer shall then be notified of same and shall issue a transport permit. The legislative body's engineer or his agent will designate the route to be traveled. The transport permit is good only for the date specified on permit. The transport permit will not be issued if ninety (90) consecutive calendar days or more have lapsed from the date of inspection by the building inspector. The transport permit provided for in this section shall not be in lieu of any other permits which may be required by the legislative body.
7. There will be a building investigation fee, as established by the legislative body, to cover the costs of investigation and inspection for determining the structural soundness of buildings, structures, or improvements to be moved, the fee is payable in advance and must accompany the application provided for herein. This fee is not returnable. If any alterations or improvements to be made are found to be in compliance with the legislative body's applicable codes and regulations, a building permit to move and set will be issued and the fee will be based on the cost of new foundations and all work necessary to place the building or structure in its completed condition in the new location. This fee is in addition to the building investigation fee.
8. The transport permit provided for in this section shall not be in lieu of any building permits which may be required by the city.

9. No transport of building permit to move and set shall be issued until the applicant has first obtained the necessary permits from the telephone company, public utilities companies, railroad companies, and the State Highway department of Kentucky and the county road supervisor unless it can be shown by the applicant, that these agencies are not interested in the matter.
10. No transport or building permit to move and set shall be issued for any building, structure, or improvement exceeding the dimensions approved by the zoning administrator and building inspector.
11. No person, corporation, or company shall transport, move, or set any building, structure, or improvement in the legislative body, until and unless such person, corporation, or company shall post with the building inspector a good and sufficient indemnity bond in the amount of five thousand dollars (\$5,000.00) in favor of the city. Such bond shall be made by a surety corporation authorized to do business in the Commonwealth of Kentucky; said bond may be issued on an annual basis but shall not be in excess of such period of time.

SECTION 9.17 SCREENING AREA: All screening areas, where required, in and along any yard, shall consist of a planting strip at least ten (10) feet in width planted with a hedge (or similar vegetation or suitable fences approved by the zoning administrator or the planning commission if required by this ordinance). These hedges or fences shall be of a height suitable for screening as approved by the zoning administrator (or planning commission if required by this ordinance). All required screening (including the planting of trees and other vegetation) shall be maintained by the property owner.

SECTION 9.18 OUTDOOR SWIMMING POOLS

- A. **PRIVATE SWIMMING POOLS:** All private swimming pools shall be regulated according to the following requirements:
1. Swimming pools shall be permitted to be located only to the rear of the principal permitted dwelling or dwellings.
 2. Except as herein provided, no swimming pool, including the apparatus and equipment pertaining to the operation of the swimming pool shall be permitted within any required yards of the lot nor within the limits of any public utility right-of-way easement.
 3. Swimming pools which are constructed in-ground shall be required to have a fence or wall, including a self-closing and self-latching door or gate, with the latches placed at least four (4) feet above the ground, around the pool or the property on which the pool is located, of at least

four (4) feet, but not exceeding six (6) feet (only classes 1, 3,4, or 5 are permitted, as regulated in Article XIII of this ordinance); such fences or walls shall be constructed in such a manner that any openings shall not allow the passage of a four (4) inch diameter sphere.

4. Swimming pools which are located above-ground shall be required to have a fence or wall, including a self-closing and self-latching door or gate, with the latches placed at least four (4) feet above the ground, around the pool or property upon which the pool is located, of at least four (4) feet in height, but not exceeding six (6) feet (only classes 1, 3, 4, and 5 are permitted, as regulated by Article XIII of this ordinance). Such fence or wall shall be constructed in such a manner that any openings shall not allow the passage of a four (4) inch diameter sphere. Said 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.

In addition, any access to above ground pools by means of a ladder or stairway shall be provided with a self-closing and self-latching door or gate, with the latches placed at least four (4) feet above the ground, or some other device that would prevent a small child from gaining access to the pool by means of a ladder or stairway.

5. Glare from flood lights used to illuminate the swimming pool area for night bathing shall be directed away from adjacent properties.
 6. 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.
 7. 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 ordinance section within sixty (60) days after its adoption.
- 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 required yards or within the limits of any public utility right-of-way 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-locking door or gate, with the latches placed at least four (4) feet above the ground, (only classes 1, 3, 4, and 5 fences are permitted, as regulated by Article XIII of this ordinance) at least five (5) feet in height, but not exceeding the height as permitted herein, and of such construction that any openings shall not allow the passage of a four (4) inch diameter sphere.
3. Glare from flood lights used to illuminate the swimming pool area for night bathing shall be directed away from adjacent properties.
4. All swimming pools and associated equipment of the swimming pool shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the city. Water used in the operation of 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 residential properties through the emission of noises, voices, or music which is loud enough to cause complaints from said adjacent residential property owners.

