

## ARTICLE IX

### GENERAL REGULATIONS

**SECTION 9.0 PURPOSE:** Except as herein provided, general regulations shall apply to all zones.

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

**SECTION 9.2 INTERFERENCE WITH TRAFFIC CONTROL DEVICES:** No sign, structure, tree, planting, or vegetation, or any portion thereof, shall protrude over or into any street so as to create confusion around, or otherwise interfere with, traffic control devices of any kind.

**SECTION 9.3 VISION CLEARANCE AT CORNERS, CURB CUTS, AND RAILROAD CROSSINGS:** No structure, vehicle, tree, planting, vegetation, sign, 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:**

- A. On lots having frontage on more than one street, the minimum front yard depth shall be provided for each street, in accordance with the provisions of this ordinance.
- B. On double frontage lots, once a front lot line is established by construction of a principal structure, all subsequent principal structures shall face the same established front lot line

**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 9.12 of this ordinance. The

location of such facilities shall be in accordance with Kentucky Revised Statutes, and all other pertinent regulations, and the following requirements:

- A. Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which the element is a part.
- B. A building or structure, except an enclosing fence, shall be set back at least fifty (50) feet from any property line.
- C. Such facilities shall be enclosed by a protective fence as regulated by Article XIII of this ordinance.
- D. Open spaces on the premises shall be landscaped and maintained according to Section 9.15 of this ordinance.
- 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 EXCAVATION, MOVEMENT OF SOIL, TREE REMOVAL, AND EROSION AND SEDIMENTATION CONTROL**

- A. No governmental entity or other person or entity shall strip, excavate, fill, or otherwise move soil, trees, or other vegetation, except for minor changes such as the filling of small depressions, removal of vegetation which is diseased or endangering the public safety, without first insuring that all requirements of the Subdivision Regulations, if applicable, have been fulfilled and then obtaining a permit from the building inspector.
- B. The building inspector may issue the required permit after determining that the resulting change in grade, or removal of trees and other vegetation, in the affected area will be in conformance with all applicable provisions of this ordinance. The provisions of this section shall not be construed to prohibit normal excavation or grading which is 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.
- C. Erosion and Sedimentation Control: Erosion and sedimentation controls for excavation, movement of soil, and tree removal, shall be planned and applied according to the following:

1. The smallest practical area of land shall be exposed at any one time during development.
2. When land is exposed during development, the exposure shall be kept to the shortest practical period of time.
3. Temporary vegetation and/or mulching shall be used to protect critical areas exposed during development.
4. Sediment basins (debris basins or silt traps) shall be installed and maintained to remove sediment from run-off waters from land undergoing development.
5. Provisions shall be made to accommodate the increased runoff caused by changed soil and surface conditions during and after development.
6. Permanent final vegetation and structures shall be installed as soon as practical in the development.
7. The development shall be fitted to the topography and soils so as to create the least erosion potential.
8. Wherever feasible, natural vegetation shall be retained and protected.

#### **SECTION 9.7 UNSIGHTLY OR UNSANITARY STORAGE**

- A. No rubbish, salvage materials, junk, or miscellaneous refuse shall be openly stored or kept in the open, and weeds shall not be allowed to go uncut within any zones, when the same may be construed to be a menace to public health and safety by the appropriate health department, or have a depressing influence upon property values in the neighborhood, in the opinion of the zoning administrator.
- B. All uses that maintain garbage dumpsters on site shall provide a screened enclosure by means of a Class 1, 4, 6 fence/wall, or a combination thereof, equal in height to the dumpster. Such enclosure may only open to the interior of the site on which it is located. All such garbage collection areas shall be located in the rear yard and setback a minimum of fifteen (15) feet from any property line, unless site limitations such as topography, yard area, or access prevent such placement, as determined by the Zoning Administrator.

#### **SECTION 9.8 APPLICATION OF ZONING REGULATIONS**

- A. Except as herein provided, no public or private structures or land shall be used for any purpose other than that permitted in the zone in which such structures or land is located or is to be located.
- B. 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 structure on one (1) lot, nor shall any structure be erected on any lot which does not abut a public right - of - way. Except as herein provided, access to the lot shall be provided via a paved (Portland cement or asphalt cement per appendix A) driveway from that portion of the lot which abuts the public right of way. All flag lots must be a part of a new subdivision development and part of the preliminary and final plats submitted to the planning commission. No identification plats shall be permitted to allow for flag lots. Flag lots shall be permitted only within areas proposed for development which are greater than three (3) acres in size.
- C. Except as herein provided, accessory structures and uses shall not be permitted within any front yard or minimum required side yard in any zone. Accessory structures and uses may be permitted to extend into the minimum required rear yard, as defined herein, in all zones, provided that such structures are set back from the rear lot line a minimum of ten (10) feet, and minimum required side yard clearances are maintained. Location of off - street parking, loading and/or unloading areas, fences, and signs, shall be governed by their respective sections, as provided for herein.
- D. Permitted Obstructions in Minimum Required Yards: Except as herein provided, the following shall not be considered to be obstructions when located in the minimum required yards specified:
  - 1. In All Minimum Required Yards - Driveways, providing they are not closer than one (1) foot to the property line to which they run approximately parallel to, except that in the event that a common driveway will be used to serve two (2) or more lots, then driveways may be permitted to abut the property line; steps, four (4) feet or less above grade, projecting not more than four (4) feet into the minimum required yards which are necessary for access to a lot from a street or alley; fire escapes and chimneys, projecting not more than eighteen (18) inches into the minimum required yards; arbors and trellises, flag poles, bird baths, trees, plants, shrubberies, ornaments, utility poles and wires, and outdoor furniture.
  - 2. In Minimum Required Front Yards - Bay windows, projecting three (3) feet or less into the minimum required front yard; overhanging eaves and gutters, projecting not more than three (3) feet into the minimum required front yard; awnings, and canopies, extending not more than four (4) feet into the minimum required front yard.

3. In Minimum Required Rear Yards - Bay windows, overhanging eaves, gutters, and air conditioning equipment, projecting not more than four (4) feet into the minimum required rear yard; awnings and canopies, provided they do not extend more than ten (10) feet into the minimum required rear yard; uncovered porches, decks, or patios, provided they are less than eighteen (18) inches above grade at the highest point and they do not extend more than ten (10) feet into the minimum required rear yard.
4. In Minimum Required Side Yards - Air conditioning equipment, excluding compressor for central air conditioning unit, overhanging eaves, gutters, awnings, and canopies, projecting not more than thirty (30) inches into the minimum required side yard, but never closer than three (3) feet to the side lot line.

**SECTION 9.9 SPECIAL REQUIREMENTS GOVERNING HOME OCCUPATIONS:**

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

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

- F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the vicinity where such home occupation is located.
- G. No equipment or process which creates noise, vibration, glare, fumes, odors, or electrical interference, detectable to the normal senses off the lot, shall be used in such home occupation. In the case of electrical interference, no equipment or process which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises, shall be used.

