
ARTICLE IX

GENERAL REGULATIONS

SECTION 9.0 PURPOSE: General regulations 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.

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, road, or highway, 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 except the MX zones, the minimum front yard depth 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 State Law, and the following requirements shall be complied with:

- A. Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which the above 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, 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 State law which regulate such uses.

SECTION 9.7 EXCAVATION, MOVEMENT OF SOIL, TREE REMOVAL, AND EROSION AND SEDIMENTATION CONTROL: 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, removal of vegetation which is dead, diseased, or endangering to the public safety, 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 city for such stripping, excavating, filling, or other means of soil movement including wholesale removal of trees and other vegetation. City shall issue the required permit only after being informed by letter from the city engineer 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, at any time. Said rubbish, salvage materials, junk, or miscellaneous refuse shall be removed by the owner, occupant, user, tenant, or lessee, on whose property the same appears. Regular salvage and junk yards, where permitted herein, shall be adequately enclosed with a solid fence or wall as required by Article XIII of this ordinance and an approved permanent planting screen shall be required as regulated in Section 9.17 of this ordinance.

No weeds shall 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. Furthermore, all weeds on lots located and platted within the corporate limits of the city shall be cut at least twice per year; once between June 1 and June 15, and also between August 1 and August 15. When a violation of this section of this ordinance occurs, the city council shall delegate some suitable person to cut the whole lot or remove any rubbish, salvage materials, junk, or miscellaneous refuse that is unsightly. The city council shall inform its selected delegate to cut weeds, within ten (10) days from June 15 and August 15, and all other items which violate this section of this ordinance shall be removed by the 15th day of each calendar month or the city's delegate will remove same within ten (10) days thereafter. All property owners, occupants, users, tenants, or lessees who use the city's delegate to complete their work as required in this section of this ordinance shall be billed directly for their proportionate cost of labor, or in the alternative, have the cost of such labor attached and made part of their respective annual tax bills in the discretion of the city council.

SECTION 9.9 JUNKYARD LOCATION: No person shall operate, or cause to 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 Bureau of Highways, in accordance with KRS 177.905 to 177.950.

SECTION 9.10 APPLICATION OF ZONING REGULATIONS

- A. Except as herein 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 carrier 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 herein 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 structures is to be located or is located.

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- C. Except as herein provided, no lot area 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, for any other building, structure, or use.
- E. Except as herein provided, every 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 on one (1) lot, nor shall any building be erected on any lot which does not abut a public right-of-way. In the case of a newly subdivided lot, the requirement to abut a public street is further regulated by the subdivision regulations for incorporated and unincorporated Kenton County.
- F. Accessory structures and uses, including off-street parking and loading and/or unloading areas, shall not be permitted within any front yard or side yard, except as herein provided. Accessory structures and uses, including off-street parking and loading and/or unloading areas shall be permitted to extend into the minimum rear yard area, as defined herein, in all zones, but never closer than ten (10) feet to the rear property line and minimum side yard widths are maintained.
- 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 required yards or courts specified:
1. In All Minimum Required Yards Or Courts - Awnings and canopies; driveways, providing they are not closer than three (3) feet to the property line to which they run approximately parallel to; common driveways may abut or extend over a property line to serve two (2) or more lots as provided for in accordance with the subdivision regulations for incorporated and unincorporated Kenton County; steps, four (4) feet or less above grade and 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; 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 three (3) feet or less into the minimum required yard.

3. In Minimum Rear Yard Depths - One story bay windows, projecting three (3) feet or less into the minimum required rear yard; overhanging eaves and gutters, projecting three (3) feet or less into the minimum required rear yard; air conditioning equipment, projecting eighteen (18) inches or less into the minimum required rear yard.
4. In Minimum Side Yard Widths - Awnings, canopies, overhanging eaves and gutters, projecting eighteen (18) inches or less into the minimum required side yard.

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 on 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 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 shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference, detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or

television receivers off the premises, or causes fluctuations in line voltage off the premises.

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 public or private 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 may be enlarged or extended 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 one of the following activities or conditions shall terminate, immediately, the right to operate a public or private nonconforming 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.

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.

- a. Changing to a conforming 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 as of the date of such damage of the structure in which the nonconforming use is operated.
 - 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 exceeds fifty (50) percent of the market value of such structure as of the date of the official order under the applicable ordinance.
 - f. Whenever said nonconforming use becomes illegal, a nuisance, or a hazard to the public health, safety, or welfare.
 - g. Whenever said nonconforming use becomes the property of the city, or any other governmental entity.
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 as of the date of such damage of the nonconforming structure.
 - 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.
 - e. Whenever said nonconforming structure becomes a nuisance or a hazard to the public health, safety, 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 uses which become 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, provided that the cubic content of the building, as it existed at the time of passage or amendment of this ordinance 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, upon order of such official, 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 it 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 requirement for sign regulations, as regulated in Section 14.1 of this ordinance.
 - b. Changing to a conforming sign.
 - c. Abandonment per Section 14.15, A., 9.
 - d. Nonoperative or nonuse of said nonconforming sign.
3. ZONE CHANGE: The foregoing provisions shall also apply to signs which become 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, water towers, transmission towers, chimneys, flag poles, and aerials, stand pipes, 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. FRONT YARD VARIANCE

1. In any zone except the MX zones 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 minimum depth of the front yard on any such lot shall not be greater than seventy-five (75) feet.

D. EXCEPTION TO AREA AND YARD REGULATIONS

1. Where existing or proposed developments within any multi - family (R-2a and R-2b) or commercial (SC, PO-1, PO-2, RP-1, HLC, and INST) Zone is to be subdivided, the minimum area and yard requirements may be less than required by this ordinance provided that:
 - a. The maximum density of the zone is not exceeded and/or the minimum site for the total development must not be less than that required by the respective zone;
 - b. A community association or other responsible entity is established prior to the approval by the planning commission of any subdivision of land. The "association" shall be obligated and empowered to own, operate, and maintain all common areas (as specifically identified on the submitted site plan required by item c. of this section) including such items as open space, recreational facilities, access drives, parking areas, pedestrian walkways, etc., and all facilities constructed thereon.
 - c. A site plan, as regulated by the applicable requirements of Section 9.19 of this ordinance, including the proposed area and yard requirements for the development, is submitted for review and approval by the planning commission.
2. In addition, the planning commission may waive the requirement that all lots abut a minimum frontage along a dedicated right-of-way provided that those lots that do not abut a dedicated right-of-way are assured an unencumbered and maintained accessway by the association to a dedicated right-of-way in accordance with Subsection 9.13, D., paragraph 1., b., above, of this ordinance.

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:

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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 adjustments 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. ALL ZONES

1. **MINIMUM GROSS FLOOR AREA:** No dwelling unit shall have a gross floor area as defined in Section 7.0 herein, of less than that required on table A-1, except minimum gross floor areas for dwelling units in the MX zones are defined in 10.16.3.I. Uses.
2. **PUBLIC WATER AND SANITARY SEWERS:** No building may be constructed in any zone unless such building is connected to a public water and centralized sanitary sewer system of adequate capacity and design, and approved by the proper authorities. Where existing buildings are presently unserved by a public sewer system, and are located within a reasonable distance, as determined by the city and/or the Northern

Kentucky District Health Department, of an existing or newly extended sewer line, said building shall be required to connect with the public sewer system and the private sewer disposal system shall be prohibited.

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, road, or highway in the city, 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 city's building code.

C. PROCEDURE:

PERMITS:

1. Any person who wishes to obtain a building permit to move and set shall apply at the office of the building inspector requesting: (a) an inspection of the building, structure, or improvement to be moved and set; and (b) that an application for such permit 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 treasurer, 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 city and determine if the proposed development complies with the building code.
5. The move and set shall be referred to the zoning administrator for approval or denial of compliance with this ordinance. No transport or building permit to move and set shall be issued for any building, structure, or improvement exceeding the dimensions as approved by the zoning administrator and building inspector.

6. Upon approval by the zoning administrator and building inspector, a building permit to move and set shall be issued. The city engineer shall then be notified of same and shall issue a transport permit. The city engineer or his agent will designate the route to be traveled. The transport permit is good only for the date specified on permits, except Saturday, Sunday, or holidays. 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 city.

SECTION 9.17 LANDSCAPE REGULATIONS

- A. **PURPOSE:** The purpose of these regulations is to promote and to protect the health, safety and welfare of the community through reduction of noise, air, and visual pollution, air temperature and headlight glare and to improve the aesthetic character of the community by improving the appearance of vehicular use areas and property adjoining public/private road rights-of-way and driveways, preserving existing trees, and requiring screening between land uses.
- B. **WHO PROVIDES LANDSCAPING:** Landscaping required to fulfill these regulations shall be provided by the property owner. If an adjacent property has landscaping fulfilling perimeter landscaping requirements, the requirement for perimeter landscaping along the common boundary may be waived if deemed appropriate by the Zoning Administrator.
- C. **TYPES OF LANDSCAPING REQUIRED:** Landscaping required per these regulations includes perimeter landscaping, vehicular use area (parking lot) or interior landscaping, and landscaping for screening of dumpsters.
- D. **LANDSCAPE REQUIREMENTS TABLE:** The Landscape Requirements Table (Table 9-1) contains landscape requirements for perimeter, vehicular use or interior landscaping per these regulations. Refer to 10.16 for additional landscaping required in the MX zones.
- E. **SITES AFFECTED:** Landscaping as required in the Landscape Requirements Table (Table 9-1), shall be required as follows:
 1. All new building development and construction or development requiring a zoning map amendment, except for single and two-family residential.
 2. **EXISTING DEVELOPED SITES:**
 - a. New parking lot construction, including the expansion, moving or relocation of existing parking. This requirement shall only affect

those newly paved areas of five (5) spaces or larger, or any paved area larger than 1500 square feet. The number of parking spaces added shall also include any spaces added within one (1) calendar year prior to the building permit application for the new spaces. This requirement shall, in no instance, be deemed as retroactively affecting sites prior to the adoption of this amendment.

- b. Substantial additions to an existing building - Substantial building additions will be defined per the criteria established below:

Where Existing Structure Is	Substantial Increase An Addition Of
0 - 1,000 sq. ft.	101% or greater
1,001 - 10,000 sq. ft.	40% or greater
10,001 - 25,000 sq. ft.	30% or greater
25,001 - 50,000 sq. ft.	20% or greater
50,001 sq. ft. and above	10% or greater

Perimeter landscaping is required between addition and adjoining land use or public/private street, per the landscape requirements table. See Figure 9-1 for additional information. If this does not involve new parking lot construction, interior (Vehicular Use Area) landscaping is not required.

- c. When a land use changes to a different land use requiring the construction of additional parking.

- F. **PLANTING MANUAL AND LANDSCAPE REGULATIONS GUIDELINES:** The legislative body shall have on file a manual that outlines recommended plant materials, illustrations of the landscape ordinance applications and minimum requirements for other landscape materials. This manual shall be used as a guideline to anyone preparing a landscape plan in order to meet the requirements of this Landscape Ordinance.