SECTION 9.19 SITE PLAN REQUIREMENTS: No building shall be erected or structurally altered nor shall any grading take place on any lot or parcel in zones where a site plan is required, except in accordance with the regulations of this section and an approved site plan as hereinafter required. Before a permit is issued for construction, one (1) copy of the site plan of the area at a scale no smaller than one (1) inch to one hundred (100) feet, shall be filed with Planning and Development Services of Kenton County and (1) copy with the building inspector and the zoning administrator. The site plan shall identify and locate, where applicable, the following:

- A. Total area in development project including legal description.
- B. Present zoning of property in question and adjacent properties.
- C. All public and private rights-of-way and easement lines located on or adjacent to the subject property which are proposed to be continued, created, enlarged, relocated, or abandoned.
- D. Existing and proposed topography shown by contour with intervals not to exceed five (5) feet.
- E. All existing and proposed housing units on the subject property:

1. Detached housing - location and approximate number of lots, including a typical section(s) identifying approximate lot sizes and dimensions, and setback and height of buildings;
 2. Attached housing - location and description of the various housing types (i.e., townhouse, fourplex, garden apartment, etc.) including approximate heights of typical structures, and the approximate number of units by housing type;
- F. Location, arrangement, height, and identification of all existing and proposed nonresidential buildings and uses on the subject property.
- G. The amount of area proposed for common open space, including the location and arrangement of recreational facilities, identification of unique natural features to be retained and a statement indicating the means of maintaining all common areas.
- H. Location of proposed pedestrian walkways, identifying approximate dimensions.
- I. Location of proposed streets, identifying approximate dimensions of pavement, right-of-way widths, and grades.
- J. Location of off-street parking, loading and/or unloading and driveway areas, identifying the number of off-street parking spaces to be provided, type of surfacing and approximate dimensions.
- K. Location of all existing and proposed water, sanitary sewer, and storm drainage lines, indicating approximate pipe sizes. Indication should also be given regarding the provision of electric and telephone service.
- L. Certification from appropriate water and sewer agencies that services will be available.
- M. Landscaping features, including identification of planting areas and the location, type, and height of walls and fences.
- N. Location of signs indicating their orientation and size and height.
- O. Identification of soil types and geologic formations on the subject property, indicating anticipated problems and proposed methods of handling said problems.
- P. A schedule of development, including the staging and phasing of:

1. Residential area, in order of priority, by type of dwelling unit;
 2. Streets, utilities, and other public facility improvements, in order of priority;
 3. Dedication of land to public use or set aside for common ownership with a preliminary statement indicating how maintenance of the latter will be handled; and
 4. The construction of non-residential buildings and uses, in order of priority.
- Q. Such other information with regard to the development area as may be required by the planning commission, or its duly authorized representative, to determine conformance with this ordinance.

All such site plans shall be reviewed by the planning commission, or its duly authorized representative, and the factual determination approving or rejecting such plans shall be made in accordance with requirements of this or other applicable sections of this ordinance, and the comprehensive plan for the city. However, no action of approving or rejecting any site plan shall be taken unless and until a review of the proposal has been made and submitted to Planning and Development Services of Kenton County.

All site plans approved shall be binding upon the applicants, their successors, and assigns, and shall limit the development to all conditions and limitations established in such plans.

Amendments to plans may be made in accordance with the procedure required by this ordinance subject to the same limitations and requirements as those under which such plans were originally approved.

After final approval, the subject area may be developed in stages, provided all of the procedures required by the planning commission, or its duly authorized representative, have been complied with.

SECTION 9.20 REGULATIONS CONCERNING AIR RIGHTS: Any proposed use of air rights, as defined herein, shall be in the form of a site plan (as regulated in Section 9.19 of this ordinance) submitted to the planning commission, or its duly authorized representative, for its review.

SECTION 9.21 REGULATIONS CONCERNING DESIGN AND CONSTRUCTION OF IMPROVEMENTS: Any proposed development which does not constitute a subdivision, shall be required to provide streets (including curb and gutters), sidewalks, sewers (sanitary and storm), and water lines. Improvements to be provided shall be designed and constructed in accordance with the applicable articles and sections of the Subdivision Regulations, unless specifically waived.

SECTION 9.22 REGULATIONS PERTAINING TO PARKING OR STORING OF TRAILERS, MOBILE HOMES, CAMPERS, INOPERABLE VEHICLES, AND OTHER SUCH TYPE EQUIPMENT

- A. No motor vehicle which is inoperable shall be stored on any lot in any zone or parcel of ground unless it is in a completely enclosed building. Parking shall be limited to the number of operable vehicles regularly used by members of a resident family and their guests.
- B. It shall be unlawful for any person or persons to live in any boat, automobile, camper, mobile home, or truck, within the limits of the city, except mobile homes may be permitted when located in a RMHP (mobile home park) Zone.
- C. The outside storage of any trailer, mobile home, recreational vehicle, camper, boat, or similar type equipment, shall be restricted to the rear yard of all lots within the city, except as herein provided, and in cases where, due to unique conditions, topographic or other, which do not allow use of the rear yard, the zoning administrator may permit such storage on another part of the lot.