**SECTION 9.10 NONCONFORMING LOTS, NONCONFORMING USES, NONCONFORMING STRUCTURES, REPAIRS AND MAINTENANCE, AND NONCONFORMING SIGNS**

**A. NONCONFORMING LOTS:**

- 1. Any lot of record which does not meet the minimum requirements of this ordinance shall be considered a nonconforming lot of record.
- 2. If two (2) or more lots with continuous frontage are in single ownership and 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 minimum requirements for lot width and area, as established by this ordinance, the nonconforming lots of record may be developed, provided: the lot is on an existing and improved public street; a minimum of fifty - one (51) percent of the lots located on the same side of the street within the same block front are developed; and the development proposed is in conformance with all other requirements of this ordinance. Where a minimum fifty - one (51) percent of the lots located on the same side of the street within the same block front are not developed, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold which does not meet the minimum lot width and minimum area 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.
- 3. Where a single nonconforming lot of record exists, development may be permitted on the lot, provided: the lot is located on an existing and improved public street; the lot is of separate ownership from all adjacent and contiguous parcels; the adjacent and contiguous parcels exist as developed building lots or dedicated street rights - of - way, precluding acquisition of additional area to achieve conformity; and development proposed on the lot is in conformance with all other requirements of this ordinance. Where a variance from any minimum yard, setback, etc., is

necessary to develop said lot, an application for such variance shall be submitted to the board of adjustment in accordance with Article XVIII of this ordinance.

**B. NONCONFORMING USES**

1. **CONTINUANCE:** Except as herein provided, the lawful use of any structure or land existing at the time of the adoption of this ordinance may be continued although such use does not conform to the provisions of this ordinance. However, no nonconforming use may be enlarged or extended beyond its area of use at the time it becomes a nonconforming use, unless and until the use is brought into conformance with all provisions of this ordinance.
2. **CHANGE FROM ONE NONCONFORMING USE TO ANOTHER:** As regulated by Section 18.6, D. of this ordinance.
3. **TERMINATION:** In all cases, the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to operate a nonconforming use based on any of the following conditions, and if the decision is to do so, the board shall state its bases, in writing, for such determination.
  - a. Nonoperative, nonused, or abandoned for a period of twelve (12) consecutive months, providing that the board of adjustment may allow the continuation of such nonconforming use if it is determined that reasons for such nonuse were beyond the owners'/operators' control.
  - b. 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 determined by the assessed value of the Property Valuation Administrator) in which the nonconforming use is operated and a determination is made by the board of adjustment that this structure should not be reconstructed.
  - c. Whenever the structure, in which the nonconforming use is operated, becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such structure (as determined by the assessed value of the Property Valuation Administrator) as of the date of the official order under the applicable ordinance and a

determination is made by the board of adjustment that this structure should not be reconstructed.

- d. Whenever said nonconforming use is determined to be detrimental or injurious to the public health, safety, or general welfare.
4. ZONE CHANGE: The foregoing provisions shall apply to uses which become nonconforming due to zone changes which take place thereafter.

#### C. NONCONFORMING STRUCTURES

1. CONTINUANCE: Except as herein provided, any nonconforming structure, existing at the time of adoption of this ordinance, 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. However, if such a structure is removed or destroyed, other than by intentional means of the owner, the structure may be reconstructed, but shall not be enlarged, extended, or moved, except as provided in Section 9.10.D.
2. TERMINATION: In all cases the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to reconstruct the nonconforming structure based on any of the following conditions, and if the decision is to do so, the board shall state its bases, in writing, for such determination.
  - a. 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 determined by the assessed value of the Property Valuation Administrator) and a determination is made by the board of adjustment that the structure should not be reconstructed.
  - b. 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 determined by the assessed value of the Property Valuation Administrator) as of the date of the official order under the applicable ordinance and a determination is made by the board of adjustment that the structure should not be reconstructed.



- c. Whenever said nonconforming structure is determined to be detrimental or injurious to the public health, safety, or general welfare.
3. ZONE CHANGE: The foregoing provisions shall apply to structures which become nonconforming due to zone changes which take place thereafter.
- D. REPAIRS AND MAINTENANCE: On any structure 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 which rendered it nonconforming, shall not be increased, except as provided herein.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring, to a safe condition, of any building, structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, except for the conditions as stated in Section 9.10, B., 3., or 9.10, C., 2.

Existing nonconforming free standing garages may be replaced and/or removed and replaced, either by natural causes or by intentional means of the owner, with an expanded garage provided the new or replaced garage does not exceed one story in height, does not exceed in total space more than 150% of the garage being replaced, not to exceed 600 square feet in gross floor area or a maximum coverage of ten (10) percent of the available yard area in which said structure is to be located, whichever is less. Such an increase in gross floor area shall be allowed only one time. In all cases, the floor area of such structure shall be less than the gross floor area of the principal structure. Said structure shall be in compliance with all other provisions of this Code and architecturally and aesthetically compatible with the dwelling on the lot.

E. NONCONFORMING SIGNS

1. CONTINUANCE: Except as herein provided, any nonconforming sign, existing at the time of adoption of this ordinance, may be continued provided, however, that no such sign shall be changed in any manner unless it is changed in compliance with all provisions of this ordinance.
2. TERMINATION: In all cases the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to operate a nonconforming sign based on any of the following conditions and, if the decision is to do so, the board shall state its bases, in writing, for such determination.

- a. Not meeting the requirements for sign regulations, as regulated in Article XIV of this ordinance.
  - b. Nonuse or abandonment of said nonconforming sign for a period of twelve (12) consecutive months.
3. ZONE CHANGE: The foregoing provisions shall also apply to signs which become nonconforming due to zone changes which take place thereafter.

## **SECTION 9.11 EXCEPTIONS AND MODIFICATIONS**

### **A. EXCEPTIONS TO HEIGHT LIMITS**

1. The height limitations of this ordinance shall not apply to such things as church spires, various types of towers, smoke stacks, other related structures, and necessary mechanical appurtenances, provided their construction is in accordance with existing or hereafter adopted ordinances of the legislative body, and is acceptable to the Federal Aviation Agency and the Federal Communication Commission.

- B. OTHER EXCEPTIONS: Service stations shall be constructed so that the centerlines of the pumps shall be at least twenty - five (25) feet from any street right - of - way line.

### **C. FRONT YARD VARIANCE**

1. 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 required by this ordinance, the minimum required front yard depth on such lot shall be modified to be the average depth of said existing front yards.
  - a. For the purposes of determining front yard setbacks in Section 9.11, C., 1., a proposed new road shall not be considered an interruption in the existing block front.
2. In any residential zone, no front yard shall be required to exceed the average depth of existing front yards on the same side of the street within the same block, when fifty - one (51) percent or more of the lots within that block are improved with residential buildings, provided that in no case shall a front yard depth be less than twelve (12) feet.

- D. SIDE YARD VARIANCE: Where a nonconforming lot of record exists in any residential zone, no side yard shall be required to exceed the average width of existing side yards with the side having the least width, on the same side of the

street within the same block, when fifty-one (51) percent or more of the lots within the same block are improved with residential buildings; provided that no side yard width shall be less than five (5) feet, except as authorized by the Board of Adjustment.