The Planting Manual and Landscape Regulation Guidelines include plant lists which can be used for reference purposes when selecting trees and shrubs to meet the requirements of these regulations. The lists are as follows:

PLANT LIST A: SHADE TREES (Mature height greater than 30 ft.)

PLANT LIST B: FLOWERING AND NON - FLOWERING TREES
(Mature height less than 30 ft. for use under power lines.)

PLANT LIST C: EVERGREEN/BROADLEAF TREES

PLANT LIST D: DECIDUOUS SHRUBS

PLANT LIST E: EVERGREEN/BROADLEAF SHRUBS

PLANT LIST F: STREET TREES

PLANT LIST G: UNACCEPTABLE SHRUBS AND TREES

Please note that with the exception of Plant List G, Unacceptable Plants, the Plant Lists included in the manual are only suggestions of use groups that have been successful in this region for urban landscaping. The choice of plant materials is not limited to those of the lists, but all plants and trees specified on landscape plans that are not included must have proven acceptability in this region. No shrubs and trees on Plant List G will be permitted.

G. MISCELLANEOUS REGULATIONS

1. **EASEMENTS, RIGHTS-OF-WAY, AND SETBACKS:** Landscaping must be placed in the required area between the property line and the front, rear and side yard setbacks, except as permitted herein. Required landscaping may be placed wholly or partially in utility or other easements providing all requirements can be fulfilled and approval is granted by the holder of the easements. Trees placed under overhead utility wires must be from List B. The rights-of-way of any public street may also be utilized for the required landscaping provided that approval is granted by the appropriate government. It must be noted that an Encroachment Permit shall be required from the Kentucky Transportation Cabinet to plant within state right-of-way. When rights-of-ways are used for required landscaping it shall be the responsibility of the property owner to maintain said landscaping and to replace any required landscaping subsequently removed by the Kentucky Transportation Cabinet or local legislative bodies.
2. **SIGHT TRIANGLE:** That area at street or drive intersections where all landscaping is prohibited, except ground covers and trees that are without limbs, with a ground clearance seven feet (see Figure 9-2).
3. **JOINT DRIVEWAYS:** If two properties share a driveway or vehicular use area and have a written reciprocal access agreement, no vehicular use area screening shall be required along the paved portion of the common boundary. Interior landscape shall be required on the property submitting plans.

4. DUMPSTERS: Shall be screened on at least three (3) sides according to Table 9-2.

When dumpsters located less than ten (10) feet from an unwindowed portion of a building on the same property, landscape screening may be waived by the Zoning Administrator for the side of the dumpster facing that building wall. Fencing shall be required on that side.

5. CONFLICTS IN REQUIREMENTS: When an activity or land use falls under more than one of the categories listed in the table, the most stringent of the requirements shall be applied.

H. LANDSCAPE MATERIALS

1. WALLS AND FENCES: When walls or fences are used to fulfill screening requirements, they shall be indicated on the landscape plan. They are to be of weather-proof materials. This includes the use of synthetic or other construction materials or pressure treated lumber or painting of lumber if it is not redwood or cedar and using aluminum or galvanized hardware. Chain link fences with wood or synthetic slat material shall not be used to meet the requirements of these regulations.

2. PLANTS AND TREES: All plants are to be healthy and part of the acceptable plants listed in the Planting Manual. All plants must be replaced if they die. A plant manual should be obtained from the legislative body that outlines recommended plant material.

- a. Quality: Plant materials used in conformance with provision of this ordinance shall comply with the American Standards for Nursery Stock (ANSI Z60. 1-1990, or most current edition) as prepared and published by the American Association of Nurserymen which is on file at the City Hall. In addition all plant materials shall have passed any inspection required under state and/or local regulations.

- b. Deciduous Trees (trees which normally shed their leaves in the fall): Shall be species having an average mature crown spread of greater than fifteen (15) feet in Kenton County and having trunk(s) which can be maintained with a minimum of seven (7) feet of clear wood in areas which have visibility requirements. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by a grouping of the same so as to create the equivalent of a fifteen (15) foot crown spread. A minimum of six to eight (6-8) feet overall height or a minimum caliper (trunk diameter, measured by 6 inches above ground for trees up to 4 inches caliper) of at least 1 1/2 inch immediately after planting shall be

- required. Trees of species whose roots are known to cause damage to public roadways or other public works shall not be planted closer than fifteen (15) feet from such public works, unless the tree root system is completely contained within a barrier for which the minimum interior container dimensions shall be five feet square and five feet deep and for which the construction requirements shall be four (4) inches thick reinforced concrete.
- c. Evergreen Trees: Shall be a minimum of five (5) feet high with a minimum caliper of 1-1/2 inches immediately after planting.
 - d. Shrubs and Hedges: Shall be at least 15" - 20" in average height when installed. All plants shall conform to opacity, mature height, and other requirements within four (4) years after the date of the final approval of each planting or replanting. Privet, Ligustrum species cannot meet the opacity requirements and may not be used to satisfy the requirements of this Article. The height of the planting shall be measured from the level of the surface of the vehicular use area at the edge closest to the screening.
 - e. Grass or Ground Cover: Grass of the fescus (Gramineak) or Bluegrass (Poaceae) family shall be planted in species normally grown as permanent lawns in Kenton County, and may be sodded, plugged, sprigged, or seeded; except in swales or other areas subject to erosion, where solid sod, erosion reducing net, or suitable mulch shall be used, nurse-grass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Ground cover shall be planted not more than 15 inches on center and in such a manner as to present and have 75% of complete coverage after two complete growing seasons.
3. EARTH MOUNDS: Earth mounds shall be constructed with slopes which allow easy maintenance of grass or other ground cover. Differences in elevation between areas requiring screening does not constitute an earth mound.
 4. MAINTENANCE AND INSTALLATION: All landscaping materials shall be installed according to accepted planting procedures (see Planting Manual). The Owner of the property shall be responsible for the continued property maintenance of all landscaping materials, including existing trees, and shall keep them in a proper, neat and orderly appearance, free from refuse and debris at all times. All unhealthy or dead plant material shall be replaced within one year, or by the next planting period, whichever comes first; while other defective landscape material shall be replaced or repaired

within three months. Topping trees or cutting of limbs to stubs larger than three (3) inches in diameter within the tree crown to such a degree as to remove the normal canopy shall not be considered proper for the maintenance of trees as required by this Article. Tree pruning cuts shall be made sufficiently close to the trunk or parent limb without cutting into the branch collar or leaving a protruding stub so that closure can readily start under normal conditions. All branches that are so heavy as to cause bark splitting or peeling are to be precut. Violation of these installation and maintenance provisions shall be grounds for the legislative body to refuse a building occupancy permit, require replacement of the landscape material or institute legal proceedings to enforce the provisions of this Article.

I. SUBMISSION REQUIREMENTS

1. **LANDSCAPE PLAN CONTENT:** The landscape plan shall be drawn to a scale no smaller than 1" = 100'-0" and shall include: all property lines; a north arrow; a scale; all easements; all existing and proposed structures and their uses; dumpsters; all vehicular use areas, labeled as to size and number of parking spaces; the names and addresses of the owners and plan preparers; and either topographic contour or spot elevations where elevation changes occur in areas to be landscaped.
2. **TREE PROTECTION PLAN:** Identify all trees within the disturbed limits that are to be preserved and are to be part of the required landscaping. Such trees shall be protected during the construction phase, per guidelines in the Planting Manual and Landscape Ordinance Guidelines, Section II, C.
3. **BUILDING OR ZONING PERMIT:** A building or zoning permit shall not be issued until the required landscape plans have been approved.
4. **CERTIFICATE OF OCCUPANCY:** A temporary Certificate of Occupancy may be issued even though the required landscaping has not yet been installed. A final Certificate of Occupancy shall not be issued unless either:
 - a. All landscaping has been installed and accepted by the Building or Zoning Inspector, or
 - b. A full cash bond, irrevocable letter of credit (on an approved bank), or other form of acceptable surety has been posted in an amount equal to the cost of contracting the purchase and installation of the landscaping, plus 10%.

The owner shall have up to six (6) months, as determined by the Zoning Administrator to install the required landscaping. If, after the established time frame, the landscaping is not installed, the legislative body will contract the landscaping using the posted bond. Two one month extensions of the bond may be allowed beyond the established time if it is determined that planting will be detrimental to the plant material.

J. PLANTING ADJUSTMENTS

1. The Zoning Administrator shall have the authority to grant a waiver of any of the requirements in this section upon receipt of a written request which outlines the rationale for the planting adjustment. The Zoning Administrator shall review each written request and grant a waiver only: (1) under unusual or extreme circumstances which cause an unreasonable hardship such as the size of the lot; (2) when an innovative or alternative approach can be made which still meets the intent and purpose of this section; or (3) when the requirements of this section are impractical or unreasonable because of the existence of conditions specified in subsection J., 4. Of this section. All decisions made by the Zoning Administrator may be appealed to the Board of Adjustment, pursuant to this ordinance and Kentucky Revised Statutes.
2. PLANTING ADJUSTMENTS: If the property owner wishes to request a planting adjustment of the Landscape Requirements of this article, an application shall be filed with the Zoning Administrator.
3. REVIEWING ADJUSTMENT REQUESTS: The Zoning Administrator or the planning commission, in its review of requests for adjustments, shall in making its decision consider all of the following criteria:
 - a. The need for the adjustment is due to circumstances typical of the land in the general vicinity of the site or in the same zone.
 - b. The strict application of the Landscape Ordinance would deprive the applicant of a reasonable use of the land or create an unnecessary hardship.
 - c. Circumstances necessitating an adjustment are not the result of an action by the applicant subsequent to the passage of the Landscape Ordinance.
 - d. Adherence to the Landscape Ordinance will adversely affect the health, safety and welfare of the public or will adversely alter the general character of the general vicinity.

- e. When an innovative or alternative approach can be made which still meets the intent and purpose of this section.
- f. The existence of significant grade separations between adjoining developments or properties.
- g. The horizontal distance between the proposed development and the adjoining property.
- h. The existence of natural features (water bodies, tree lines, creeks or streams) that are proposed to be maintained.
- i. The different land use intensities that can be found within the same land use categories (i.e., a small single tenant office use or a 24 hour gasoline/convenience store can both be developed in a commercial zone).

TABLE 9-1
LANDSCAPE REQUIREMENTS TABLE

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
Any commercial or professional office zone or land use, or any conditional use	Any residential zone or land use	20 feet	Choose one of the following: 1. 1 tree per 35 linear feet, or fraction thereof, from List A* (shade trees), plus double row hedge from list E (evergreen/broadleaf shrubs) 2. 1 tree per 20 linear feet, or fraction thereof, from List B (flowering and non-flowering trees), plus double row hedge from List E (evergreen/broadleaf shrubs) 3. 1 tree per 40 linear feet, or fraction thereof, from List A (shade trees), plus a hedge from List D, plus a 6 foot wall, fence, or earth mound 4. 1 tree per 40 linear feet, or fraction thereof, from List B (flowering and non-flowering trees), plus a hedge from List D, plus a 6 foot wall, fence, or earth mound 5. Double row, staggered planting of trees from List C at 15 feet on center

* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.
2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.
3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicular use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.
4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.
5. The Zoning Administrator may allow a mixture or combination of tree categories, provided that the required number of trees is provided.
6. In no case shall the minimum planting strip be required to exceed the minimum setback requirement established by the zoning district.