SECTION 9.23 HILLSIDE DEVELOPMENT CONTROLS

- A. This section is designed to ensure, when development is proposed in those areas of the community which have physical characteristics limiting development (hillside slopes of 20 percent or greater), that said development shall occur in a manner harmonious with adjacent lands so as to minimize problems of drainage, erosion, earth movement, and other natural hazards.
- B. Areas of land on which development is physically restricted due to excessive hillside slopes shall be limited according to the following requirements, notwithstanding any other section of this or any other ordinance adopted by the city:
 - 1. All land areas located within the city and identified on the Area-Wide Comprehensive Plan as "Developmentally Sensitive Areas", and any other areas which have slopes of 20 percent or greater, shall require approval before development may occur. In those areas which are identified in the Comprehensive Plan as "Developmentally Sensitive Areas" and containing slopes less than 20 percent, the requirements contained herein may be waived; if, after review of the proposed site plan by the engineer, it is determined that said development will not result in any significant hillside slippage or soil erosion.
 - 2. No excavation, removal, or placement of any soil, foundation placement, or construction of buildings or structures of any nature within the area identified as a Developmentally Sensitive Area in (1) above, may occur

until plans and specifications for such work have been submitted in the form of a site plan as regulated by Section 9.19 of this ordinance. In addition to site plan requirements, the following shall also be submitted:

- a. Plan(s) which show existing topography and the proposed physical changes necessary for construction, indicating grading (cutting and filling), compaction, erosion, sedimentation basins, areas to be defoliated, and any other pertinent information which will change the natural physical features of the site or general area.
 - b. Subsurface investigation of the area under consideration, including test borings, laboratory tests, engineering tests, and a geological analysis. Such investigation shall be made by a qualified, registered civil engineer and a geologist, indicating that any structural or physical changes proposed in the area will be completed in a manner which will minimize hillside slippage and/or soil erosion.
3. The site plan and other information required in this Section shall be reviewed by the city engineer who will recommend to the planning commission, or its duly authorized representative, what effect the proposed development will have on hillside slippage and/or soil erosion.

After consideration of the recommendations of the city engineer, the planning commission, or its duly authorized representative, may grant a permit for use of the in accordance with the submitted plans.

4. If, after review of the plans required by this section of the ordinance, the planning commission, or its duly authorized representative, determines that said proposed plans will not minimize hillside slippage, the planning commission shall deny a permit for the development of said land, and the site shall be limited to those open type uses, excluding structures, as permitted or conditionally permitted in the Conservation Zone.

SECTION 9.24 FLOOD PROTECTION DEVELOPMENT CONTROLS

A. FINDINGS OF FACT

1. The flood hazard areas of the City of Bromley are subject to periodic inundation which result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all which adversely affect the public health, safety, and general welfare.

2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increased flood height and velocity, and by the location in flood hazard areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damage.
- B. PURPOSE: The purposes of the flood protection development controls are:
1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water erosion hazards, or which result in damaging increases in erosion or in flood height or velocity.
 2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
 3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which accommodate or channel flood waters.
 4. Control filling, grading, dredging, and other development which may increase erosion or flood damage.
 5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other areas.
- C. DEFINITIONS: Notwithstanding other definitions within this ordinance, the following definitions shall only apply to this section of the ordinance:
1. Addition (to an existing structure) - Any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.
 2. Area of shallow flooding - A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) where the base flood depths range from one to three feet, there is no clearly defined channel, the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
 3. Area of special flood hazard - The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

4. Base flood - A flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.
5. Base Flood Elevation (BFE) - The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.
6. Basement - That portion of a structure having its floor subgrade (below ground level) on all four sides.
7. Breakaway Wall - A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.
8. Community Rating System (CRS) - A program developed by the Federal Insurance Administration to provide incentives to those communities in the Regular Program to go beyond the minimum floodplain management requirements to develop extra measures for protection from flooding.
9. Community Flood Hazard Area (CFHA) - An area that has been determined by the Floodplain administrator (or other delegated, designated, or qualified community official) from available technical studies, historical information, and other available and reliable sources, which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety and general welfare. Included are areas downstream from dams.
10. Critical facility - Any property that, if flooded, would result in severe consequences to public health and safety or a facility which, if unusable or unreachable because of flooding, would seriously and adversely affect the health and safety of the public. Critical facilities include, but are not limited to: housing likely to contain occupants not sufficiently mobile to avoid injury or death unaided during a flood; schools, nursing homes, hospitals, police, fire and emergency response installations, vehicle and equipment storage facilities, emergency operations centers likely to be called upon before, during and after a flood, public and private utility facilities important to maintaining or restoring normal services before, during and after a flood, and those facilities or installations which produce, use or store volatile, flammable, explosive, toxic and/or water-reactive materials, hazardous materials or hazardous waste.

11. Development - Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.
12. Elevated structure - A non-basement structure built to have the lowest floor elevated above ground level by means of fill, solid foundation perimeter walls, piling, columns (post and piers), shear walls, or breakaway walls. (See freeboard requirements for residential and non-residential structures.)
13. Elevation Certificate - A statement certified by a registered professional engineer or surveyor on the FEMA-approved form in effect at the time of certification that verifies a structure's elevation and other related information to verify compliance with this ordinance.
14. Emergency Program - The initial phase under which a community participates in the NFIP, intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.
15. Enclosure - That portion of a structure below the Base Flood Elevation (BFE) used solely for parking of vehicles, limited storage, or access to the structure.
16. Encroachment - The physical advance or infringement of uses, plant growth, fill, excavation, structures, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
17. Existing construction - Any structure for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "Existing structures".
18. Existing Manufactured Home Park or Subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management ordinance adopted by the legislative body based on specific technical base flood elevation data which established the area of special flood hazards.