E. EXCEPTION TO MINIMUM FRONTAGE, AREA AND YARD REGULATIONS

1. In any subdivision of an existing or proposed development, in any multi-family or commercial zones described herein, zoning, building, and occupancy permits may be issued in the following circumstances, for lots which do not abut a minimum frontage along a dedicated right - of - way, or lots with a lot area, yard areas, or yard sizes which are less than the minimums therefore required by the area and height regulations established herein for the zone in which such development is located:
  - a. A development plan conforming to the provisions of Section 9.17 of this ordinance, including all existing and proposed lot and yard areas and sizes in the development, is reviewed and approved by the Planning Commission.
  - b. The area of the total development of which such lot is a part, is not less than the minimum total area required for such a development in the zone in which it is located.
  - c. The density of the total development of which such lot is a part, is not greater than the maximum density allowed for such a development in the zone in which it is located.
  - d. Such lot abuts upon areas within such development, which are either used or proposed for use in common by, or for the benefit of, the owners or tenants of such lot and other lots or areas abutting upon such common area, hereinafter identified and referred to as "benefited abutting property", according to the provisions of legally enforceable agreements or land use restrictions, approved by the Planning Commission and recorded in the office of the County Clerk of Kenton County, Kentucky, which include provisions that:
    - (1) Specifically identify such common areas by a metes and bounds description thereof.
    - (2) Specifically identify the owners of such common areas by name and address, and which identify and establish the obligation and duty of such owners, jointly and severally, to cause such common areas and all improvements thereon, including, without limitation, all motor vehicle access drives

and parking areas, pedestrian walkways, other paved surfaces, signs, recreational facilities and open spaces, and other aesthetic and environmental amenities, to be maintained and repaired at least to the extent required by any and all governmental agencies having jurisdiction thereof, or any use or activity conducted thereon.

- (3) Specifically identify the owners of the benefited abutting property by name and address, and the joint and several obligation thereof to pay a proportionate part of all costs of the aforescribed maintenance and repair of such common areas and the improvements thereon, secured by a lien therefore in favor of the owners of the common areas upon that portion of the benefited abutting property in which they have an ownership interest.
- (4) Specifically identify and establish a legally enforceable right of the city and its successors to enter upon such common areas, through officers, agents, servants, employees and independent contractors thereof, and cause to occur thereon the aforescribed maintenance and repair of such common areas and the improvements thereon, at the joint and several cost and expense of the owners of any interest in the benefited abutting property, with the payment thereof secured by a lien in favor of the city upon such common areas benefited abutting property.
- (5) Identify and establish a legally enforceable right of the owners of each lot or parcel of real estate in such development which does not abut upon a dedicated right-of-way to a paved and unobstructed right-of-way and easement from each of such lots across, over and through such common areas, for motor vehicles and pedestrian access thereto from a dedicated right-of-way.

## **SECTION 9.12 CONDITIONAL USES**

- A. **DETERMINATION:** Subject to the requirements of Section 18.7 of this ordinance, the board of adjustment may authorize a conditional use to be located within any zone in which such conditional use is permitted, if the evidence presented by the applicant is such as to establish, beyond any reasonable doubt:
1. That the proposed 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; and

2. That such use will not 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.
- 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 9.25 of this ordinance. The board shall have the power to revoke conditional use permits 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 person 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 permit.

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 adjustments.

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

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

the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co - owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

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

#### **SECTION 9.13 BUILDING REGULATIONS AND WATER AND SANITARY SEWER SERVICE**

- A. **BUILDING REGULATIONS:** All structures shall be designed, erected, or altered in accordance with the applicable housing and building codes.
- B. **WATER AND SANITARY SEWER SERVICE:** No building may be constructed in any zone unless such building is connected to a public water and central sanitary sewer system of adequate capacity and design, and approved by proper authorities.
  1. Where existing structures are presently not served by a public sanitary sewer system, and is located within a reasonable distance of an existing or newly extended sanitary sewer line, as determined by the legislative body and/or the Northern Kentucky District Board of Health, said development shall be required to connect with the public sanitary sewer system and the on-site disposal system shall be discontinued.

#### **SECTION 9.14 MOVE AND SET**

- A. **REQUIREMENTS:** No building, structure, or improvement shall be moved or set from or upon land located in any area or transported upon any public street, in the legislative body, until and unless both: (1) a building permit to move and set;

and (2) a transport permit, have been obtained, and said building, structure, or improvement complies with the provisions of this section of the ordinance.

B. COMPLIANCE: All alterations and improvements made shall comply with the applicable housing and building code, and all other applicable codes and regulations.

C. PROCEDURE - PERMITS

1. The applicant shall submit to the building inspector, the following:

- a. An application for a building permit requesting an inspection of the building, structure, or improvement to be moved or set;
- b. A plot plan, footing and foundation plan, and construction plans for any new construction;
- c. A statement from the applicable legislative body(s) insuring that all past and current taxes have been paid.

2. Upon receipt of the foregoing items, the building inspector shall inspect said building, structure, or improvements, and the proposed location where same will be set within the legislative body and determine if the proposed development will comply with all applicable codes and regulations.

3. The move and set shall be referred to the zoning administrator for approval or denial of compliance with this ordinance.

4. Upon approval by the zoning administrator and building inspector, a building permit to move and set shall be issued. The legislative body's engineer shall then be notified of same and shall issue a transport permit. The legislative body's engineer or his agent will designate the route to be traveled. The transport permit is good only for the date specified on the permit. The transport permit will not be issued if ninety (90) consecutive calendar days or more have lapsed from the date of inspection by the building inspector. The transport permit provided for in this section shall not be in lieu of any other permits which may be required by the legislative body.

5. No transport or building permit to move and set shall be issued until the applicant has first obtained the necessary permits from all applicable agencies.

D. FEES



1. There will be a building investigation fee, as established by the legislative body, to cover the costs of investigation and inspection for determining the structural soundness of buildings, structures, or improvements to be moved. The fee is payable in advance and must accompany the application provided for herein. This fee is not returnable. If any alterations or improvements to be made are found to be in compliance with the legislative body's applicable codes and regulations, a building permit to move and set will be issued and the fee will be based on the cost of new foundations and all work necessary to place the building or structure in its completed condition in the new location. This fee is in addition to the building investigation fee.
2. No person, corporation, or company shall transport, move, or set any building, structure, or improvement in the jurisdiction of the legislative body, until and unless such person, corporation, or company shall post with the building inspector a good and sufficient indemnity bond in the amount of five thousand dollars (\$5,000.00) in favor of the legislative body, which shall cover the cost of any damage or claim to damage to public improvements (e.g., street pavement, curb and gutter, catch basins, sewers) and other damage to private property resulting from the move and set. Such bond shall be made by a surety corporation authorized to do business in the state of Kentucky.

**SECTION 9.15 SCREENING AREA:** Screening areas shall be provided for the purpose of minimizing the friction between incompatible land uses and improving the aesthetic and functional quality of any development.