Table 9-1 (continued)

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
Any industrial zone or land use	Any residential zone Any commercial or professional office zone	75 feet side and rear yard 50 feet side and rear yard	Double row of staggered trees from List C (evergreen/broadleaf trees) at 15 feet on center, plus a 36 foot wide, 6 foot tall, earthen berm Double row of staggered trees from List C (evergreen/broadleaf trees) at 15 feet on center STORAGE YARD: A hedge from List E (evergreen/broadleaf shrubs) facing the front yard only and/or any public/private street plus a 6 foot fence or wall

* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.
2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.
3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicular use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.
4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.
5. The Zoning Administrator may allow a mixture or combination of tree categories, provided that the required number of trees is provided.
6. In no case shall the minimum planting strip be required to exceed the minimum setback requirement established by the zoning district.

Table 9-1 (continued)

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
Any multi-family residential (3 units per building or greater density) zone or land use	Any single family residential zone or land use	20 feet	Choose one of the following: 1. 1 tree per 45 linear feet, or fraction thereof, from List A* (shade trees), plus a double row hedge from List E (evergreen/broadleaf shrubs) 2. 1 tree per 20 linear feet, or fraction thereof, from List B (flowering and non-flowering trees), plus a double row hedge from List E (evergreen/broadleaf shrubs) 3. A hedge from List D (deciduous shrubs), plus a 6 foot wall, fence, or earth mound 4. Continuous double row, staggered planting of trees from List C (evergreen/broadleaf trees) at 15 feet on center
Any commercial, professional office or industrial zone or land use	The public right-of-way, public or private street	10% of each yard area must be landscaped	Trees, shrubs, planting beds, and/or perennials in a motif designed by the owner. A minimum of 3 trees shall be planted per 100 linear feet, or fraction thereof, of road frontage. This is not in addition to other required landscaping.

* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.
2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.
3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicular use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.
4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.
5. The Zoning Administrator may allow a mixture or combination of tree categories, provided that the required number of trees is provided.
6. In no case shall the minimum planting strip be required to exceed the minimum setback requirement established by the zoning district.

Table 9-1 (continued)

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
A junk, salvage, refuge, or parts yard or recycling center	Any residential zone Any commercial or professional office zone Any industrial zone or street (public or private)	75 feet 50 feet 20 feet	Choose one of the following: 1. 1 tree per 35 feet of linear boundary, or fraction thereof, from either List A (shade trees) or List B (flowering and non-flowering trees), plus a single row hedge from either List D (deciduous shrubs) or List E (evergreen/broadleaf shrubs), plus a 6 foot wall or fence 2. A double row, staggered planting of trees from List C (evergreen/broadleaf trees) at 15 feet on center, plus a 6 foot solid fence or wall
Street trees may be planted along all public or private streets to meet the requirements of these regulations		4 feet	Choose one of the following: 1. 1 tree every 60 feet on center (maximum) from List A (shade trees) 2. 1 tree every 60 feet on center (maximum) from List F (street trees) 3. 1 tree every 60 feet on center (maximum) from List B (flowering and non-flowering trees)

* Plant lists can be found in the "Planting Manual And Landscape Regulation Guidelines"

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.
2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.
3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicular use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.
4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.
5. The Zoning Administrator may allow a mixture or combination of tree categories, provided that the required number of trees is provided.
6. In no case shall the minimum planting strip be required to exceed the minimum setback requirement established by the zoning district.

FIGURE 9-1
REQUIRED PERIMETER LANDSCAPING FOR BUILDING ADDITIONS

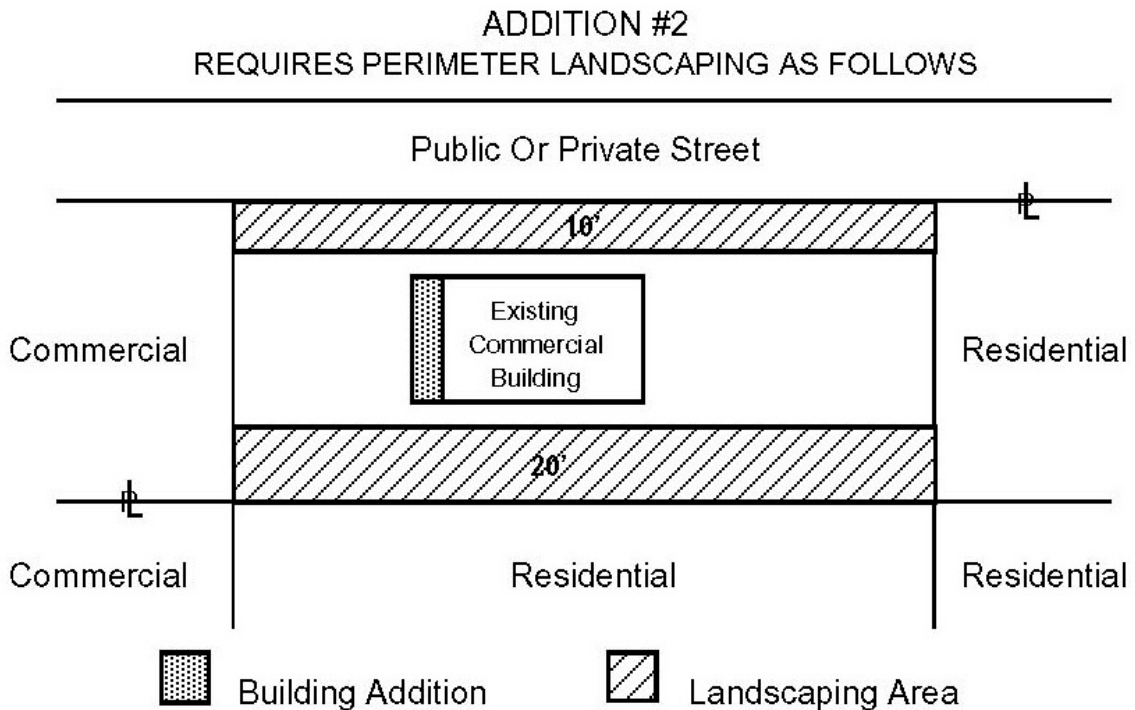
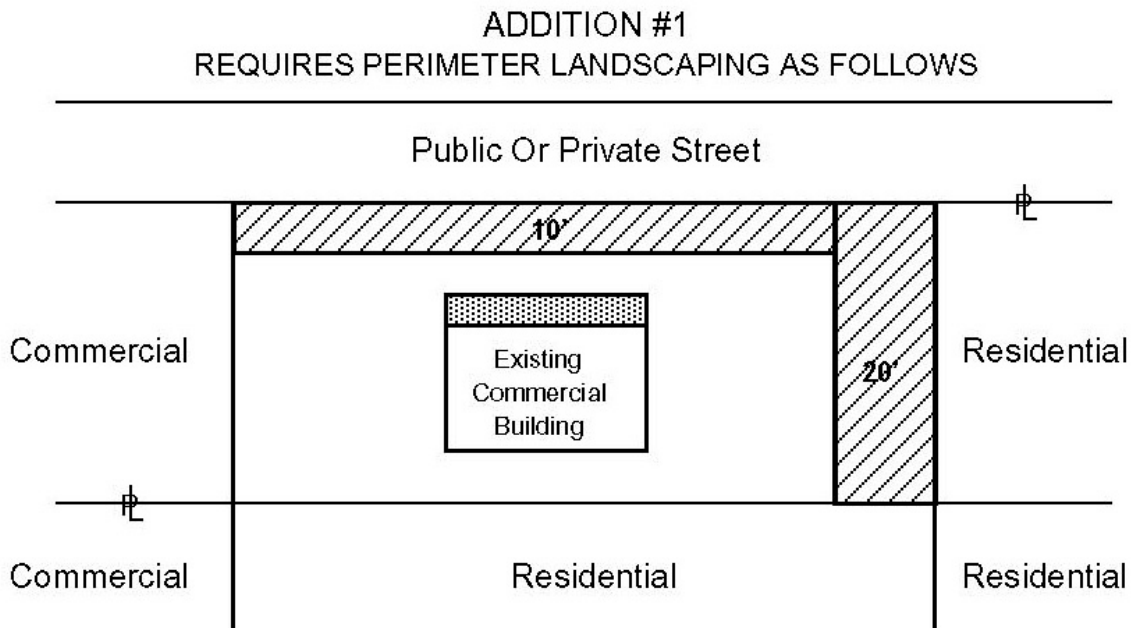
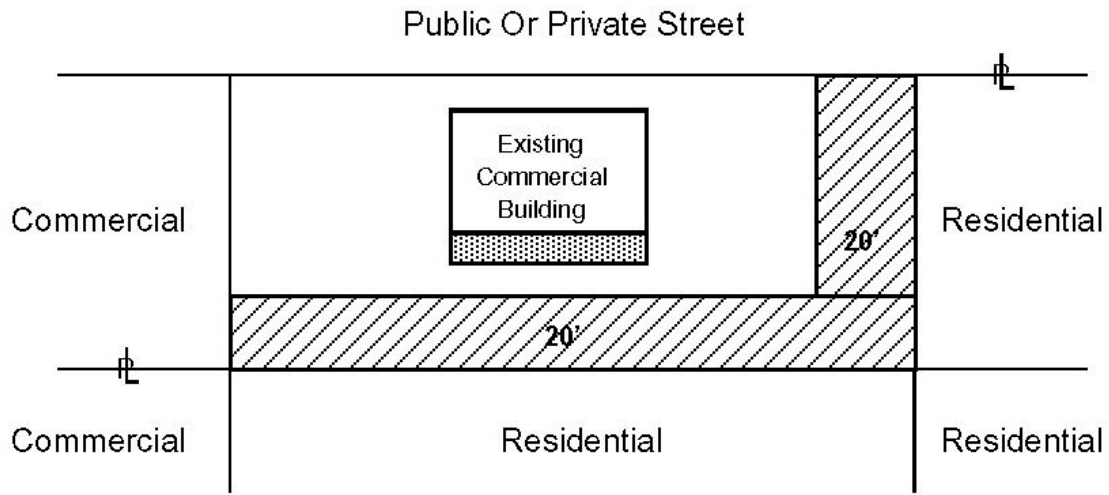
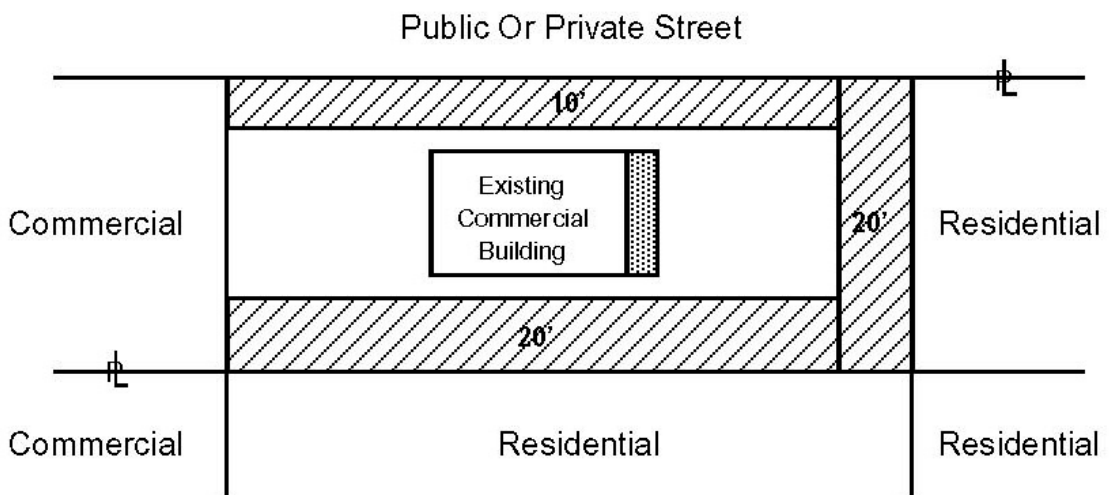


