

ARTICLE IX

GENERAL REGULATIONS

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

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

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

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

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

SECTION 9.5 UTILITIES LOCATION: Electrical transformer stations, gas regulator stations, sewage and water treatment plants, pumping stations, standpipes for public water supply, and other similar utility uses, may be located in any zone subject to the approval of the Board of Adjustment, as set forth in Section 9.14 of this Ordinance. The location of such facilities shall be in accordance with Kentucky State Law and the following requirements shall be complied with:

- A. Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which the 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 XVI.
- D. Open spaces on the premises shall be suitably landscaped and maintained and a screening area according to Section 9.16 of this Ordinance may be required in and along any yard.
- E. The storage of vehicles and equipment on the premises, unless enclosed or screened, shall be prohibited.
- F. The surrounding area shall not be adversely affected by, and shall be protected from, noise, odor, glare, dust, gas, smoke, and vibration, by such suitable means and conditions as the Board of Adjustment may specify.

SECTION 9.6 RAILROAD RIGHTS - OF - WAY LOCATION: Railroad rights - of - way, exclusive of such uses as marshaling yards, passenger and freight terminals, maintenance shops, fueling facilities and round houses, may be located in any zone of this Ordinance providing said railroad rights - of - way meet the requirements of those sections of the Kentucky State Law which regulates such uses and approved by the Kenton County and Municipal Planning and Zoning Commission and the City Council of Park Hills.

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

SECTION 9.8 UNSIGHTLY OR UNSANITARY STORAGE: No rubbish, salvage materials, junk, or miscellaneous refuse shall be openly stored or kept in the open, and no weeds shall be allowed to go uncut within any zones when the same may be construed to be a menace to public health and safety by the appropriate health department, or have a depressing influence upon property values in the neighborhood, in the opinion of the Zoning Administrator. Regular salvage and junkyards shall be adequately enclosed with a solid fence or wall, as regulated by Article XVI of this Ordinance, and an approved permanent planting screen, may also be required as regulated Section 9.16 of this Ordinance.

SECTION 9.9 JUNKYARD LOCATION: No person shall operate or cause to operate any junkyard which is located in the city of Park Hills.

SECTION 9.10 APPLICATION OF ZONING REGULATIONS:

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

-
- E. Every public or private building or other structure hereafter erected shall be located on a lot, as herein defined, and in no case shall there be more than one (1) principal building and permitted accessory structures on one (1) lot, except as hereinafter provided, nor shall any building be erected on any lot which does not abut at least twenty (20) feet on a deeded and accepted public right-of-way. In the case of two contiguous flag lots, said twenty (20) foot frontage may be reduced to ten (10) feet of frontage per parcel, provided the contiguous lots share a common unobstructed easement of access to the publicly dedicated street of at least twenty (20) feet in width and further provided said common easement shall be located within said twenty (20) foot strip. In no case shall more than two flag lots be contiguous to each other at the publicly dedicated street. Flag lots shall only be used in those locations where due to geometric, topographic, and other physical features, it would be impractical to extend a publicly dedicated street to serve lots located in said areas, as determined by the planning commission.
- F. Accessory structures and uses including off - street parking and loading and/or unloading areas shall not be permitted within any required minimum front yard or side yard (on each side of the lot), except in the NC and HC zones as provided herein. Accessory structures and uses including off - street parking and loading and/or unloading areas shall be permitted to extend into the minimum rear yard area, as defined herein, in all zones, but by never more than ten (10) feet.
- G. Permitted Obstructions in Minimum Required Yards or Courts: Except as herein provided, the following shall not be considered to be obstructions when located in the minimum required yards or courts specified:
1. In All Minimum Required Yards or Courts - awnings and canopies excluding carports; driveways, providing they are not closer than five (5) foot to the property line to which they run approximately parallel to, steps, four (4) feet into the minimum required yards which are necessary for access to a lot from a street or alley; fire escapes, chimneys, and air conditioning equipment projecting eighteen (18) inches or less into the minimum required yards; arbors and trellises, flag poles, bird baths, fences and walls, subject to the requirements in Article XVI of this Ordinance.
 2. In Minimum Front Yard Depths - one - story bay windows, projecting three (3) feet or less into the minimum required yard; overhanging eaves and gutters, projecting not more than three (3) feet or less into the minimum required front yard.
 3. In Minimum Rear Yard Depths - one - story bay windows, projecting three (3) feet or less into the minimum required yard; overhanging eaves and gutters projecting not more than three (3) feet or less into the minimum required yard.
-

4. In Minimum Side Yard Width - overhanging eaves, and gutters projecting not more than eighteen (18) inches or less into the minimum required side yard.