- A. **SCREENING AREA REQUIREMENTS:** All screening areas shall be approved by the zoning administrator (or planning commission, where required by this ordinance) according to a submitted site plan, as regulated by the applicable requirements of Section 9.17 of this ordinance. Screening areas shall be designed, provided, and maintained according to the following:
1. Where vegetative and/or topographic conditions that provide a natural screening and buffer exist prior to development of properties in question, such conditions shall be retained. In such cases, additional screening may not be required, provided that provision is made for maintenance of such areas to the satisfaction of the Legislative Body.
  2. Whenever screening is required, it shall be provided as follows:
    - a. Except when prohibited herein, all screening shall be provided by the construction of a Class 1 or Class 4 fence, as regulated by Article XIII of this ordinance, and/or evergreen trees;

- b. All trees shall be a minimum of ten (10) feet in height when planted, however, smaller trees (a minimum of five feet in height) may be utilized in combination with berms (e.g., earthen mounds) to provide the minimum 10 - foot height requirement; berms must be covered with suitable vegetation, such as grass, ivy, and/or shrubs, to preclude erosion of the berm;
  - c. Trees which are intended to provide screening to separate multi-family development from single - family development, shall not be planted further than ten (10) feet apart; parking facilities which are located adjacent to the single - family areas shall be additionally screened to a minimum height of three (3) feet (via an earth berm, depressed parking, solid fence, etc., as regulated by Article XIII of this ordinance) to reduce automobile headlight glare onto adjacent property;
  - d. Trees which are intended to separate commercial and industrial development from residential development (single - family and multi - family) shall not be planted further than 10 feet apart; parking facilities which are located adjacent to residential areas shall be additionally screened to a minimum height of three (3) feet (via an earth berm, depressed parking, solid fence, etc., as regulated by Article XIII of this ordinance) to reduce automobile headlight glare onto adjacent property.
- 3. All trees, shrubs and other planting materials shall be living plants (not artificial) and shall be suitable to the Northern Kentucky Area and the specific conditions of the site in question, such as, but not limited to, soil conditions, slopes, reduction of noise pollution, maintenance necessary, and the type of screening needed.
  - 4. Screening areas shall be provided in such a manner as to obscure the view into the development from adjacent properties. In those cases where property is adjacent to property within another governmental jurisdiction, screening shall be provided in the same manner as would be required if the adjacent area was within the jurisdiction of this legislative body.
  - 5. In the case where a zoning map change occurs, resulting in adjacency to a different zoning district than was previously the case, and where development has already occurred on property in the unchanged district, required additional setbacks and screening requirements (as required in each district's regulations) shall be provided for the property in the district where the zone change has occurred.

- B. **PROVISION AND MAINTENANCE:** Required screening areas shall be provided as a condition of development by the owner and/or developer. All required screening (including the planting of trees and other vegetation) shall be maintained by the property owner. Any alteration, removal, or additional plantings shall be approved by the Zoning Administrator.
- C. **INCLUSION ON SITE PLAN AND/OR SUBDIVISION IMPROVEMENT DRAWINGS:** Areas to be set aside as screening areas shall be identified on the required development plans, as regulated in Section 9.17 of this ordinance, and where applicable, on the improvement drawings as regulated by the subdivision regulations. Sufficient bond, adequate to cover the required improvements as determined by the legislative body, may be required to be posted. It shall be unlawful to occupy any premises unless the required screening has been installed in accordance with the requirements as provided herein.

## **SECTION 9.16 OUTDOOR SWIMMING POOLS**

- A. **PRIVATE SWIMMING POOLS:** All private swimming pools shall be regulated according to the following requirements:
1. Only in - ground pools shall be permitted.
  2. Shall be permitted to locate in the rear yard no closer than ten (10) feet to any property line. The Board of Adjustment may allow pools to be located in the side yard if they determine that due to topography, unusual lot shape, or insufficient rear yard area, location of the pool in the rear yard is not possible.
  3. Swimming pools which are constructed in - ground shall be required to have a fence, including a self - closing or self - latching door or gate around the pool or the property on which the pool is located and such fence shall be set back at all points at least four (4) feet from the pool. Such fence shall be at least four (4) feet in height, but not more than six (6) feet in height (only classes 2 or 3 fences are permitted, as regulated in Article XIII of this ordinance). If a class 2 or class 3 fence is used, it shall be set back at least ten (10) feet from the property line. Such fences shall be constructed in such a manner that a child may not reach the pool from the street or any property without climbing the fence or opening the gate or door.
  4. Glare from lights used to illuminate the swimming pool area shall be directed away from adjacent properties.
  5. All swimming pools and associated equipment shall be constructed and erected in accordance with all applicable codes, ordinances, and

regulations of the legislative body. Water used in the swimming pool, which is obtained from other than a public source, shall be approved by the Northern Kentucky District Health Department.

6. All swimming pools existing at the time of adoption of this ordinance, which are unprotected by a surrounding fence, including gates or doors, as regulated herein, shall be required to comply with the provisions of this section within sixty (60) days after its adoption.

**SECTION 9.17 DEVELOPMENT PLAN REQUIREMENTS:** No structure shall be erected or structurally altered nor shall any grading take place on any lot or parcel in zones where a development plan is required, except in accordance with the regulations of this section and an approved development plan as hereinafter required. Before a permit is issued for construction, one copy of the development plan, at a scale no smaller than one (1) inch to one hundred (100) feet, shall be filed with Planning and Development Services of Kenton County, the building inspector, and the zoning administrator. The development plan shall identify and locate, where applicable, the information as listed in Section 9.18, B. -- Stage II Development Plan Requirements.

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

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

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

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

**SECTION 9.18 DEVELOPMENT PLAN REQUIREMENTS - STAGES I, II, AND RECORD PLAT:**

- A. **STAGE I DEVELOPMENT PLAN REQUIREMENTS:** The Stage I Development Plan shall identify and provide, where applicable, the following information:

1. Plan(s) of the subject property, drawn to a scale not smaller than one (1) inch equals forty (40) feet, that identifies and provides the following information:
  - a. The total area in the project;
  - b. The present zoning of the subject property and all adjacent properties;
  - c. All public and private rights - of - way and easement lines located on or adjacent to the subject property which are proposed to be continued, created, enlarged, relocated, or abandoned;
  - d. Existing topography and approximate delineation of any topographical changes shown by contour with intervals not to exceed five (5) feet;
  - e. Delineation of all existing and proposed residential areas in the project with a statement indicating net density of the total project:
    - (1) Detached housing - location and approximate number of lots, including a typical section(s) identifying lot sizes and dimensions and height of buildings;
    - (2) Attached housing - location and description of the various housing types (i.e., townhouses, fourplex, garden apartment, etc.) including approximate heights of typical structures and the approximate number of units by housing type;
  - f. Delineation of all existing and proposed nonresidential uses in the project:
    - (1) Commercial and industrial uses - location and type of all uses, including approximate number of acres, gross floor area, and height of buildings;
    - (2) Open Space/Recreation - the approximate amount of area proposed for common open space, including the location of recreational facilities and identification of unique natural features to be retained;
    - (3) Other public and semi - public uses - location and type of all uses, including approximate number of acres, gross floor area, and height of buildings;

- g. Location of all existing and proposed pedestrian walkways, identifying approximate dimensions;
- h. Location of all existing and proposed off - street parking and loading and/or unloading areas, identifying the approximate number of spaces;
- i. Location of all existing and proposed streets, identifying approximate dimensions of pavement, right - of - way widths, and grades;
- j. Location of all existing and proposed water, sanitary sewer, and storm drainage lines, indicating approximate pipe sizes; electric and phone service.
- k. Certification from appropriate water, sewer, electric and phone agencies indicating that services are available.
- l. Identification of the soil types and geologic formations on the subject property, indicating anticipated problems and proposed methods of handling said problems.
- m. A schedule of development, including the staging and phasing of:
  - (1) Residential area, in order of priority, by type of dwelling unit;
  - (2) Streets, utilities, and other public facility improvements, in order of priority;
  - (3) Dedication of land to public use or set aside for common ownership; and
  - (4) Nonresidential buildings and uses, in order of priority.