FIGURE 9-1 (continued)
REQUIRED PERIMETER LANDSCAPING FOR BUILDING ADDITIONS

ADDITION #3
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS



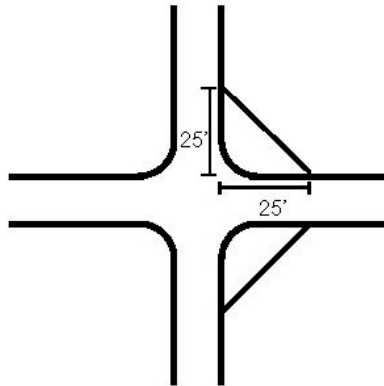
ADDITION #4
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS



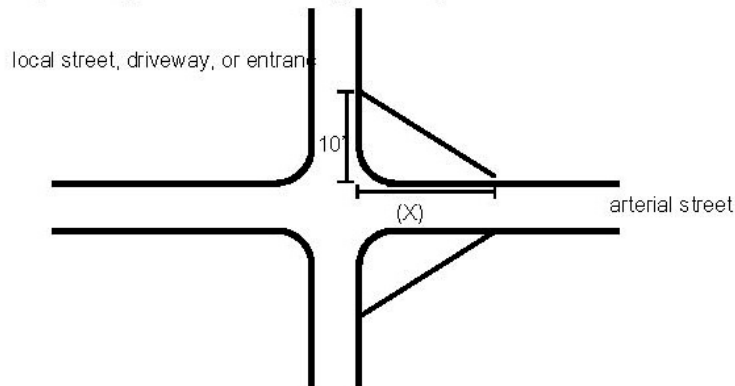
 Building Addition  Landscaping Area

FIGURE 9-2
CITY STREETS/STATE HIGHWAY SIGHT TRIANGLES

1. Local, Subcollector, and Collector Streets: When two city streets intersect or a driveway intersects a city street, the sight triangle shall consist of the area between points twenty-five (25) feet along both streets from the intersection of the edges of the pavement.



2. Arterial or State Maintained Roadways: Where a city street, driveway or other entrance intersects with a state highway, the sight triangle shall consist of the area between a point located along the edge of the state highway pavement the distance an automobile traveling the speed limit can go in six seconds. An Encroachment Permit from the Kentucky Department of Transportation is required to plant in the State Right-of-Way.



(X) SIGHT DISTANCE	POSTED SPEED LIMIT
484 feet	55 miles per hour
396 feet	45 miles per hour
308 feet	35 miles per hour
220 feet	25 miles per hour
132 feet	15 miles per hour

TABLE 9-2
DUMPSTER SCREENING TABLE

DUMPSTER* OCCURS IN	WHICH ADJOINS	REQUIRED SCREENING**
any zone or land use other than residential	any zone or land use other than residential	fencing per plant manual
any residential land use or zone	any zone or land use	fencing per plant manual plus hedge on three sides from list D or E
any zone or land use	any residential land use or zone	fencing per plant manual plus hedge on three sides from list D or E

* Includes dumpsters, compactors, and all other solid or other waste containers, excluding recycling containers.

** If a dumpster is oriented towards a street or toward the nearest perimeter of the site, and can be seen from the street or adjoining property, that side must also be screened.

**TABLE 9-3
RECYCLING CONTAINER SCREENING TABLE***

	CLASS 1	CLASS 2	CLASS 3
CONTENTS	Paper and cardboard	Paper, cardboard, plastic and glass	Metal containers
ENCLOSURE	None required, but container must be painted similar color as adjoining wall	Same as dumpster enclosure requirements	Same as dumpster enclosure requirements
LABELING	Two prominent recycle logos and description of acceptable recycling material	Two prominent recycle logos and description of acceptable recycling material	Two prominent recycle logos and description of acceptable recycling material
LOCATION	Only in rear of building adjacent to and within five feet of the structure, and structure must be two times the height of top of container, not visible from public street and meet all building setback requirements. Must not occupy any required parking spaces.	Only in rear of building adjacent to and within five feet of the structure, and structure must be two times the height of top of container, not visible from public street and meet all building setback requirements. Must not occupy any required parking spaces.	Only in rear of building adjacent to and within five feet of the structure, and structure must be two times the height of top of container, not visible from public street and meet all building setback requirements. Must not occupy any required parking spaces.
MULTIPLE UNITS	Containers within 150 feet should be grouped together, one container per 35,000 gross square feet of primary use	Grouped within same enclosure or separately enclosed	Grouped within same enclosure or separately enclosed
SIZE	Each container cannot exceed 8 cubic yards and must have a secure lid. Larger containers must meet the dumpster screening requirements found in Table 9-2.	Each container cannot exceed 8 cubic yards and must have a secure lid. Larger containers must meet the dumpster screening requirements found in Table 9-2.	Each container cannot exceed 8 cubic yards and must have a secure lid. Larger containers must meet the dumpster screening requirements found in Table 9-2.
PERMIT	Required for all new recycling containers	Required for all new recycling containers	Required for all new recycling containers
SCREENING	None required individually, however, a maximum of 8 total non-screened units allowed per property.	Same as dumpster or effectively screen sides of container with plants from Plant List C,D, or E.	Same as dumpster screening requirements
ZONE	PO-1, PO-2, SC, IP, INST, RP-1	PO-1, PO-2, SC, IP, INST, RP-1, and R-2b	PO-1, PO-2, SC, IP, INST, RP-1, and R-2b

* Excludes single family recycling bins.

SECTION 9.18 SWIMMING POOLS AND OUTDOOR ENTERTAINMENT BUILDINGS

- 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 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 or self-latching door or gate around the pool or the property on which the pool is located, of at least four (4) feet in height, but not exceeding six (6) feet (only classes 1, 3, 4, or 5 are permitted, as regulated in Article XIII of this ordinance) and of such construction that a small child may not reach the pool from the street or any adjacent property without climbing a fence or wall or opening a gate or door.
 4. Swimming pools which are located above-ground shall be required to have a fence or wall, including a self-closing or self-latching door or gate around the pool or property upon which the pool is located 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) and of such construction that a small child may not reach the pool from the street or any adjacent property without scaling a fence or wall or opening a gate or door. Said wall may be the wall of the above-ground pool, providing, however, 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, said ladder or stairway shall be provided with a self-closing or self-latching door or gate, 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, including apparatus and equipment pertaining to the operation of the swimming pool, shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the

City. Any water used in the operation of a swimming pool, other than from a public source, shall be approved by the appropriate 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 by Subsection A., 3., A., 4., A., 5., and A., 6., of this Section of the Ordinance, shall be required to comply with the provisions of this Section on the effective date of this Ordinance.
 8. Where an in - ground or above - ground pool is constructed, fences at a maximum height of 6 feet may be erected within the rear yard by an adjoining property owner, provided the fence is erected in such a manner that it extends along the fence of the pool side only.
- 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, including the apparatus and equipment pertaining to the operation of the swimming pool shall be permitted within any required yards of the lot 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 (only classes 1, 3, 4, and 5 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 a small child may not reach the pool from the street or from adjacent property without opening a door or gate or scaling a wall or fence.
 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 including the apparatus and equipment pertaining to the operation of the swimming pool shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the city. Any water used in the operation of the swimming pool, other than from a public source, shall be approved by the appropriate health department.
 5. No mechanical and/or electrical 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.

6. This section and its subsections shall not apply to swimming pools which are located more than two hundred (200) feet from an existing property line.

C. OUTDOOR ENTERTAINMENT BUILDINGS

1. Purpose. The purpose of this section is to allow for an unobtrusive rear-yard accessory structures providing outdoor entertainment space for the primary building in residential zones. Permitted Outdoor Entertainment Buildings shall be subordinate to and not detracting from the main structure, and be harmonious with the architecture of the principal building. Outdoor Entertainment Buildings are not intended as separate living quarters.
2. Limitations/Standards. Outdoor Entertainment Buildings which are incidental to other uses permitted in the residential zone may be placed or constructed in the following residential zones, R-1Bc, R-1C, R-1D, R-1E, and R-PUD, provided that all requirements for such buildings as set below are met.
 - a. Application. An application must be submitted to the City prior to construction or installation of an Outdoor Entertainment Building. Building and zoning application processes are applicable per Section 16.1 and 16.2. Each application for approval of an accessory building shall be accompanied by:
 - i. Building plans, elevations and cross section drawings in an accurate scale, with detail sufficient to determine height, dimensions, and materials and colors for exterior walls and roofs.
 - ii. A site plan, showing property location, lot setbacks and proposed location of the accessory building, and identify neighboring properties.
 - iii. Any other information that may be needed to show compliance with this section.
 - b. Approval. Approval for installation of an Outdoor Entertainment Building must be obtained by:
 - i. Review by the Crestview Hills Architectural Review Board for all structures greater than two hundred (200) square feet to ensure proposed structure is compatible with the principal structure on the property.
 - ii. Review by the Crestview Hills Zoning Administrator for all structures not requiring approval by the Architectural Review

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- Board to ensure all setback and other restrictions are met for accessory structures.
- iii. Review by the Building and Zoning Departments for all structures per Section 16.1 and 16.2.
3. Number of Buildings Allowed. Only one Outdoor Entertainment Building shall be allowed on each individual parcel, except when the parcel exceeds ten acres in size. On parcels larger than ten acres, two accessory structures shall be allowed, provided the size of the two structures does not exceed the maximum allowable size either individually or collectively.
 4. Maximize Size of Building. An Outdoor Entertainment Building may occupy a footprint up to ten percent of the total size of the rear yard (see Article VII, Section 7.0) of the property, not to exceed six hundred (600) square feet or gross floor area of the principal structure.
 5. Maximize Height of Building. No Outdoor Entertainment Building shall exceed a height of fourteen (14) feet, measured from the lowest ground level of the structure to the highest point of the roof; notwithstanding the height of the principal structure.
 6. Location of Building. No Outdoor Entertainment Building shall be erected in any front yard. For parcels of less than ten acres, structures may only be erected in rear yards. For parcels over ten acres, building(s) may be located in the side and rear yards. All buildings shall be setback at least 25 feet from the side property line and 10 feet from the rear property line. This distance includes all eaves, overhangs, and attachments to the structure. No building shall be located closer than twenty (20) feet to the primary structure.
 7. Exterior Materials, Colors, and Roof Pitch. As a condition of approval of an Outdoor Entertainment Building, the Crestview Hills Architectural Review Board shall consider whether the proposed building's exterior color, type of building materials, and roof pitch are compatible with the principal structure.
 8. Landscaping. The Zoning Administrator may establish reasonable requirements for the installation and maintenance of landscaping improvements as a condition of approval for an Outdoor Entertainment Building in order to protect the existing character of the surrounding neighborhood. The owner of the property who fails to install or maintain the required landscaping improvements established, as a condition of approval of an Outdoor Entertainment Building shall be in violation of this section.