19. Expansion to an existing Manufactured Home Park or Subdivision - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
20. Five-Hundred Year Flood - The flood that has a 0.2 percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate to low risk of flooding.
21. Flood, Flooding, or Flood Water:
 - a. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e. mudflows). See Mudslides.
 - b. The condition resulting from flood-related erosion. See flood-related erosion.
22. Flood Boundary and Floodway Map (FBFM) -A map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and the regulatory floodway.
23. Flood Hazard Boundary Map (FHBM) -A map on which the boundaries of the flood, mudslide (i.e. mudflow), and flood-related erosion areas having special hazards have been designated as Zones A, M, and/or E by the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA).
24. Flood Insurance Rate Map (FIRM) - A map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated special flood hazard areas and risk premium zones.
25. Flood Insurance Study - The report provided by the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) containing flood profiles, the Flood Insurance Rate Map (FIRM), and/or the Flood Boundary Floodway Map (FBFM), and the water surface elevation of the base flood.
26. Floodplain or flood-prone area - Any land area susceptible to being inundated by flood waters from any source.

27. Floodplain administrator - The individual appointed by a NFIP participating community to administer and enforce the floodplain management ordinances.
28. Floodplain Management - The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management ordinances, and open space plans.
29. Floodplain Management Regulations - This ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control), and other applications of police power, which control development in flood-prone areas. This term describes federal, state and/or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
30. Floodproofing - Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.
31. Floodproofing Certificate - A certification by a registered professional engineer or architect, on a FEMA-approved form in effect at the time of certification stating that a non-residential structure, together with attendant utilities and sanitary facilities is watertight to a specified design elevation with walls that are substantially impermeable to the passage of water and all structural components are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy and anticipated debris impact forces.
32. Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as the "regulatory floodway".
33. Floodway fringe - That area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.
34. Floor - The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

-
35. Freeboard - A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood. Freeboard must be applied not just to the elevation of the lowest floor or floodproofing level, but also to the level of protection provided to all components of the structure, such as building utilities, HVAC components, etc.
 36. Functionally dependent use facility - A facility, structure, or other development, which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.
 37. Hazard potential - The possible adverse incremental consequences that result from the release of water or stored contents due to failure of a dam or misoperation of a dam or appurtenances. The hazard potential classification of a dam does not reflect in any way the current condition of a dam and its appurtenant structures (e.g., safety, structural integrity, flood routing capacity).
 38. Highest adjacent grade - The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
 39. Historic Structure - Any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- (1) By an approved state program as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
40. Increased Cost of Compliance (ICC) – Increased cost of compliance coverage provides for the payment of a claim for the cost to comply with State or community floodplain management laws or ordinances after a direct physical loss by flood. When a building covered by a Standard Flood Insurance Policy under the NFIP sustains a loss and the state or community declares the building to be substantially or repetitively damaged, ICC will help pay up to \$30,000 for the cost to elevate, floodproof, demolish, or remove the building.

ICC coverage is available on residential and non-residential buildings (this category includes public or government buildings, such as schools, libraries, and municipal buildings) insured under the NFIP.

41. Letter of Map Change (LOMC) – Is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's include the following categories:
- a. Letter of Map Amendment (LOMA) – A revision based on technical data showing that a property was incorrectly included in a designated SFHA. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.
 - b. Letter of Map Revision (LOMR) - A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features.
 - c. Letter of Map Revision – Fill (LOMR_F) – A determination that a structure or parcel has been elevated by properly placed engineered fill above the BFE and is, therefore, excluded from the SHFA.
42. Levee - A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
43. Levee System - A flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

For a levee system to be recognized, the following criteria must be met:

- a. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual (a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or revised).
 - b. All operations must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP.
44. Limited storage - An area used for storage and intended to be limited to incidental items which can withstand exposure to the elements and have low flood damage potential. Such an area must be of flood resistant material, void of utilities except for essential lighting, and cannot be temperature controlled.
 45. Lowest adjacent grade - The elevation of the sidewalk, patio, deck support, or basement entryway immediately next to the structure and after the completion of construction. It does not include earth that is emplaced for aesthetic or landscape reasons around a foundation wall. It does include natural ground or properly compacted fill that comprises a component of a structure's foundation system.
 46. Lowest Floor - The lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, structure access, or storage in an area other than a basement area is not considered a structure's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
 47. Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected or attached to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. The term "manufactured home" does not include a "recreational vehicle" (see Recreational Vehicle).
 48. Manufactured home park or subdivision - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

49. Mean Sea Level (MSL) - The average height of the sea for all stages of the tide. For the purposes of the National Flood Insurance Program, the MSL is used as a reference for establishing various elevations within the floodplain as shown on a community's FIRM. For purposes of this ordinance, the term is synonymous with either National Geodetic Vertical Datum (NGVD) 1929 or North American Vertical Datum (NAVD) 1988.
50. Mitigation - Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the costs of disaster response and recovery.
51. Mudslide (i.e. mudflow) - Describes a condition where there is a river, flow, or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain. A mudslide (i.e. mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Floodplain administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.
52. National Flood Insurance Program (NFIP) - The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.
53. National Geodetic Vertical Datum (NGVD) - As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used as the vertical datum on the older FIRM's. Refer to FIRM legend panel for correct datum.)
54. New Construction - Structures for which the start of construction commenced on or after the effective date of these floodplain management regulations and includes any subsequent improvements to such structures.
55. New manufactured home park or subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of these floodplain management regulations.
56. North American Vertical Datum (NAVD) – As corrected in 1988, a vertical control used as a reference for establishing varying elevations within the

floodplain. (Generally used on the newer FIRM's and Digitally Referenced FIRM's (DFIRM's). (Refer to FIRM or DFIRM legend panel for correct datum.)