The aforementioned information may be combined in any suitable and convenient manner so long as the data required is clearly indicated. A separate plan or drawing for each element is not necessary, but may be provided at the option of the applicant.

**B. STAGE II DEVELOPMENT PLAN REQUIREMENTS:** The Stage II Development Plan shall identify and provide, where applicable, the following requirements:

- 1. Plan(s) of the subject property drawn to a scale of not smaller than one (1) inch equals forty (40) feet, that identifies and provides the following information:

- a. The existing and proposed finished topography of the subject property shown by contours with intervals not to exceed five (5) feet. Where conditions exist that may require more detailed information on the proposed topography, contours with intervals of less than five (5) feet may be required by the planning commission, or its duly authorized representative;
- b. All housing units on the subject property:
  - (1) Detached housing - Location, arrangement, and number of all lots, including lot dimensions and maximum height of buildings;
  - (2) Attached housing - Location, height, and arrangement of all buildings, indicating the number of units in each building, and, where applicable, location, arrangement and dimensions of all lots;
- c. Location, height, arrangement, and identification of all nonresidential buildings and uses on the subject property and, where applicable, location and arrangement of all lots with lot dimensions;
- d. Location and arrangement of all common open space areas and recreational facilities, including lot dimensions. Methods of ownership, operation, and maintenance of such lands shall be identified;
- e. Landscaping features, including identification of planting areas and the location, type, and height of walls and fences;
- f. Location of signs indicating their orientation, size, and height;
- g. All utility lines and easements:
  - (1) Water distribution system, including line sizes, width of easements, type of pipe, location of hydrants and valves, and other appurtenances;
  - (2) Sanitary sewer system, including pipe sizes, width of easements, gradients, type of pipes, invert elevations, location and type of manholes, the location, type, and size of all lift or pumping stations, capacity, and process of any necessary treatment facilities, and other appurtenances;

- (3) Storm sewer and natural drainage system, including pipe and culvert sizes, gradients, location of open drainage courses, width of easements, location and size of inlets and catch basins, location and size of retention and/or sedimentation basins, and data indicating the quantity of storm water entering the subject property naturally from areas outside the property, the quantity of flow at each pickup point (inlet), the quantity of storm water generated by development of the subject area, and the quantity of storm water to be discharged at various points to areas outside the subject property;
  - (4) Other utilities (e.g., electric, telephone, etc.) including the type of service and the width and location of easements;
- h. Location of all off - street parking, loading and/or unloading, and driveway areas, including typical cross sections, the type of surfacing, dimensions, and the number and arrangement of off - street parking and loading and/or unloading spaces;
- i. Circulation System:
  - (1) Pedestrian walkways, including alignment, grades, type of surfacing, and width;
  - (2) Streets, including alignment, grades, type of surfacing, width of pavement and right - of - way, geometric details, and typical cross sections;
- j. Provisions for control of erosion, hillside slippage, and sedimentation, indicating the temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction;
- k. A schedule of development, including the staging and phasing of:
  - (1) Residential area, in order of priority, by type of dwelling unit;
  - (2) Streets, utilities, and other public facility improvements, in order of priority;
  - (3) Dedication of land to public use or set aside for common ownership; and



- (4) Non - residential buildings and uses, in order of priority.

The aforementioned information may be combined in any suitable and convenient manner so long as the data required is clearly indicated. A separate plan or drawing for each element is not necessary, but may be provided at the option of the applicant.

- C. **RECORD PLAT REQUIREMENTS:** The applicant shall submit a Record Plat, in conformance with the approved Stage II Development Plan. If the Record Plat is submitted in sections, an index shall be developed showing the entire plan area. The particular number of the section, and the relationship of each adjoining section, shall be clearly shown by a small key map on each section submitted. The Record Plat shall conform to the applicable requirements of the subdivision regulations, unless specifically waived by the planning commission.

**SECTION 9.19 REGULATIONS CONCERNING AIR RIGHTS:** Any proposed use of air rights, as defined herein, shall be in the form of a development plan, as regulated in Section 9.17 of this ordinance, submitted to the planning commission, or its duly authorized representative, for review.

**SECTION 9.20 REGULATIONS CONCERNING DESIGN AND CONSTRUCTION OF IMPROVEMENTS:** Any proposed development requiring the construction of streets (including curb and gutters), sidewalks, sewers (sanitary & storm), water lines, or other public 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 Subdivision Regulations, unless specifically waived by the planning commission.

**SECTION 9.21 REGULATIONS PERTAINING TO PARKING OR STORING OF TRAILERS, RECREATIONAL VEHICLES, CAMPERS, INOPERABLE VEHICLES, AND OTHER SUCH TYPE EQUIPMENT**

- A. No vehicle which is abandoned, non - functional, in a state of disrepair, or lacking a valid license, shall be stored in excess of seventy - two (72) hours in any residential zone, unless it is in a completely enclosed building.
- B. It shall be unlawful for any person(s) to live in any boat, automobile, camper, recreational vehicle, or truck, within the jurisdiction of the legislative body.
- C. It shall be unlawful to park and or store any trailer (garden trailer exempted), recreational vehicle, camper, boat or other such type vehicle or equipment, within any place or location within the city, unless properly screened from view of adjacent property such as provided in Section 9.15 herein, as determined and approved by the board of adjustment between September 15th and May 15th. Such vehicles may be stored in a completely enclosed building.

- D. It shall be unlawful to keep or park overnight any vehicle, other than an automobile, pick-up truck, van, or SUV designed and licensed as a non-commercial passenger vehicle at any place on property located in a residential district zone, except in a completely enclosed building.
- E. Between May 15th and September 15th, any trailer (garden trailer exempted), recreational vehicles, camper, boat or other such type vehicle or equipment may be parked on private property for a period of time not to exceed five (5) calendar days for loading and unloading such vehicles.
- F. As used in this subsection a trailer is defined in Section 7.1 of the Lakeside Park Zoning Ordinance.
- G. Any property owner may, after receiving written approval of all the immediate adjacent landowners and submitting the same to the City Clerk, apply to the City to obtain a special use permit allowing the parking of such trailer, recreational vehicle, camper or boat for a period not to exceed nine (9) days. No property owner shall be granted more than one (1) special use permit in any calendar year.
- H. In no event shall such a vehicle or trailer or part thereof extend over or beyond any property or right-of-way line.

## **SECTION 9.22 HILLSIDE DEVELOPMENT CONTROLS**

- A. This section is designed to ensure, when development is proposed in those areas of the community which have physical characteristics limiting development (hillside slopes of 20 percent or greater), that said development is in a manner which is 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:
  - 1. Development proposed on land areas identified on the Comprehensive Plan as "Developmentally Sensitive Areas", and any other areas which have slopes of 20 percent or greater, shall require approval from the planning commission, or its duly authorized representative, before development may occur.
  - 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 Subsection A., 1., above, may occur until plans and specifications for such work have been

submitted in the form of a development plan as regulated by Section 9.19 of this ordinance. In addition to development plan requirements, the following shall also be submitted:

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

After consideration of the recommendations, the planning commission, or its duly authorized representative, upon approval of the Legislative Body may authorize use of the site in accordance with the submitted plans.