9. Construction or Installation Without Prior Approval. Any property owner who initiates construction or installation of an Outdoor Entertainment Building without required approvals and permits shall be subject to all penalties and costs under applicable building codes and penalties set forth in this Section.
10. Lawful Non-Conforming Outdoor Entertainment Buildings. An Outdoor Entertainment Building which pre-dates the adoption of this section shall be considered lawful if it complied with all laws and regulations in effect at the time of construction.
11. Penalties. Outdoor Entertainment Buildings that are initiated or expanded, or are used as separate living quarters without approvals required in this Section are in violation of this ordinance and are subject to the enforcement procedures in Article XVI.

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 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 and adjacent to the property which are proposed to be continued, created, relocated, or abandoned.
- D. Existing topography with a maximum of two foot contour intervals. Where existing ground is on a slope of less than two (2) percent, either one foot contours or spot elevations, where necessary, but not more than fifty (50) feet apart in both directions.
- E. The proposed finished grade of the development area, shown by contours with intervals not larger than two (2) feet, supplemented where necessary by spot elevations.
- F. The location of every existing and proposed building in the described parcel or parcels, the use or uses to be contained therein, the number of buildings including dimensions and height, the gross floor area and number of floors.

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- G. Location and dimension of all curb cuts, driving lanes, off-street parking and loading and/or unloading areas including number of spaces, angle of stalls, grades, and illumination facilities.
 - H. All walks, malls, and other open areas.
 - I. Location of all walls, fences, and screen plantings.
 - J. Location, size, height, and orientation of all signs.
 - K. Types of surfacing proposed on the various off-street parking and driveways including cross sections and drainage plans.
 - L. Location of all existing and proposed streets, highways, and alleys.
 - M. All existing and proposed water, storm, and sanitary sewer lines, indicating pipe sizes, types, and grades.
 - N. A drainage plan of the area showing size and location of each existing and proposed structure. The approximate volume of water generated by development of the subject area and the proposed method of disposing of said water. Provisions shall be included for adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction.
 - O. Identification of soil types on the subject property indicating soil problems and proposed method of handling soil problems.
 - P. A schedule of development, including the staging and phasing of:
 - 1. Residential areas, 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.
 - 4. The construction of non-residential buildings, in order of priority.
 - Q. Such other information with regard to the development area as may be required by the city, or its duly authorized representative, to determine conformance with this ordinance.

Where development is proposed on a parcel of land that is a part of a larger tract of land which is under one ownership, the developer shall be required to submit a site plan for the entire property under said ownership, unless specifically waived by the city. The site plan shall also indicate, however applicable, how the proposed development will tie into adjacent properties not under said ownership.

All such site plans shall be reviewed by the city, 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.

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 approve.

After final approval, the subject area may be developed in stages, provided all of the procedures required by the city, 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 city, or its duly authorized representative, for its review.

SECTION 9.21 REGULATIONS CONCERNING DESIGN AND CONSTRUCTION OF IMPROVEMENTS: Any proposed development or modifications to existing development requiring the construction or reconstruction of streets (including curb and gutters), sidewalks, sewers (sanitary and storm), water lines, or other improvements, which does not constitute a subdivision, as herein defined, shall be required to be designed and constructed in accordance with the applicable articles and sections of the city's Subdivision Regulations.

SECTION 9.22 REGULATIONS PERTAINING TO PARKING OR STORING OF TRAILERS, MOBILE HOMES, CAMPER, 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 Zone (mobile home park).
- C. Outside storage of any trailer, R-V, mobile home, camper, boat, or other such type equipment, within any place or location in the city, shall be regulated as follows. In no case shall more than one of the previously mentioned vehicles or similar type equipment be permitted outside of an enclosed building on any lot.
1. Such equipment of 18 feet or less in length may be stored outside in the rear yards of residential districts with side and rear yard setbacks being maintained. In cases which do not allow use of the rear yard, such as: (a) special circumstances which do not generally apply to land in the general vicinity; and (b) the strict application of the zoning regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant, the zoning administrator may permit such storage in another part of the lot excluding the front yard.
 2. The storing of said equipment outside must be on a hard surface, such as asphalt or concrete.
 3. Such equipment greater than 18 feet in length may be stored within an enclosed garage, or in the rear yard as approved by the zoning administrator for appropriate location and screening from adjacent properties.
 4. Storage of a trailer, R-V, mobile home, camper, boat or other such recreational type equipment may be permitted on hard surfaced driveways during the period from June 1 through the following September 1 for no more than 14 days, provided that the following conditions are met:
 - a. The required off-street parking spaces are available in addition to the space used for the recreational equipment.
 - b. The stored recreational vehicles shall not extend over any property or right-of-way line.
 5. No storage of recreational vehicles, campers, and/or boats on trailers is permitted within driveways in the front or side yards during the period from September 2 through the following May 31 of the next year.

SECTION 9.23 HILLSIDE DEVELOPMENT CONTROLS

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- 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 that portion of the Kenton County Comprehensive Plan, as it pertains to the city of Crestview Hills, 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 Kenton County 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 city 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 ponds, 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, and engineering analysis should be made by a qualified, registered professional engineer, indicating that the building and 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 Section 9.23, B., 2., of this section of the ordinance, shall be reviewed by the city engineer who will
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recommend to the city, or its duly authorized representative, what effect the proposed development will have on hillside slippage and soil erosion.

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

4. If, after review of the plans required by this section of the ordinance, the city, or its duly authorized representative, determines that said proposed plans will not minimize hillside slippage, the city 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 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 the 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 9.25 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) and 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 9.26 REGULATIONS OF SEXUALLY ORIENTED BUSINESSES

- A. The Fiscal Court of Kenton County, after consultation among the mayors, councils, commissioners and staffs of the municipalities and the county within the

County, found that a substantial need exists to revise significantly the ordinances regarding sexually oriented businesses within Kenton County.

- B. The Fiscal Court, in association with 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.

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- 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 Crestview Hills 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

Crestview Hills to balance the Constitutional rights of businesses that present sexually oriented entertainment with the City of Crestview Hills 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 Crestview Hills 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.

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- R. The City of Crestview Hills recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the City of Crestview Hills 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 Crestview Hills 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 Crestview Hills 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 Crestview Hills 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.

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- V. The City of Crestview Hills 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 Crestview Hills finds that the following principles are essential to effective zoning controls of sexually oriented businesses:
1. Sexually oriented businesses should, to the maximum extent practicable, be separated from one another by a distance that is greater than a convenient walking distance, because experience elsewhere has shown that the location of such businesses near one another may increase the adverse secondary effects, particularly those related to crime, by a greater than arithmetic factor;
 2. Although there are currently several such businesses located near one another in Covington's downtown area, the Covington City Commission has determined that the City will not attempt to require these existing businesses be relocated;
 3. Sexually oriented businesses have the greatest adverse effect on residential neighbourhoods and should thus be separated to the maximum extent practicable from residential neighbourhoods;
 4. Sexually oriented businesses are likely to attract criminal elements that prey on "soft targets," including children, and it is thus important to separate sexually oriented businesses from schools, parks, recreation centers, and religious institutions, all of which are places where children are likely to congregate, often without parental protection;
 5. Also because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people and others who are vulnerable, are likely to walk in going about their day-to-day business. Thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented business;
 6. Experiences in other communities show that private booths, back rooms, "VIP" rooms and other small and private spaces in sexually oriented businesses create the opportunity for casual sexual activity and create logistical difficulties and risks of physical endangerment for police officers responsible for dealing with such activities. For that reason, it is essential that movies, performances and other activities at sexually oriented businesses should be permitted only in large rooms that are open and

visible to management, other patrons and code and police officers who may visit the establishment during operating hours.

X. FINDINGS: The facts and other matters set forth in the previous clauses that form the preamble to this ordinance are hereby adopted as findings of fact in support of the legislative action of the City of Crestview Hills in adopting this amendment to the Zoning Ordinance. Upon adoption of this zoning amendment, these shall be incorporated into the Zoning Code by reference as if fully set forth therein to the adopting Resolution.

Y. DEFINITIONS:

1. CABARET OR THEATER, SEXUALLY ORIENTED – a building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to “adult entertainment,” “strippers,” “showgirls,” “exotic dancers,” “gentleman’s club,” “XXX” or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.
2. CUSTOMER – any person who:
 - a. Is allowed to enter a business in return for the payment of an admission fee or any other form of consideration or gratuity; or
 - b. Enters a business and purchases, rents, or otherwise partakes of any material, merchandise, goods, entertainment, or other services offered therein; or
 - c. Enters a business other than as an employee, vendor, service person, or delivery person.
3. DAY CARE CENTER – a licensed facility providing care, protection and supervision for children 12 years old or younger or for any individual who is deemed mentally challenged.
4. DISPLAY PUBLICLY – the act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others or from any portion of the premises where items and material other than sexually oriented media are offered for sale or rent to the public.

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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.

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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.

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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.

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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.
- Z. **PROHIBITED USES:** The following uses are prohibited in the city of Crestview Hills and county-wide under Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented
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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. Statutes §309.350 et seq.;
5. Sexually oriented modeling studio;
6. Sexually oriented nude modeling studio; and
7. Sexually oriented escort bureau.

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

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

AB. PERMITTED ZONING DISTRICTS:

1. A media store carrying some sexually oriented media is permitted in any zoning district where other retail establishments are permitted.
2. A sexually oriented media store, sex shop or service oriented escort bureau is permitted in the following zoning districts if it holds an approved Zoning Permit and a valid License approved under the county-wide Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus:

a. SC (Shopping Center) Zone

3. A sexually oriented business featuring on-premise entertainment such as sexually oriented motion picture theatre, cabaret or theatre is permitted in the following zoning districts if it holds an approved Zoning Permit and a valid Kenton County Sexually Oriented Business License:

- a. HC-1 (Highway Commercial One) Zone
- b. HC-3 (Highway Commercial Three) Zone

- c. LHS (Limited Highway Service) Zone
- d. LSC (Limited Service Commercial) Zone
- e. SC (Shopping Center) Zone
- f. All Industrial (I) Zones, except for the IP (Industrial Park) Zone

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

1. Zoning Permit and License Required

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

AD. GENERAL STANDARDS:

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

controlled or occupied that is nearest to the use for which the measurement is being made. Measurements between properties or spaces under this section shall be made by the shortest distance between the two properties and/or spaces.