57. Obstruction - Includes but is not limited to any dam, wall, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, structure, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.
58. One-Hundred Year Flood (100-Year Flood) (see Base Flood) - The flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the 100-year flood. Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood with the SFHA.
59. Participating Community - A community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.
60. Pre-FIRM Construction - Construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.
61. Post-FIRM Construction - Construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after December 31, 1974, whichever is later.
62. Probation - A means of formally notifying participating NFIP communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations. During periods of probation, each insurance policy is subject to a \$50 surcharge.
63. Program Deficiency - A defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management standards or of the standards of 44 CFR 60.3, 60.4, 60.5, and/or 60.6.
64. Public Safety and Nuisance - Anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the

customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

65. Recreational Vehicle - A vehicle that is:
- a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. Designed to be self-propelled or permanently towable to a light duty truck; and
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
66. Regular Program - The phase of a community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.
67. Regulatory floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. See Base Flood.
68. Remedy a violation - The process by which a community brings a structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impact of non-compliance. Reduced impact may include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing state or federal financing exposure with regard to the structure or other development.
69. Repair - The reconstruction or renewal of any part of an existing structure.
70. Repetitive Loss - Flood-related damages sustained by a structure on two or more separate occasions during a 10-year period where the value of damages equals or exceeds an average of 50% of the current value of the structure, beginning on the date when the damage first occurred, or, four or more flood losses of \$1000.00 or more over the life of the structure, or, three or more flood losses over the life of the structure that are equal to or greater than the current value of the structure.

71. Special flood hazard area (SFHA) - That portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zone A, AE, A1 – A30, AH, AO, or AR.
72. Start of Construction (includes substantial improvement and other proposed new development) - The date a building permit is issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement is within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the structure.
73. Section 1316 - That section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.
74. Substantial Damage - Means any damage to a building for which the cost of repairs equals or exceeds fifty percent of the market value of the building prior to the damage occurring. This term includes structures that are categorized as repetitive loss.

For the purposes of this definition, “repair” is considered to occur when the first repair or reconstruction of any wall, ceiling, floor, or other structural part of the building commences.

The term does not apply to:

- a. Any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have

- been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or
- b. Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

75. Substantial Improvement - Means any combination of reconstruction, alteration, or improvement to a building, taking place during a 1-year period in which the cumulative percentage of improvement equals or exceeds fifty percent of the current market value of the building. For the purposes of this definition, an improvement occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building.

The term does not apply to:

- a. Any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions, or
 - b. Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” Or
 - c. Any building that has been damaged from any source or is categorized as repetitive loss.
76. Substantially improved existing manufactured home parks or subdivisions - Repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equaling or exceeding 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.
77. Suspension - Removal of a participating community from the NFIP for failure to enact and/or enforce floodplain management regulations required for participation in the NFIP. New or renewal flood insurance policies are no longer available in suspended communities.
78. Utilities - Includes electrical, heating, ventilation, plumbing, and air conditioning equipment.
79. Variance - Relief from some or all of the requirements of this ordinance.
80. Violation - Failure of a structure or other development to fully comply with this ordinance. A structure or other development without the elevation

certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

81. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically.
82. Water surface elevation - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or river areas.
83. Watershed - All the area within a geographic boundary from which water, sediments, dissolved materials, and other transportable materials drain or are carried by water to a common outlet, such as a point on a larger stream, lake, or underlying aquifer.
84. Zone - A geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

D. LANDS TO WHICH THIS ORDINANCE APPLIES

1. This ordinance shall apply to all Special Flood Hazard Areas (SFHA), areas applicable to KRS 151.250 and, as determined by the Floodplain administrator or other delegated, designated, or qualified community official as determined by the legislative body from available technical studies, historical information, and other available and reliable sources, areas within the jurisdiction of the legislative body which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety, and general welfare.

E. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

1. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Kenton County, dated March 16, 2009, with the accompanying Flood Insurance Rate Maps (FIRMS), other supporting data and any subsequent amendments thereto, are hereby adopted by reference and declared to be a part of these regulations, and for those land areas acquired through annexation. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City Council by the Floodplain administrator and are

enacted by City Council pursuant to statutes governing land use management regulations.

F. ESTABLISHMENT OF DEVELOPMENT PERMIT

1. A Development Permit shall be required in conformance with the provision of this ordinance prior to the commencement of any development activities in the special flood hazard areas (SFHA).
2. Application for a development permit shall be made on forms furnished by the Floodplain administrator.

G. COMPLIANCE

1. No structure or land shall hereafter be constructed, located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable state regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the legislative body from taking such lawful action as is necessary to prevent or remedy any violation.

H. ABROGATION AND GREATER RESTRICTIONS

1. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

I. INTERPRETATION

1. In the interpretation and application of this ordinance, all provisions shall be:
 - a. Considered minimum requirements;
 - b. Liberally construed in favor of the governing body; and,
 - c. Deemed neither to limit nor repeal any other powers granted under state statutes.