4. If, after review of the plans required by this section the planning commission, or its duly authorized representative, determines that said proposed plans will not minimize hillside slippage and/or soil erosion, the planning commission, or its duly authorized representative, shall deny a permit for the development of said land.

**SECTION 9.23 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, which tend to increase flood heights, or obstruct the flow of flood waters shall be in accordance with this ordinance; and

- C. All dwellings to be constructed or provided as part of land used for agricultural purposes shall meet all requirements of the zone in which said use is located and all other requirements of this ordinance.

#### **SECTION 9.24 CONTROL OF OBSTACLES IN PUBLIC RIGHTS - OF - WAY**

- A. **PURPOSE:** To control the items or obstacles that are permitted in the public rights - of - way (sidewalks, alleys, streets) for the safety of pedestrian and vehicular traffic movement and the beautification of the community in general.
- B. **PERMITTED ITEMS:** The following items are permitted to be installed or constructed within public rights - of - way.
1. Mail collection boxes
  2. Telephone poles
  3. Electric line poles
  4. Fire hydrants
  5. Traffic and street identification signs
  6. Traffic control devices
  7. Street lights and street light poles
  8. Trash cans and plastic bags, on days of pick - up only
  9. Historical markers
  10. Communications or T.V. transformers

#### **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) any land use restrictions according to the provisions of KRS 100.3681 to 100.3684. A \$10.50 fee for recording such filing shall be collected by the body imposing the restriction. This fee shall be paid over to the county clerk. An additional fee, not to exceed \$10.50 may be imposed by the body imposing the restriction for costs of completing and filing the certificate.

#### **SECTION 9.26 REGULATIONS CONCERNING TELEVISION AND RADIO STATIONS**

- A. **TELEVISION:** Earth stations for the reception and/or transmittal of TV signals, programs, messages, etc., may be installed as accessory structures in any zone, in compliance with the following regulations:
1. Such structures, including support equipment, shall not be permitted within any front yard or side yard in any zone. Such structures may be permitted to extend into the minimum required rear yard, as defined herein, in all

zones, provided that such structures are set back from the rear lot line a minimum of ten (10) feet, and side yard clearances are maintained.

2. Structures may be ground mounted or roof mounted, provided that maximum height limitations are maintained. If the structure is roof mounted, it shall be located in a manner so as to detract as little as possible from the architectural character of the building.
  3. Structures shall be constructed to withstand a wind load of eighty (80) miles per hour and prior to construction applicant shall present an engineer's certificate or manufacturers certification in which it is certified that the structure is built to withstand wind loads of eighty (80) miles per hour.
  4. Structures shall be grounded electrically and shall not cause to disturb, restrict, or impede the reception of equipment on adjoining properties.
- B. RADIO: Earth stations for the reception and/or transmittal of radio signals, programs, messages, etc., may be installed as accessory structures in any zone, in compliance with the following regulations:
1. Such structures, including tower, mast, antenna, guy wires, support equipment, etc., shall not be permitted within any front yard or side yard in any zone. Such structures may be permitted to extend into the minimum required rear yard as defined herein, in all zones, provided that such structures are set back from the rear lot line a minimum of ten (10) feet, and side yard clearances are maintained.
  2. Such structures, including tower, mast, antenna, guy wires, support equipment, etc., shall not exceed seventy (70) feet in height, as measured from ground level to the highest point of the structure.
  3. Structures shall be constructed to withstand a wind load of eighty (80) miles per hour and prior to construction applicant shall present an engineer's certificate or manufacturers certification in which it is certified that the structure is built to withstand wind loads of eighty (80) miles per hour.
  4. Structures shall be grounded electrically and shall not cause to disturb, restrict, or impede the reception of equipment on adjoining properties.

## **SECTION 9.27 REGULATIONS OF SEXUALLY ORIENTED BUSINESSES**

- A. The City of Lakeside Park, together with the other cities in Kenton County together with the Kenton County Fiscal Court, after consultation among the

mayors, councils, commissioners and staffs of the municipalities and the county within the County, found that a substantial need exists to revise significantly the ordinances regarding sexually oriented businesses within Kenton County.

- B. The City of Lakeside Park, in association with Planning and Development Services of Kenton County and the Fiscal Court of adjacent Campbell County its cities in the Northern Kentucky Community, retained Duncan Associates to conduct a study of existing sexually oriented uses and related businesses in Kenton and Campbell Counties, which is part of a single, larger community.
- C. Duncan Associates assigned two nationally-known planners, Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP, to conduct that study
- D. Kelly and Cooper have completed that study, including the following elements:
  - 1. Field study, involving visits to all identified existing sexually oriented businesses in Kenton and Campbell Counties;
  - 2. Meetings with stakeholder groups involved in these businesses;
  - 3. Consultation with the Kenton County, Campbell County Attorney, and the city attorneys for certain cities, and the community at large on this issue;
  - 4. Consultation with the professional staff of Planning and Development Services of Kenton County on this issue;
  - 5. Review of studies and litigation concerning sexually oriented businesses in other communities;
  - 6. Investigation of regulatory approaches to massage therapy;
  - 7. Review of existing ordinances in Kenton and Campbell Counties;
  - 8. Review of similar ordinances in a number of communities outside the Commonwealth of Kentucky;
  - 9. Review of Kentucky statutes related to regulating sexually oriented businesses.
- E. Duncan Associates has summarized this work and presented recommendations to Planning and Development Services of Kenton County and Kenton and Campbell Counties and their cities in an August 2003 report entitled "Site Visit Analysis: Sexually Oriented and Related Businesses in Kenton and Campbell Counties" (hereinafter called simply the "Kelly and Cooper Study").
- F. That study has also been made available to the legislative bodies of Kenton and Campbell Counties for their consideration and use.
- G. That study has been accepted and used by the Fiscal Court of Kenton County in adopting the countywide licensing ordinance, Kenton County Ordinance No. 451.9, as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus in 2004.

- H. The United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that local governments may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses;
- I. The United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities.
- J. The study by Kelly and Cooper found extensive physical interaction between patrons and dancers at many of the establishments in both Kenton and Campbell Counties.
- K. Covington, the only municipality in Kenton County that has had sexually oriented businesses within its border, from January 1, 2002, to February 11, 2004, the police made a total of 469 calls to sexually oriented businesses in the city. The crimes committed at these establishments during this time period included robbery, assault, fraud, malicious mischief, public intoxication, and possession of illegal drugs. In addition, on June 13, 2003, Covington police arrested three individuals for prostitution-related charges at Liberty's Show Lounge, a sexually oriented cabaret in the city.
- L. As the Sixth Circuit Court of Appeals noted in a decision addressing issues related to the Adult Entertainment ordinance in the City of Newport (Campbell County), there is a long history underlying efforts to regulate sex businesses in Northern Kentucky:

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

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

A 1986 report generated by the Newport Alcoholic Beverage Control Administrator indicated that of 28 adult bars opened since 1978 (including successive bars at the same site), 21 had had at least one prostitution-related conviction, and 18 had had multiple convictions. Def. Ex. K, p. 2. The report explained that "all of the prostitution in businesses with adult entertainment

involved an alcoholic beverage as the median [sic] of exchange and the solicitation of such drinks by 'mixers.'" *Id.* In all, 98% of prostitution arrests in Newport occurred in the vicinity of these bars. *Id.* Adult entertainment establishments, which constituted 12% of all businesses serving alcohol, accounted for 17% of all police runs. Def. Ex. K, p. 21.