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

AE. INDIVIDUAL BUSINESS STANDARDS:

1. Standards for a Service Oriented Escort Bureau: A service oriented escort bureau shall be subject to the following additional standards:
 - a. Room size. The establishment shall operate all business in an open area of at least 600 square feet of floor area. No walls, dividers, curtains, screens, shades or other similar devices shall be used to obscure any part of the room where customers are located.
 - b. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.

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2. Standards for a Media Store with Some Sexually Oriented Media: A retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area shall not be classified as a sexually oriented business but shall be subject to the following standards:
 - a. Separate room. The sexually explicit media shall be kept in a separate room from the rest of the inventory of the store and shall not be visible outside the room;
 - b. Age limit. Sexually explicit media shall be available only to persons 18 years or older;
 - c. Access. Access to the room shall be through a solid door, accessed by an electronic control device monitored by the clerk or manager on duty through direct visual control;
 - d. Visibility. Customers and activities in the room shall be visible at all times to the clerk or manager on duty through a video system located at the clerk's or manager's counter; and
 - e. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.

 3. Standards for a Sexually Oriented Media Store or Sex Shop: A sexually oriented media store or sex shop shall be subject to the following additional standards:
 - a. Room size. The establishment shall operate all business in an open area of at least 600 square feet of floor area. No walls, dividers, curtains, screens, shades or other similar devices shall be used to obscure any part of the room where customers are located;
 - b. Displays. No displays of sexually explicit media or images shall be visible from the exterior of the buildings; and
 - c. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.

 4. Standards for a Sexually Oriented Motion Picture Theatre: A sexually oriented motion picture theater shall be subject to the following additional standards:
 - a. Presentation area. All screenings and presentations of motion pictures, videos or other media shall occur in a room open to all customers of the establishment and containing at least 1000 square feet of floor area. No walls, dividers, curtains, screens, shades or other similar devices shall be used to obscure any part of the room.
 - b. Lighting. The lighting level in the area occupied by customers shall be at least 5 footcandles as measured at the floor.

- c. Seating. Seating shall consist of individual, theater-style chairs, with solid arms separating the chairs. No couches, benches, portable chairs, beds, loose cushions or mattresses, or other forms of seating may be provided. Separate spaces for wheelchairs shall be provided in accordance with the applicable provisions of the building code and the Americans with Disabilities Act.
5. Standards for a Sexually Oriented Cabaret or Theatre: A sexually oriented cabaret or theater shall be subject to the following additional standards:
 - a. Presentation area. All entertainment shall occur in an unobstructed room of at least 600 square feet of floor area with a person in any part of such room having a clear view of all entertainment areas;
 - b. Performance stage. All entertainment shall take place on stage elevated at least 24 inches above the surrounding floor area, with a minimum area of 100 square feet, and with a horizontal separation of at least 60 inches between the edge of the stage and the nearest space to which customers have access—the horizontal separation shall be physically enforced by a partial wall, rail, or other physical barrier, which may be located either on the stage (to keep the entertainers back from the edge) or on the floor (to keep the customers back from the stage);
 - c. Lighting. The lighting level in the area occupied by customers shall be at least 15 footcandles as measured 3 feet from the floor.
 - d. Seating. Seating shall consist of chairs or open booths; no couches, beds, or loose cushions or mattresses, or of any form shall be provided.

AF. ZONING ADMINISTRATOR REVIEW AND EXPIRATION OF ZONING PERMIT:

1. Determination of Completeness: Within 5 business days of submission of the sexually oriented land use permit application, the Zoning Administrator shall determine if the application is complete. If the application is incomplete, the Zoning Administrator shall return the application to the applicant with a letter or form specifying the items that are missing. The application shall not be further processed unless and until the applicant submits a complete application.
2. Review, Decision: If the Zoning Administrator determines that an application is complete, the Zoning Administrator shall review the application and, within 20 calendar days of submittal of the complete application, grant or deny the permit. If the permit is denied, the denial shall be made in writing, by letter or on a form, and shall specify the reasons why the application was denied, citing the specific provisions of

this ordinance or other provisions of the City's ordinances that provide the basis for such denial. If the Zoning Administrator fails to act on a complete application within the 20-day period, the application is deemed denied. Upon denial or deemed denial, the applicant may appeal that denial to the Board of Adjustment.

3. The applicant may, at its option, pursue other or additional administrative remedies available under the zoning ordinance; by doing so, applicant shall be deemed to have waived any right to a decision within a particular time period and shall be subject to all of the terms, conditions and timelines applicable to such administrative remedies under the zoning ordinance.
4. **Expiration of Zoning Permit:** The issuance of the Zoning Permit shall be conditioned on the applicant obtaining and retaining a Kenton County Occupational License for the use represented by the Zoning Permit. If a no license has been granted within 6 months after the issuance of the Zoning Permit, then the Zoning Permit shall expire; provided, however, that the expiration date for the Zoning Permit shall be extended until 30 days after the end of any administrative or judicial appeal of the Zoning Permit.

AG. APPEAL PROCEDURES:

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

the appellant and the Zoning Administrator at least 7 calendar days prior to the hearing. The affected parties may appear at the hearing in person or by an attorney. The Board of Adjustment shall hear the matter and render a decision within 36 days after the filing of the appeal. If the Board of Adjustment fails to act within such time, the application is deemed denied.

2. Appeals from the Board of Adjustment

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

AH. SEVERABILITY: It is hereby declared to be the intention of the city of Crestview Hills 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 Crestview Hills without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

SECTION 9.27 FLOOD PROTECTION DEVELOPMENT CONTROLS

A. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

1. STATUTORY AUTHORIZATION

The Legislature of the Commonwealth of Kentucky has in Kentucky Revised Statutes 151.230 delegated to local government units the authority to adopt regulations designed to promote the public health,

safety, and general welfare of its citizenry. Therefore, the legislative body of the City of Crestview Hills, Kentucky, hereby adopts the following floodplain management ordinance, as follows:

2. FINDINGS OF FACT

- a. The flood hazard areas of the City of Crestview Hills 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.
- b. 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.

3. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private loss due to flooding by provisions designed to:

- a. 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;
- b. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c. Control the alteration of natural floodplains, stream channels, and natural protective barriers which accommodate or channel flood waters;
- d. Control filling, grading, dredging, and other development which may increase erosion or flood damage, and
- e. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other areas.

4. OBJECTIVES

The objectives of this ordinance are to:

- a. Protect human life and health;

- b. Minimize expenditure of public money for costly flood control projects;
- c. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. Minimize prolonged business interruptions;
- e. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines; streets and bridges located in areas of special flood hazard;
- f. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard or other flood-prone areas in such a manner as to minimize future flood blighted areas caused by flooding;
- g. Ensure that potential homebuyers are on notice that property is in a Special Flood Hazard Area; and,
- h. Ensure that those who occupy a Special Flood Hazard Area assume responsibility for their actions.

B. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. A Zone - Special Flood Hazard Areas inundated by the 1% annual chance flood (100-year flood). Base flood elevations (BFEs) are not determined.
2. Accessory structure (Appurtenant structure) - A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and should be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.
3. Accessory use - A use which is incidental and subordinate to the principal use of the parcel of land on which it is located.
4. Addition (to an existing structure) - Any walled and roofed expansion to the perimeter or height of a structure.
5. AE zones - Special Flood Hazard Areas inundated by the 1% annual chance flood (100-year flood). Base flood elevations (BFEs) are determined.

6. AH zone - An area of 100-year shallow flooding where depths are between one and three feet (usually shallow ponding). Base flood elevations are determined.
7. AO zone - An area of 100-year shallow flooding where water depth is between one and three feet (usually sheet flow on sloping terrain). Flood depths are determined.
8. Appeal - A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or from the floodplain administrator's ruling on a request for a variance.
9. AR/A1 – A30, AR/AE, AR/AH, AR/AO, and AR/A zones - Special Flood Hazard Areas (SFHAs) that result from the de-certification of a previously accredited flood protection system that is in the process of being restored to provide a 100-year or greater level of flood protection. After restoration is complete these areas will still experience residual flooding from other flooding sources.
10. A99 zone - That part of the SFHA inundated by the 100-year flood which is to be protected from the 100-year flood by a Federal flood protection system under construction. No base flood elevations are determined.
11. 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.
12. 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.
13. 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.
14. Basement - any area of a structure having its floor sub-grade (below ground level) on all sides.
15. Building - See definition for structure.

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16. Community - A political entity having the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.
 17. 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.
 18. 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. This includes areas downstream from dams.
 19. 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.
 20. D zone - An area in which the flood hazard is undetermined.
 21. 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 storage of equipment or materials.
 22. Elevated structure – For insurance purposes, a non-basement structure built to have the lowest floor elevated above ground level by foundation walls, shear walls, posts, piers, pilings or columns.
 23. 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.

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24. 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.
 25. Enclosure - That portion of a structure below the lowest floor used solely for parking of vehicles, limited storage, or access to the structure.
 26. Encroachment - The physical advance or infringement of uses, plant growth, fill, excavation, structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
 27. 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.
 28. 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 a community.
 29. 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).
 30. 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 risk of flooding.
 31. Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.

- c. Mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
 - d. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.
- 32. Flood Boundary and Floodway Map (FBFM) -A map on which the Federal Emergency Management Agency (FEMA) has delineated the areas of flood hazards and the regulatory floodway.
 - 33. 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).
 - 34. Flood Insurance Rate Map (FIRM) - A map on which the Federal Emergency Management Agency (FEMA) has delineated special flood hazard areas and risk premium zones.
 - 35. Flood Insurance Study - The report provided by the Federal Emergency Management Agency (FEMA) 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.
 - 36. Floodplain or flood-prone area - Any land area susceptible to being inundated by flood waters from any source.
 - 37. Floodplain Administrator - The individual appointed by the community to administer and enforce the floodplain management ordinances.
 - 38. 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.

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39. 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.
 40. 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.
 41. Floodproofing Certificate - A certification by a registered professional engineer or architect, the FEMA 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.
 42. 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”.
 43. Floodway fringe - That area of the floodplain on either side of the regulatory floodway.
 44. 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.
 45. Fraud and victimization - As related in Article 6, Appeals and Variance Procedures, of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed structure adds to government responsibilities and remains a part of the community for fifty to one hundred years. Structures that are permitted to be constructed below the base flood elevation are subject

during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages may incur. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

46. 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, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.
47. Governing body - The local governing unit, i.e. county or municipality that is empowered to adopt and implement ordinances to provide for the public health, safety and general welfare of its citizenry.
48. 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).
49. Highest adjacent grade - The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
50. 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:

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- (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.
51. Increased Cost of Compliance (ICC) – Increased cost of compliance coverage means under the standard flood insurance policy the cost to repair a substantially flood damaged building that exceeds the minimal repair cost and that is required to bring a substantially damaged building into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are floodproofing (nonresidential), relocation, elevation, demolition, or any combination thereof.
 52. 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.
 53. Letter of Map Change (LOMC) – 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 inadvertently 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 – Based on 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.
 54. 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.
 55. 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.
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56. 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.
 57. Lowest adjacent grade – The lowest elevation of the sidewalk, patio, attached garage, deck support, basement entryway or grade immediately next to the structure and after the completion of construction.
 58. 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.
 59. 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).
 60. Manufactured home park or subdivision - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
 61. Map - The Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Federal Emergency Management Agency (FEMA).
 62. Map Panel Number - The four-digit number on a flood map, followed by a letter suffix, assigned by FEMA. The first four digits represent the map panel. The letter suffix represents the number of times the map panel has been revised. (The letter “A” is not used by FEMA, the letter “B” is the first revision.)
 63. Market value - The property value (as agreed between a willing buyer and seller), excluding the value of the land as established by what the local real estate market will bear. Market value of the structure can be established by independent certified appraisal; replacement cost depreciated by age of structure (Actual Cash Value) or adjusted assessed values.