- J. WARNING AND DISCLAIMER OF LIABILITY: The degree of flood protection required by this section of the ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This section of the ordinance does not imply that land outside the areas

of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This section of the ordinance shall not create liability on the part of the Local Floodplain Coordinator or any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

- K. DESIGNATION OF LOCAL FLOODPLAIN COORDINATOR: The legislative body of the City of Bromley hereby appoints the Zoning Administrator to administer, implement, and enforce the provisions of this ordinance by granting or denying development permits in accordance with its provisions, and is herein referred to as the Floodplain Coordinator.
- L. PERMIT PROCESS: In addition to the requirements within Article XVI of this ordinance, all applications for a Development Permit shall be made to the Local Floodplain Coordinator prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information may be required:
1. Application Stage:
 - a. Elevation in relation to Mean Sea Level of the proposed lowest floor (including basement) of all buildings.
 - b. Elevation in relation to Mean Sea Level to which any non-residential building will be flood-proofed.
 - c. Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing requirements of this section of the ordinance.
 - d. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
 2. Construction Stage:
 - a. Provide a floor elevation or flood-proofing certificate after the lowest floor, or flood-proofing is completed. Upon placement of the lowest floor or flood-proofing, by whatever construction means, it shall be the duty of the permit holder to submit to the Local Floodplain Coordinator a certificate of the elevation of the lowest floor or flood-proofed elevation, as built, in relation to Mean Sea Level. Said certificate shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same.
 - b. When flood-proofing is utilized for a particular building, said certification shall be prepared by, or under the direct supervision of,

a professional engineer or architect and certified by same. Any work undertaken prior to the submission of the certification shall be at the permit holder's risk. The Local Floodplain Coordinator shall review the submitted floor elevation survey data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey, or failure to make said corrections, shall be cause to issue a stop work order for the project.

M. DUTIES AND RESPONSIBILITIES OF THE LOCAL FLOODPLAIN COORDINATOR: The duties of the Local Floodplain Coordinator shall include, but not be limited to:

1. Review all development permits to assure that the permit requirements of these regulations have been satisfied.
2. Advise applicants that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.
3. Notify adjacent communities and the Kentucky Division of Water prior to any alteration or relocation of the watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
5. Verify and record the actual elevation, in relation to Mean Sea Level, of the lowest floor of all new or substantially improved building.
6. Verify and record the actual elevation, in relation to Mean Sea Level, to which the new or substantially improved buildings have been flood-proofed.
7. Obtain certification from a registered professional engineer or architect, when flood-proofing is utilized for a particular building.
8. Provide interpretation as to the exact location of boundaries of the areas of special flood hazard.
9. Obtain, review, and reasonably utilize any base flood elevation and floodway data that may be available from any federal, state or other

source, when base flood elevation data or floodway data has not been provided pursuant to these regulations.

10. Maintain all records pertaining to the provisions of these regulations.
- N. Areas of land adjacent to streams, rivers, or bodies of water which have a high degree of susceptibility to flooding shall be limited to development according to the following regulations, notwithstanding any other section of this ordinance or any other ordinance adopted by the city.
1. The limits of the floodplain (areas subject to flooding during the occurrence of a 100-year flood) and floodway are identified as Flood Protection Control Areas on the zoning map, pursuant to the Flood Insurance Study prepared by the Federal Emergency Management Agency. This study, along with any accompanying maps and other supporting data, and any revisions thereto, are adopted by reference and declared to be a part of this section of the ordinance.
 2. Areas designated as susceptible to flooding during the occurrence of a 100-year flood shall be controlled by both the zoning district in which the area is located and the requirements of this section of the ordinance.

In the case of any proposed activity located along other tributaries or bodies of water not covered in these tables, and located in those areas which are identified as being susceptible to flooding, according to the report prepared by the U.S. Department of Agriculture, Soil Conservation Service, "Soil Survey of Boone, Campbell and Kenton Counties, Kentucky", August, 1973, a survey shall be made by a qualified, registered civil engineer establishing the elevation of the 100-year flood and floodway for said areas prior to the issuance of any zoning and building permits.

3. No person, city, county, or other political subdivision of the state shall commence filling of any area with earth, debris, or any other material, or raise the level of any area in any manner, or place a building, barrier, or obstruction of any sort on any area, including making any alteration or relocation of a waterway, located within the floodway which would result in any increase in flood levels during the occurrence of a 100-year flood discharge. In those cases where a watercourse is to be altered or relocated, the flood carrying capacity of said portion of the waterway affected must be maintained. Plans and specifications for such work shall be submitted to the Local Floodplain Coordinator for review to determine if said encroachment will meet the requirements of this Ordinance. Said plans shall also be submitted to the Kentucky Department of Natural Resources & Environmental Protection, Division of Water Resources, and other applicable agencies, for their review and approval.

-
4. All land outside the floodway of the bodies of water, but located within the floodplain, may be used for any purpose for which it is zoned, provided that:
 - a. Any new residential construction, including any expansion or substantial improvements of existing residential structures as herein defined, within said floodplain, shall have the lowest floor elevated to a minimum of two feet above the level of the 100-year flood. Electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. For all new construction and substantial improvement, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage, in an area other than a basement, and which are subject to flooding, shall be designed to automatically equalize hydrostatic exit of floodwaters. Designs for meeting this requirement must be certified by a professional engineer or architect.
 - b. Any new non-residential structures, including any expansion or substantial improvements of non-residential structures, within the floodplain area, shall have the lowest floor elevated to a minimum of two feet above the level of the 100-year flood or together with attendant mechanical, utility, and sanitary facilities shall be designed and floodproofed so that below the 100-year flood level the structure is water tight with walls impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydro-dynamic loads and effects of frequency certified by a professional engineer or architect. For all new construction and substantial improvement of elevated non-residential structures, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage, in an area other than a basement, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a professional engineer or architect.
 - c. For all new construction and substantial improvement of elevated non - residential structures, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic

flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a professional engineer or architect or meet the following minimum requirements:

- (1) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (2) The bottom of all openings shall be no higher than one foot above grade; and
 - (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
5. All utilities constructed to serve structures which are to be located within the floodplain shall be flood protected at a minimum to the elevation of the 100-year flood level.
6. All construction or modification of buildings and structures, including flood-proofing measures and techniques in the flood plain area, as required within this section of the ordinance, shall be in accordance with the applicable design standards of the U.S. Army, Corps of Engineers' publication, entitled "Flood Proofing Regulations", June, 1972 GPO 19730-505-026 Edition, or as amended, and the following requirements:
- a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - b. All new construction and substantial improvements shall be constructed with materials and mechanical and utility equipment resistant to flood damage.
 - c. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
 - d. Electrical, heating, ventilation, plumbing, air condition equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and if
 - e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- f. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems' discharges from the systems into flood waters.
 - g. On-site waste disposal systems, where permitted, shall be located to avoid impairment to them or contamination from them during flooding.
7. In addition to the above requirements, manufactured homes, as herein defined, shall meet the following standards:
- a. No manufactured home or recreational vehicle shall be placed in a floodway.
 - b. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
 - (1) Over-the-top ties be provided at each end of the manufactured home, with one additional tie per side at an intermediate location on manufactured homes of less than fifty (50) feet and one additional tie per side for manufactured homes of fifty (50) feet or more;
 - (2) Frame ties be provided at each corner of the home with four (4) additional ties per side at intermediate points for manufactured homes less than fifty (50) feet long and one additional tie for manufactured homes of fifty (50) feet or longer;
 - (3) All components of the anchoring system be capable of carrying a force of 4,800 pounds;
 - (4) Any additions to the manufactured home be similarly anchored.
 - c. For new manufactured home parks and subdivisions; for expansions to existing manufactured home parks and subdivisions; for existing manufactured home parks and subdivisions where the repair, reconstruction or improvement of the streets, utilities, and pads equals or exceeds fifty (50) percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement has commenced; and, for manufactured homes not placed in a manufactured home park or subdivision require:
 - (1) That all manufactured homes meet all of the requirements for new construction, including elevations and anchoring;

- (2) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be a minimum of two feet above the base flood level;
 - (3) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above grade;
 - (4) The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse, and lateral movement;
 - (5) Adequate surface drainage and access for a hauler are provided;
 - (6) In the instance of elevation on pilings; (1) lots are large enough to permit steps; (2) piling foundations are placed in stable soil no more than ten (10) feet apart; and (3) reinforcement is provided for pilings more than six (6) feet above the ground level.
8. Recreational vehicles may be permitted to be located within the limits of the floodplain, subject to compliance with the following requirements:
- a. The recreational vehicle must be on the site for less than 180 consecutive days;
 - b. The recreational vehicle must be fully licensed and ready for highway use; or
 - c. That the recreational vehicle meet the elevation and anchoring requirements for manufactured homes, as set forth in Subsection H., 7., above.
- A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
9. Any existing structure or use which is located within the floodplain and which does not conform to the requirements herein shall be nonconforming and subject to the requirements of Section 9.12 of this ordinance, providing, however, any existing permitted use and structure may be modified, altered, or repaired to incorporate flood proofing measures, where such measures do not raise the level of the 100-year flood.
10. All land designated "Flood Protection Control Area" on the Official Zoning Map, but determined to be above the elevation of the 100-year flood level

may be used for any purpose for which it is zoned without further flood protection controls.

11. A survey of the site in question will be required prior to the issuance of any building permit or construction activity that would alter the site in any manner, to establish the existing elevation of the land.
12. After completion of the first floor elevation, as provided in Subsection (4) of this section, an elevation certificate shall be provided to and maintained in the offices of the Zoning Administrator - Building Official.
13. A site plan, as regulated by Section 9.19 of this ordinance, shall be required for any land below the elevation of the 100-year flood level.
14. A zoning permit, as regulated by Section 16.1 of this ordinance shall be required prior to any grading or construction within any area designated as being located within the floodplain.
15. No encroachments, including fill material or structures shall be located within special flood hazard areas, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

O. STANDARDS FOR SUBDIVISION PROPOSALS

1. All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood and be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
4. In areas where base flood elevation and floodway data is not available (Zone A or unmapped streams), base flood elevation and floodway data for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall be provided.

5. All subdivision plans will include the elevation of proposed structure(s) and lowest adjacent grade. If the site is filled above the base flood elevation, the lowest floor and lowest adjacent grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain administrator.

P. VARIANCE PROCEDURE:

1. The Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of these regulations.
2. The Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any requirement, decision, or determination made by the Local Floodplain Coordinator in the enforcement or administration of these regulations.
3. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the appropriate court of law, as provided in the Kentucky Revised Statutes.
4. Variances may be issued for the repair or rehabilitation of historic structures upon determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variation is the minimum to preserve the historic character and design of the structure.
5. In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - a. The danger that materials may be swept onto other lands to the injury of others.
 - b. The danger to life and property due to flooding or erosion damage.
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - d. The importance of the services provided by the proposed facility to the community.
 - e. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility.
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
 - g. The compatibility of the proposed use with existing and anticipated development.