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

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

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

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

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

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

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

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



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

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

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

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

- M. The Supreme Court had earlier noted in upholding another regulation in Newport, "it is plain that, as in *Bellanca*, the interest in maintaining order outweighs the interest in free expression by dancing nude." *Newport v. Iacobucci*, 479 U.S. 92, 97, 93 L. Ed. 2d 334, 340, 107 S. Ct. 383, 386 (1986). Although the significance of the opinion itself is now questionable (see *J&B Social Club # 1 v. City of Mobile*, 966 F. Supp. 1131, 1135 (S.D. Ala. 1996)), the quoted part of the opinion stands unchallenged.
- N. The cities of Covington and Newport continue their efforts to improve their image. Since 1985, Covington has redeveloped its riverfront, creating several new office towers, high-end condominiums, hotels, and a convention center. In Newport, in conjunction with private development and Southbank Partners, Inc., the City has built a major entertainment center along the river. This initiative has promoted improved pedestrian and transit connections in Northern Kentucky's river cities to and from the stadiums and other attractions along the Cincinnati riverfront.
- O. Despite these efforts, the areas of downtown Covington and Newport away from the riverfront continue to suffer in many ways. The study by Kelly and Cooper found in the area near to existing sexually oriented uses a number of building vacancies and building maintenance falling far short of that found in the revitalized areas near the river.
- P. The City of Lakeside Park 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

Lakeside Park to balance the Constitutional rights of businesses that present sexually oriented entertainment with the City of Lakeside Park 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 Lakeside Park also finds that such businesses may have primary and secondary effects involving crimes related to the activities in the establishments, of which prostitution and crimes of violence are those of greatest concern. See for example:

1. "Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard," Richard W. McCleary, Ph.D., James W. Meeker, J.D., Ph.D., October 23, 1991.
2. "Survey of Appraisers: Fort Worth and Dallas – Effects of Land Uses on Surrounding Property Values," Duncan Associates, Eric Damian Kelly, FAICP, and Connie B. Cooper, FAICP, September 2004.
3. "Adult Entertainment Businesses in Indianapolis, An Analysis," 1984.
4. "Adult Business Study," by City of Phoenix Planning Department, May 25, 1979.
5. "Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul," June 1978, City of Saint Paul Division of Planning, Department of Planning and Management; and Community Crime Prevention Project, Minnesota Crime Control Planning Board.
6. "Staff Report, Whittier City Planning Commission; Subject: Adult Business Regulations," July 11, 1994.
7. "Adult Entertainment Study," Department of City Planning, City of New York, Second Printing, November 1994.
8. "Adult Use Study," Newport News Department of Planning and Development, March 1996.
9. "A Report on the Secondary Impact of Adult Use Businesses in the City of Denver," prepared by multiple city departments for Denver City Council, January 1998.
10. "Survey of Appraisers in Monroe County, New York," Summer 2000. For detailed results of the survey, see Kelly and Cooper, Everything You Always Wanted to Know about Regulating Sex Businesses, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.
11. The Tucson "study" consisting of two memos: one from the Citizens Advisory Planning Committee, addressed to the Mayor and City Council, and dated May 14, 1990; and the other from an Assistant Chief of Police to the City Prosecutor, regarding "Adult Entertainment Ordinance," dated May 1, 1990.

- R. The City of Lakeside Park recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the City of Lakeside Park 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 Lakeside Park 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 Lakeside Park 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 Lakeside Park finds that the countywide licensing ordinance related to sexually oriented businesses and service oriented escort bureaus adopted by the Fiscal Court of Kenton County is an effective tool for addressing the many operational issues that can arise with such businesses.

- V. The City of Lakeside Park 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 Lakeside Park finds that the following principles are essential to effective zoning controls of sexually oriented businesses:
1. Sexually oriented businesses should, to the maximum extent practicable, be separated from one another by a distance that is greater than a convenient walking distance, because experience elsewhere has shown that the location of such businesses near one another may increase the adverse secondary effects, particularly those related to crime, by a greater than arithmetic factor;
  2. Sexually oriented businesses have the greatest adverse effect on residential neighbourhoods and should thus be separated to the maximum extent practicable from residential neighbourhoods;
  3. Sexually oriented businesses are likely to attract criminal elements that prey on "soft targets," including children, and it is thus important to separate sexually oriented businesses from schools, parks, recreation centers, and religious institutions, all of which are places where children are likely to congregate, often without parental protection;
  4. Also because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people and others who are vulnerable, are likely to walk in going about their day-to-day business. Thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented businesses.
- X. In examining Kenton County for available sites that would be suitable for sexually oriented businesses that meet the above criteria, Kelly and Cooper identified a number of such sites in the County, none of which were located in City of Lakeside Park.
- Y. City of Lakeside Park currently has no sexually oriented businesses in the community.
- Z. City of Lakeside Park currently has no area zoned for any type of commercial use.

- AA. City of Lakeside Park currently has only limited areas zoned for commercial use, and those areas are small and adjacent to residential areas.
- AB. City of Lakeside Park has within its limited commercial areas only small, local businesses generally serving the convenience needs of residents.
- AC. City of Lakeside Park residents in these jurisdiction with limited commercial areas must go to larger, nearby cities for most of their retail purchases and entertainment.
- AD. Staff of City of Lakeside Park can not recall ever receiving any applications for or inquiries about the establishment of any sexually oriented business in the City of Lakeside Park.
- AE. City of Lakeside Park thus finds that the physical context and experience of the City of Lakeside Park support the findings by Kelly and Cooper.
- AF. City of Lakeside Park finds that, in reliance on the Kelly and Cooper study, other municipalities in the County, including specifically Covington, Erlanger and Taylor Mill, all of which have large and diverse commercial or industrial areas with suitable sites that would be potentially available locations where sexually oriented businesses could legally locate.
- AG. City of Lakeside Park acknowledges that it can re-evaluate these findings if, in the future, there is a substantial change in the character of the community and the potential for suitable sites for sexually oriented businesses within the community.
- AH. City of Lakeside Park therefore finds that there are no suitable locations for sexually oriented businesses in the City of Lakeside Park and such businesses should therefore be prohibited.
- AI. FINDINGS: The facts and other matters set forth in the previous clauses that form the preamble to this ordinance are hereby adopted as findings of fact in support of the legislative action of the City of Lakeside Park in adopting this amendment to the Zoning Ordinance. Upon adoption of this zoning amendment, these shall be incorporated into the Zoning Code by reference as if fully set forth therein to the adopting Resolution.
- AJ. DEFINITIONS:
1. CABARET OR THEATER, SEXUALLY ORIENTED – a building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an

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

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

forms of performing, or individual conversations with customers for which some type of remuneration is received.