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64. 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 the community's FIRM. For purposes of this ordinance, the term is synonymous with either National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988.
 65. 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.
 66. 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.
 67. Mudslide (i.e. mudflow) area management - The operation of and overall program of corrective and preventative measures for reducing mudslide (i.e. mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and floodplain management regulations.
 68. Mudslide (i.e. mudflow) prone area - An area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.
 69. 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.
 70. 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.)
 71. New Construction - Structures for which the start of construction commenced on or after the effective date of a floodplain management

regulation adopted by a community and includes any subsequent improvements to such structures.

72. 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 floodplain management regulations adopted by a community.
73. Non-Residential – Structures that are not designed for human habitation, including but is not limited to: small business concerns, churches, schools, farm structures (including grain bins and silos), pool houses, clubhouses, recreational structures, mercantile structures, agricultural and industrial structures, warehouses, and hotels or motels with normal room rentals for less than 6 months duration.
74. 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 panel legend for correct datum.)
75. 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.
76. 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 inundation by 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.
77. 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.
78. Pre-FIRM Construction - New construction or substantial improvements for which start of construction occurred on or before December 31, 1974,

- or before the effective date of the initial FIRM of the community, whichever is later.
79. Post-FIRM Construction – New construction or substantial improvements for which start of construction occurred after December 31, 1974, or on or after the effective date of the initial FIRM of the community, whichever is later.
 80. Probation – A FEMA imposed change in community’s status resulting from violations and deficiencies in the administration and enforcement of the local floodplain management regulations.
 81. Program Deficiency - A defect in a community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management standards.
 82. 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.
 83. 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.
 84. 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 flood elevations determined in the FIS.
 85. 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.
 86. 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.

87. Repair - The reconstruction or renewal of any part of an existing structure.
88. Repetitive Loss - Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.
89. Repetitive Loss Property - Any insurable building for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling 10-year period, since 1978. At least two of the claims must be more than ten days apart but, within ten years of each other. A RL property may or may not be currently insured by the NFIP.
90. Riverine - Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
91. 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.
92. Severe Repetitive Loss Structure - Any insured property that has met at least one of the following paid flood loss criteria since 1978, regardless of ownership:
 - a. Four or more separate claim payments of more than \$5,000 each (including building and contents payments); or
 - b. Two or more separate claim payments (building payments only) where the total of the payments exceeds the current market value of the property.

In either case, two of the claim payments must have occurred within ten years of each other. Multiple losses at the same location

within ten days of each other are counted as one loss, with the payment amounts added together.

93. Sheet flow area - see "Area of shallow flooding".
94. 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.
95. 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.
96. Structure - A walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.
97. Subdivision - Any division, for the purposes of sale, lease, or development, either on the installment plan or upon any and all other plans, terms and conditions, of any tract or parcel of land into two (2) or more lots or parcels.
98. Subrogation – A legal action brought by FEMA to recover insurance money paid out where all or part of the damage can be attributed to acts or omissions by a community or other third party.
99. Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

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100. Substantial Improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during a 1-year period in which the cumulative percentage of improvements equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:
- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum 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.”
101. 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.
102. 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.
103. Utilities – Include, but not limited to, electrical, heating, ventilation, plumbing, and air conditioning equipment that service the structure and the site.
104. Variance - Relief from some or all of the requirements of this ordinance.
105. 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.
106. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically.
107. 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 riverine areas.

108. 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.
109. X (shaded) and B zones - Areas of the 0.2% annual chance (500-year) flood that are outside of the SFHA, areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than 1 square mile, and areas protected by levees from the base flood
110. X (unshaded) and C zones - Areas determined to be outside the 500-year floodplain.
111. 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.

C. GENERAL PROVISIONS

1. LANDS TO WHICH THIS ORDINANCE APPLIES

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 of the City of Crestview Hills from available technical studies, historical information, and other available and reliable sources, areas within the jurisdiction of the legislative body of the City of Crestview Hills which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety, and general welfare of the citizens of the City of Crestview Hills.

2. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Kenton County, dated May 16, 2013, 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 by the City of Crestview Hills, and for those land areas acquired by the City of Crestview Hills 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. The FIS and/or FIRM are permanent records of the City of Crestview Hills and are on file and available for review by the public during regular business hours at PDS offices at 2332 Royal Drive, Fort Mitchell, Kentucky, 41091.

3. ESTABLISHMENT OF DEVELOPMENT PERMIT

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). See Section 9.27.D.2 for instructions and explanation.

Application for a Development Permit shall be made on forms furnished by the Floodplain Administrator.

4. COMPLIANCE

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.

5. ABROGATION AND GREATER RESTRICTIONS

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.

6. INTERPRETATION

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.

7. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This 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 damage. This ordinance shall not create liability on the part of the Local Floodplain Administrator of the City of Crestview Hills, any officer or employee, thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

8. ENFORCEMENT, VIOLATION NOTICE AND PENALTIES

- a. **Civil Offense:** If, at any time, development occurs which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications, such development shall constitute a civil offense.
- b. **Notice of Violation:** If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications thereof, a duly authorized employee of the Floodplain Administrator shall issue a notice to the person responsible for the violation and/or the property owner, stating the facts of the offense or violation, the section of this ordinance and/or of the permit violated, when it occurred, how the violation is to be remedied to bring the development into conformity with this ordinance or with the approved permit, and within what period of time the remedy is to occur, which period of time shall be reasonable and shall be determined by the nature of the violation and whether or not it creates a nuisance or hazard. The remedy may include an order to stop work on the development. The notice shall also state that a citation may be forthcoming in the event that the requested remedies and corrective actions are not taken, which citation will request a civil monetary fine and shall state the maximum fine which could be imposed. See below.

- c. Notice of Citation: If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications thereof, a duly authorized employee of the Floodplain Administrator may issue a citation to the offender stating the violation, prior notices of violation issued, how the violation is to be remedied to bring the development into conformity with this ordinance or with the approved permit, and within what period of time the remedy is to occur, and what penalty or penalties are recommended. When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued by either carrying out the remedies and corrections set forth in the citation, paying the civil fine set forth in the citation or requesting a hearing before the governing body. If the person to whom the citation is issued does not respond to the citation within seven (7) days, that person shall be deemed to have waived the right to a hearing and the determination that a violation occurred shall be considered final.
- d. Penalties: Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with granting of a variance or special exceptions, shall constitute a Class A misdemeanor offense. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 and/or imprisoned for not more than 12 months, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful action as is necessary to prevent or remedy any violation.

D. ADMINISTRATION

1. DESIGNATION OF LOCAL ADMINISTRATOR

The legislative body of the City of Crestview Hills 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 Administrator.

2. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be obtained before any construction or other development begins within any special flood hazard area established in Section 9.27.C.2. Application for a Development Permit shall be made on forms furnished by Floodplain Administrator 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. Endorsement of floodplain administrator is required before a state floodplain construction permit can be processed. Specifically, the following information is required.

a. Application Stage

- (1) Proposed elevation in relation to Mean Sea Level (MSL) of the proposed lowest floor (including basement) of all structures in Zone A and elevation of highest adjacent grade; or
- (2) Proposed elevation in relation to Mean Sea Level to which any non-residential structure will be flood-proofed;
- (3) All appropriate certifications from a registered professional engineer or architect that the non-residential flood-proofed structure will meet the flood-proofing criteria in Section 9.27.E.2.b and Section 9.27.E.4.b;
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

b. Construction Stage

Upon placement of the lowest floor, and before construction continues, or flood proofing by whatever construction means, it shall be the duty of the permit holder to submit to the Floodplain Administrator and to the State a certification of the elevation of the lowest floor or flood-proofed elevation, as built, in relation to Mean Sea Level. In AE, A1-30, AH, and A zones where the Community has adopted a regulatory Base Flood Elevation, said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

When flood proofing is utilized for a particular structure, said certification shall be prepared by or under the direct supervision of a certified professional engineer or architect. Any continued work undertaken prior to the submission of the certification shall be at the

permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood proofing elevation survey data submitted. 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 required hereby, shall be cause to issue a stop-work order for the project.

3. DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

The Floodplain Administrator and/or staff is hereby appointed, authorized and directed to administer, implement and enforce the provisions of this ordinance. The Floodplain Administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose by granting or denying development permits in accordance with its provisions.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

- a. Permit Review: Review all development permits to ensure that:
 - (1) Permit requirements of this ordinance have been satisfied;
 - (2) All other required state and federal permits have been obtained: review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334.;
 - (3) Flood damages will be reduced in the best possible manner;
 - (4) The proposed development does not adversely affect the carrying capacity of affected watercourses. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.
- b. Review and Use of Any Other Base Flood Data. When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to

administer the provisions of Article 5. Any such information shall be submitted to the legislative body for adoption.

- c. Notification of Other Agencies:
 - (1) Notify adjacent communities, the Kentucky Division of Water, and any other federal and/or state agencies with statutory or regulatory authority prior to any alteration or relocation of the watercourse, and
 - (2) Submit evidence of such notification to the Federal Emergency Management Agency (FEMA); and
 - (3) Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.

- d. Documentation of Floodplain Development. Obtain and maintain for public inspection and make available as needed the following:
 - (1) Certification required by Section 9.27.E.2.a (lowest floor elevations) as shown on an accurately completed and certified Elevation Certificate. Verify and record the actual elevation (in relation to Mean Sea Level) of the lowest floor (including basement) of all new and substantially improved structures, in accordance with Section 9.27.D.2.b;
 - (2) Certification required by Section 9.27.E.2.b (elevation or floodproofing of nonresidential structures) as shown on an accurately completed and certified FEMA floodproofing certificate. Verify and record the actual elevation (in relation to Mean Sea Level) to which the new and substantially improved structures have been flood-proofed, in accordance with Section 9.27.D.2.a;
 - (3) Certification required by Section 9.27.E.2.c (elevated structures),
 - (4) Certification of elevation required by Section 9.27.E.5.a (subdivision standards),
 - (5) Certification required by Section 9.27.E.2.e (floodway encroachments),
 - (6) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;
 - (7) Review certified plans and specifications for compliance; and
 - (8) Remedial Action. Take action to remedy violations of this ordinance as specified in Section 9.27.C.8.

- e. Map Determinations. Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas,

for example, where there appears to be a conflict between a mapped boundary and actual field conditions.