-
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as water, gas, electrical, and sewer systems, and streets and bridges.
6. Upon consideration of the factors listed in Subsection F., 5., and the purpose of these regulations, the Board of Adjustment may attach such conditions to the granting of the variation as it deems necessary to further the purposes of these regulations.
7. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
8. Conditions for variances:
- a. Variances shall only be issued upon determination that the variation is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of an historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
 - b. Variations shall only be issued upon:
 - (1) a showing of good and sufficient cause;
 - (2) a determination that failure to grant the variance would result in exceptional hardship;
 - (3) a determination that granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - c. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

- d. The Local Floodplain Coordinator shall maintain the records of all appeals and report any variances to the Federal Emergency Management Agency upon request.

Q. SEVERABILITY

1. This section and the various parts thereof are hereby declared to be severable. Should any portion of this section be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the section as a whole, or any portion thereof other than the portion so declared to be unconstitutional or invalid.
2. If any portion, clause, sentence, or phrase of this section is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall not affect the validity of this section as a whole, or any portion thereof other than the portion so declared to be unconstitutional or invalid.

SECTION 9.25 PHASED ZONING REGULATIONS

- A. Phased zoning is an overlay type regulation to be used in cases where the timing and/or phasing of the zoning of an area is especially critical to the implementation of the adopted comprehensive plan. The intent of the phased zoning regulations is to encourage redevelopment of a specified area for the use and/or density designated within the comprehensive plan when the necessary conditions for such development are realized (e.g., demolition of existing buildings). Implicit in such a phased zoning approach is the premise that until such conditions are realized, the type of development designated within the comprehensive plan is premature; such development would be prevented by temporarily zoning the area to generally conform with the predominant existing land use, with a clear stipulation of an intended future rezoning, which would be in compliance with the adopted comprehensive plan.
- B. The phased zoning regulations may be overlaid over any zoning classification by means of a zone change process. The use of the phased zoning regulations would indicate that the regulations of the overlaid zone are currently being enforced, based upon the general existing land use, but upon attainment of all the requirements of the zone which corresponds to the adopted comprehensive plan for the type of use and/or density, the area could be rezoned in direct compliance with the plan.
- C. Phased zones are indicated on the official zoning map by adding to the overlaid zone, the letter "P", as a suffix enclosed in parentheses. For example, in order to properly phase its change, an area zoned R-1C, which is identified for future use on the adopted comprehensive plan for "industrial" could be temporarily zoned R-

1C(P), indicating that present development on the site would be in conformance with the regulations of the overlaid R-1C Zone, but that, upon the attainment of certain conditions (e.g., provision of an adequate access road, demolition of existing buildings), the area could be rezoned through a zone change procedure to an industrial zone. At the time of the zone change, the temporary R-1C(P) Zone is removed and the area is developed according to the regulations of the new zone, which is in conformance with the adopted comprehensive plan.

SECTION 9.26 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 9.27 FILING OF CERTIFICATE OF LAND USE RESTRICTIONS

- A. **FILING OF CERTIFICATES OF LAND USE RESTRICTIONS:** A "Certificate of Land Use Restriction" shall be filed in the office of the county clerk by the planning commission, legislative body, and/or board of adjustment, whichever body(s) impose(s) any land use restrictions according to the provisions of KRS 100.3681 to 100.3684. A \$10.50 fee for recording such filing shall be collected by the body imposing the restriction. This fee shall be paid over to the county clerk. An additional fee, not to exceed \$10.50, may be imposed by the body imposing the restriction for costs of completing and filing the certificate.

SECTION 9.28 REGULATIONS OF SEXUALLY ORIENTED BUSINESSES

- A. The City of Bromley, 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 City of Bromley, in association with Planning and Development Services of Kenton County 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 Planning and Development Services of Kenton County 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 Planning and Development Services of Kenton County 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 City of Bromley 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 City of Bromley to balance the Constitutional rights of businesses that present sexually oriented entertainment with the City of Bromley 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 City of Bromley 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 City of Bromley recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the City of Bromley 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 City of Bromley 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 City of Bromley 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 City of Bromley 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 City of Bromley finds that amendments to the city'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 City of Bromley 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 City of Bromley.
- Y. City of Bromley currently has no sexually oriented businesses in the community.
- Z. City of Bromley currently has no area zoned for any type of commercial use.
- AA. City of Bromley currently has only limited areas zoned for commercial use, and those areas are small and adjacent to residential areas.
- AB. City of Bromley has within its limited commercial areas only small, local businesses generally serving the convenience needs of residents.

-
- AC. City of Bromley 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 City of Bromley can not recall ever receiving any applications for or inquiries about the establishment of any sexually oriented business in the City of Bromley.
- AE. City of Bromley thus finds that the physical context and experience of the City of Bromley support the findings by Kelly and Cooper.
- AF. City of Bromley 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. City of Bromley 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. City of Bromley therefore finds that there are no suitable locations for sexually oriented businesses in the City of Bromley 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 City of Bromley 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. 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 analingus, 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 City of Bromley 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 be 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 City of Bromley 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 City of Bromley without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.