8. ESCORT – a person who is held out to the public to be available for hire for monetary consideration in the form of a fee, commission, or salary, and who for said consideration consorts with or accompanies or offers to consort with or accompany, another or others to or about social affairs, entertainments, or places of amusement or within any place of public resort or within any private quarters, and shall include a “service oriented escort;” for purposes of this ordinance, the term “escort” shall not include any person who would be understood by a reasonably prudent person as providing “babysitting” services or working as an assisted living companion to the elderly, infirm, disabled, or handicapped, and shall further not include licensed health professionals.
9. ESCORT, SERVICE ORIENTED – an escort that:
  - a. operates from an open office;
  - b. does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and
  - c. does not offer to provide sexual conduct.
10. ESCORT BUREAU, SERVICE ORIENTED – an escort bureau that
  - a. maintains an open office at an established place of business;
  - b. otherwise operates in full accordance with the countywide licensing ordinance, Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus, as such ordinance may be amended from time to time.
11. ESCORT, SEXUALLY ORIENTED – an escort who:
  - a. works for (either as an agent, employee, or independent contractor), or is referred to a patron by a sexually oriented escort bureau; or,
  - b. either advertises that sexual conduct will be provided, or works for (either as an employee, agent, or independent contractor), or is referred to a patron by an escort bureau that so advertises; or,
  - c. offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee from an escort patron or a prospective escort patron.

12. **ESCORT BUREAU, SEXUALLY ORIENTED** – an escort bureau that operates in any of the following manners:
  - a. engages in fraudulent, misleading, or deceptive advertising that is designed to make the prospective client believe that acts of prostitution (as defined under Kentucky law) will be provided; or,
  - b. collects money (whether paid in advance or paid after the promised proscribed act) for the promise of acts of prostitution by its escorts; or,
  - c. uses as escorts persons known to have violated the law regarding prostitution, and refuses to cease the use of such a person; or,
  - d. operates an escort bureau as a “call girl” prostitution operation; or,
  - e. advertises that sexual conduct will be provided to a patron or customer, or that escorts which provide such sexual conduct will be provided, referred, or introduced to a patron or customer; or,
  - f. solicits, offers to provide, or does provide acts of sexual conduct to an escort patron or customer; or,
  - g. employs or contracts with a sexually oriented escort, or refers or provides to a patron a sexually oriented escort.
13. **ESTABLISHMENT** – any business regulated by this Section.
14. **EXPLICIT SEXUAL MATERIAL** – any pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation of unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or material of anthropological significance shall not be deemed to fall within the foregoing definition.
15. **FLOOR AREA, GROSS PUBLIC** – the total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled “public”), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways, and entryways serving such areas.
16. **FREQUENTLY** – two or more times per month.
17. **MASSAGE** – touching, stroking, kneading, stretching, friction, percussion, and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).



18. **MESSAGE 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. **MESSAGE 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. **MESSAGE THERAPIST** –a person licensed as a massage therapist in accordance with the provisions of Kentucky Rev. Statues §309.350 et seq.
21. **MEDIA** – anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, DVDs, other magnetic media, and undeveloped pictures.
22. **MEDIA, SEXUALLY ORIENTED** – magazines, books, videotapes, movies, slides, CDs, DVDs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.”
23. **MEDIA STORE WITH SOME SEXUALLY ORIENTED MEDIA** – a retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area.
24. **MEDIA STORE, SEXUALLY ORIENTED** – an establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests:
  - a. More than forty percent (40%) of the gross public floor area is devoted to sexually oriented media; or
  - b. More than forty percent (40%) of the stock in trade consists of sexually oriented media; or
  - c. It advertises or holds itself out in any forum as a “XXX,” “adult” or “sex” business, or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater, or sexually oriented cabaret.

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

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

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37. PROTECTED LAND USE – residential zoning district, school, religious institution, park, library, public recreation area, or day care center.
38. PUBLIC AREA – a portion of a sexually oriented business, excluding sexually oriented motels, that is accessible to the customer, excluding restrooms, while the business is open for business.
39. SADOMASOCHISTIC PRACTICES – flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.
40. SEMI-NUDE OR IN A SEMI-NUDE CONDITION – the showing of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other apparel, provided the areola is not exposed in whole or in part.
41. SEX SHOP – an establishment offering goods for sale or rent and that meets any of the following tests:
- a. It offers for sale items from any two (2) of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; sexually oriented novelties; and the combination of such items constitute more than ten percent (10%) of its stock in trade or occupies more than 10 percent (10%) of its floor area;
  - b. More than five percent (5%) of its stock in trade consists of sexually-oriented toys or novelties; or
  - c. More than five percent (5%) of its gross public floor area is devoted to the display of sexually oriented toys or novelties.
42. SEXUALLY ORIENTED BUSINESS – an inclusive term used to describe collectively the following businesses: sexually oriented cabaret or theater; sexually oriented entertainment; sexually oriented motion picture theater; sexually oriented motion picture arcade; sexually oriented encounter center; sexually oriented media store; sexually oriented escort bureau; bathhouse; massage parlor; sex shop; sexually oriented modeling studio; or any other such business establishment whose primary purpose is to offer sexually oriented entertainment or materials. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the County or any applicable municipal zoning code or other applicable ordinances.

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43. SEXUALLY ORIENTED BUSINESS LICENSE – any license applied for under the countywide licensing ordinance, Kenton County Ordinance No. 451.9 as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus, adopted in 2004.
44. SEXUALLY ORIENTED TOYS OR NOVELTIES – instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs.
45. SPECIFIED ANATOMICAL AREAS – include:
- a. Less than completely and opaquely covered human genitals, pubic region, or the areola or nipple of the female breast; and
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and
  - c. Areas of the human anatomy included in the definitions of “nude” or “nudity.”
46. SPECIFIED SEXUAL ACTIVITIES – Acts of human masturbation, sexual intercourse, or sodomy. These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human analingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This definition shall include apparent sexual stimulation of another person’s genitals whether clothed or unclothed.
- AK. PROHIBITED USES: The following uses are prohibited in the City of Lakeside Park and county-wide under Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus. No Zoning Permit shall be issued for the following prohibited businesses:
1. Sexually oriented motion picture arcade or booth;
  2. Sexually oriented encounter center;
  3. Sexually oriented motel;
  4. Sexually oriented massage parlor or any business offering massages that is operated by a person who is not licensed as a massage therapist in accordance with the provisions of Kentucky Rev. Statutes §309.350 et seq.;
  5. Sexually oriented modeling studio;
  6. Sexually oriented nude modeling studio; and

7. Sexually oriented escort bureau.
- AL. OTHER USES PROHIBITED: Because there are no suitable sites for such sexually oriented businesses or, in accordance with the recommendations of the consultants to Kenton County, the following additional uses are prohibited:
1. Sexually oriented media store;
  2. Sex shop;
  3. Service oriented escort bureau;
  4. Sexually oriented motion picture theatre; and
  5. Sexually oriented cabaret or theatre.
- AM. STANDARDS FOR A MEDIA STORE WITH SOME SEXUALLY ORIENTED MEDIA: A retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area shall not be classified as a sexually oriented business but shall be subject to the following standards:
1. Separate room. The sexually explicit media shall be kept in a separate room from the rest of the inventory of the store and shall not visible outside the room;
  2. Age limit. Sexually explicit media shall be available only to persons 18 years or older;
  3. Access. Access to the room shall be through a solid door, accessed by an electronic control device monitored by the clerk or manager on duty through direct visual control;
  4. Visibility. Customers and activities in the room shall be visible at all times to the clerk or manager on duty through a video system located at the clerk's or manager's counter; and
  5. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.
- AN. SEVERABILITY: It is hereby declared to be the intention of the City of Lakeside Park 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 Lakeside Park without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.