- (1) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 9.27.F.3.a;
- (2) When base flood elevation data and floodway data have not been provided in accordance with Section 9.27.C.2, then the Floodplain Administrator shall obtain, review, and reasonable utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of Section 9.27.E;
- (3) When flood-proofing is utilized for a particular structure, the Floodplain Administrator shall obtain certification from a registered professional engineer or architect, in accordance with Section 9.27.E.2.b a floodproofing certificate;
- (4) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.

f. Right of Entry

- (1) Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the floodplain administrator has reasonable cause to believe that there exists in any structure or upon any premises any condition or ordinance violation which makes such building, structure or premises unsafe, dangerous or hazardous, the floodplain administrator may enter such building, structure or premises at all reasonable times to inspect the same or perform any duty imposed upon the floodplain administrator by this ordinance.
- (2) If such structure or premises are occupied, the floodplain administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of such request entry.
- (3) If entry is refused, the floodplain administrator shall have recourse to every remedy provided by law to secure entry.

- (4) When the floodplain administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the floodplain administrator for the purpose of inspection and examination pursuant to this ordinance.

g. Stop Work Orders

- (1) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person performing the work, and shall state the conditions under which work may be resumed.

h. Revocation of Permits

- (1) The floodplain administrator may revoke a permit or approval, issued under the provisions of this ordinance, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
- (2) The floodplain administrator may revoke a permit upon determination that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

i. Liability

- (1) Any officer, employee, or member of the floodplain administrator's staff, charged with the enforcement of this ordinance, acting for the applicable governing authority in the discharge of his/her duties, shall not thereby render personally liable, and is hereby relieved from all personal liability, for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his/her duties. Any suit brought against any officer, employee, or member because of such act performed by him/her in the enforcement of any provision of

this ordinance shall be defended by the department of law until the final termination of the proceedings.

- j. Expiration of Floodplain Construction Permit
 - (1) A floodplain development permit, and all provisions contained therein, shall expire if the “start of construction” has not occurred within one hundred and eighty (180) calendar days from the date of its issuance.

E. PROVISIONS FOR FLOOD HAZARD REDUCTION

1. GENERAL CONSTRUCTION STANDARDS

In all Special Flood Hazard Areas the following provisions are required:

- a. All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- c. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- d. New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- e. 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
- f. Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

- g. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- h. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- i. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- j. Any alteration, repair, reconstruction, or improvements to a structure, which is not in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance;
- k. Any alteration, repair, reconstruction, or improvements to a structure, which is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.

2. SPECIFIC STANDARDS

In all special flood hazard areas where base flood elevation data have been provided, as set forth in Section 9.27.C.2, the following provisions are required:

- a. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured home) shall have the lowest floor, including basement, mechanical equipment, and ductwork elevated no lower than 2 feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of hydrostatic flood forces on walls shall be provided in accordance with standards of Section 9.27.E.2.c.
 - (1) In an AO zone, the lowest floor shall be elevated above the highest adjacent grade to a height equal to or higher than the depth number specified in feet on the FIRM, or elevated at least two feet above the highest adjacent grade if no depth number is specified.
 - (2) In an A zone, where no technical data has been produced by the Federal Emergency Management Agency, the Floodplain Administrator will determine the method by which base flood elevations are determined. Methods include, but are not

limited to, detailed hydrologic and hydraulic analyses, use of existing data available from other sources, approximate methods, use of historical data, best supportable and reasonable judgement in the event no data can be produced. The lowest floor shall be elevated no lower than 2 feet above such base flood elevation. Title 401 KAR (Kentucky Administrative Regulations) Chapter 4, Regulation 060, Section 5(5)a, states as a part of the technical requirements for a State Floodplain Permit: The applicant shall provide cross sections for determining floodway boundaries (and thereby Base Flood Elevations) at any proposed construction site where FEMA maps are not available. All cross sections shall be referenced to mean sea level and shall have vertical error tolerances of no more than + five-tenths (0.5) foot. Cross sections elevations shall be taken at those points which represent significant breaks in slope and at points where hydraulic characteristics of the base floodplain change. Each cross section shall extend across the entire base floodplain and shall be in the number and at the locations specified by the cabinet. If necessary to ensure that significant flood damage will not occur, the cabinet may require additional cross sections or specific site elevations which extend beyond those needed for making routine regulatory floodway boundary calculations.

- (3) In all other Zones, elevated 2 feet above the base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor (including basement) shall be certified by a registered professional engineer or surveyor, and verified by the community building inspection department to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

- b. Non-residential Construction. New construction and substantial improvement of any commercial, industrial, or non-residential structure (including manufactured homes used for non-residential purposes) shall be elevated to conform with Section 9.27.E.2.a or together with attendant utility and sanitary facilities:
 - (1) Be floodproofed to an elevation 2 feet above the level of the base flood elevation so that the structure is watertight with walls substantially impermeable to the passage of water;

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- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy and debris;
 - (3) A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification along with the design and operational maintenance plans shall be provided to the Floodplain Administrator.
 - (4) Manufactured homes shall meet the standards in Section 9.27.E.2.d.
 - (5) All new construction and substantial improvement with fully enclosed areas below the lowest floor (including basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be constructed of flood resistant materials to an elevation 2 feet above the base flood elevation, and, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Openings for meeting this requirement must meet or exceed the standards of Section 9.27.E.2.c.
- c. Elevated Structures. New construction and substantial improvements of elevated structures on columns, posts, or pilings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
- (1) Openings for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - (i) Provide a minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above foundation interior grade (which must be equal to in elevation or higher than the exterior foundation grade); and
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - (2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in

- connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and
- (3) The interior portion of such enclosed areas shall not be finished or partitioned into separate rooms.

d. Standards for Manufactured Homes and Recreational Vehicles.

- (1) All new and substantially improved manufactured homes placed on sites located within A, A1-30, AO, AH, and AE on the community's Flood Insurance Rate Map (FIRM) must meet all the requirements for new construction, including elevation and anchoring. Locations include:
- i) On individual lots or parcels,
 - ii) In expansions to existing manufactured home parks or subdivisions,
 - iii) In new manufactured home parks or subdivisions or
 - iv) In substantially improved manufactured home parks or subdivisions,
 - v) Outside of a manufactured home park or subdivision, and
 - vi) In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood,

All such manufactured homes must be:

- (i) Elevated on a permanent foundation, and
 - (ii) Have its lowest floor elevated no lower than 2 feet above the level of the base flood elevation, and
 - (iii) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (2) Except manufactured homes that have incurred substantial damage as a result of a flood, all manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:
- (i) The manufactured home is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement, so that either the:
 - o The lowest floor of the manufactured home is elevated no lower than 2 feet above the base flood elevation, or
 - o 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 the highest adjacent grade.

- (3) All recreational vehicles placed on sites located within A, A1-30, AO, AH, and AE on the community's Flood Insurance Rate Map (FIRM) must either:
- (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use, or
 - (iii) Meet the permit requirements for new construction of this ordinance, including anchoring and elevation requirements for "manufactured homes".

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

- e. Floodways. Located within areas of special flood hazard established in Section 9.27.C.2, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and has erosion potential, the following provisions shall apply:
- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in the base flood elevation levels during occurrence of base flood discharge;
 - (2) If Section 9.27.E.2.e is satisfied, all new construction and substantial improvements and other proposed new development shall comply with all applicable flood hazard reduction provisions of Section 9.27.E.

3. STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATION AND/OR FLOODWAYS

Located within the special flood hazard areas established in Section 9.27.C.2, where streams exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply:

- a. 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.
- b. New construction and substantial improvements of structures shall be elevated or flood proofed to elevations established in accordance with Section 9.27.C.2.

4. STANDARDS FOR SHALLOW FLOODING ZONES

Located within the special flood hazard areas established in Section 9.27.E.C.2, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet (1 – 3'), where a clearly defined channel does not exist and the water path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- a. All new construction and substantial improvements of residential structures shall:
 - (1) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
- b. All new construction and substantial improvements of non-residential structures shall:
 - (1) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.

- (2) Together with attendant utility and sanitary facilities be completely floodproofed either to the base flood elevation or above or, in Zone AO, to or above the specified flood depth plus a minimum of one foot so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as stated in Section 9.27.E.2.b.

5. STANDARDS FOR SUBDIVISION PROPOSALS

- a. All 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;
- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,
- d. In areas where base flood elevation and floodway data is not available, 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.
- e. 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.

6. STANDARDS FOR ACCESSORY STRUCTURES IN ALL ZONES BEGINNING WITH THE LETTER 'A'

For all accessory structures in special flood hazard areas designated 'A' the following provisions shall apply:

- a. Must be non-habitable;
- b. Must be anchored to resist floatation and lateral movement;
- c. Must be provided with flood openings in accordance with the standards of Section 9.27.E.2.c;
- d. Must be built of flood resistant materials to 2 feet above the base flood elevation;
- e. Must elevate utilities 2 feet above the base flood elevation;
- f. Can only be used for storage or parking; and
- g. Must not be modified for a different use after permitting.

7. CRITICAL FACILITIES

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA (100-year floodplain). Construction of new critical facilities shall not be permissible within the floodway; however, they may be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated one foot or more above the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

F. APPEALS AND VARIANCE PROCEDURES

1. Nature Of Variances

The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the legislative body to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level is so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

2. Designation of Variance and Appeal Board

- a. The Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of these regulations.

3. Duties of Board of Adjustment

- a. The Board of Adjustment shall hear and decide requests for variances from the requirements of this ordinance and appeals of decisions or determinations made by the Floodplain Administrator in the enforcement or administration of this ordinance.
- b. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Circuit Court, as provided in Kentucky Revised Statutes.

4. Variance Procedures

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 the:

- a. Danger that materials may be swept onto other lands to the injury of others;
- b. Danger to life and property due to flooding or erosion damage;
- c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
- d. Importance to the community of the services provided by the existing or proposed facility;
- e. Necessity that the facility be located on a waterfront, in the case of functionally dependent use;
- f. Availability of alternative locations, which are not subject to flooding or erosion damage;
- g. Compatibility of the proposed use with existing and anticipated development;
- h. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. Safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. Expected height, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- k. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets, and bridges and culverts.

5. Conditions for Variances

Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

- a. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- b. Variances shall only be issued upon a determination that the variance is the "minimum necessary" to afford relief considering the flood hazard. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means the legislative body need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the legislative body believes will both provide relief and preserve the integrity of the local ordinance.
- c. Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) A determination that the granting of a variance will not result in increased flood height, additional threats to public safety, cause extraordinary public expense, create nuisance (as defined in the definition section under "Public safety and nuisance"), cause fraud or victimization of the public (as defined in the definition section) or conflict with existing local laws or ordinances.
- d. 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 structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor being situated below the base flood elevation.
- e. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request
- f. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of Article 6 (4) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

6. Variance Notification

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- a. The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
- b. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Kenton County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- c. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance or denial, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

7. Historic Structures

Variances may be issued for the repair or rehabilitation of "historic structures" (see definition) upon determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

G. SEVERABILITY

This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

If any clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

This ordinance was adopted at a public meeting of the legislative body of the City of Crestview Hills on March 14, 2013.