SECTION 9.11 NONCONFORMING LOTS, NONCONFORMING USES, NONCONFORMING STRUCTURES, REPAIRS AND MAINTENANCE, AND NONCONFORMING SIGNS:

A. NONCONFORMING LOTS OF RECORD:

1. Any lot of record which does not meet the requirements of this ordinance shall be considered a nonconforming lot of record.
2. Where a nonconforming lot of record exists having a lot area and/or frontage less than required by the particular zone district wherein said lot is located, development may be permitted on the lot, provided: the lot is located on an existing and improved public street; the adjacent parcels exist as developed building lots or dedicated street rights - of - ways 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 on said lot, an application for a variance shall be submitted for review and approval by the Board of Adjustment in accordance with Article XIX of this Ordinance.

B. NONCONFORMING USES:

1. CONTINUANCE: Except as herein specified, the lawful use of any public or private structure or land existing at the time of the adoption of this Ordinance may be continued although such use does not conform to the provisions of this Ordinance. However, no nonconforming use may be enlarged or extended unless and until the use is brought into conformance with all provisions of this Ordinance.
2. CHANGE FROM ONE NONCONFORMING USE TO ANOTHER: Any nonconforming use may be changed to another nonconforming use providing the new nonconforming use is in the same or a more restrictive classification (i.e., providing that, in the opinion of the Board of Adjustment, the new nonconforming use will be more in conformance with the intent of the regulations of the zone affected, than the old nonconforming use).

3. **TERMINATION:** Any one of the following acts or conditions shall terminate, immediately, the right to operate a public or private nonconforming use:
 - a. Changing to a conforming use.
 - b. Abandonment.
 - c. Nonoperative, or nonused for a period of six (6) or more consecutive calendar months, providing or for eighteen (18) calendar months during any three (3) consecutive calendar year period.
 - d. Whenever the structure, in which the nonconforming use is operated, is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure as of the date of such damage of the structure in which the nonconforming use is operated.
 - e. Whenever the structure, in which the nonconforming use is operated, becomes obsolete or substandard under any applicable ordinance of the city of Park Hills and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such structure as of the date of the official order under the applicable ordinance.
 - f. Whenever said nonconforming use becomes illegal, a nuisance, or a hazard to the public's safety, health, or welfare.
 - g. Whenever said nonconforming use becomes the property of the city of Park Hills, Commonwealth of Kentucky, or any other governmental entity.
4. **ZONE CHANGE:** The foregoing provisions shall apply to uses which become nonconforming due to zone changes which take place hereafter.

C. NONCONFORMING STRUCTURES:

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

-
2. **TERMINATION:** Any one of the following acts or conditions shall terminate, immediately, the right to operate a public or private nonconforming structure:
- a. Changing to a conforming structure.
 - b. Abandonment.
 - c. Nonoperative or not used for a period of eighteen (18) consecutive calendar months.
 - d. Whenever the nonconforming structure is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure as of the date of such damage of the nonconforming structure.
 - e. Whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such nonconforming structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such nonconforming structure as of the date of the official order under the applicable ordinance.
 - f. Whenever said nonconforming structure becomes a nuisance, or a hazard to the public's safety, health, or welfare.
 - g. Whenever the city of Park Hills, Commonwealth of Kentucky, or any other governmental entity, acquires title to said nonconforming structure or the land upon which it is located.
3. **ZONE CHANGE:** The foregoing provisions shall apply to structures which become nonconforming due to zone changes which take place hereafter.
- D. **REPAIRS AND MAINTENANCE:** On any building devoted in whole, or in part, to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the market value of the building, provided that the cubic content of the building, as it existed at the time of passage or amendment of this Ordinance shall not be increased.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring, to a safe condition, of any building, structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

E. NONCONFORMING SIGNS:

1. **CONTINUANCE:** Except as herein specified, any nonconforming sign₁ may be continued in operation and maintained after the effective date of this Ordinance, provided, however, that no such sign shall be changed in any manner that increases the noncompliance of such sign with the provisions of this Ordinance for the zone in which such sign is located.
2. **TERMINATION:** Any one of the following acts or conditions shall terminate, immediately, the right to operate or maintain a nonconforming sign:
 - a. Not meeting the time requirements for sign regulations, as regulated in Section 15.1, B. of this Ordinance.
 - b. Changing to a conforming sign.
 - c. Abandonment.
 - d. Nonoperative or nonuse of said nonconforming sign for a period of six (6) consecutive calendar months or for eighteen (18) calendar months during any three (3) calendar years.
3. **ZONE CHANGE:** The foregoing provisions shall also apply to signs which become nonconforming due to zone changes which take place hereafter.

SECTION 9.12 EXCEPTIONS AND MODIFICATIONS:

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

-
2. In the case of a court apartment or multi - family dwellings, side yards may be used as rear yards provided that:
 - a. The required side yard shall be increased by one (1) foot for each entrance or exit opening into or served by such yard.
 - b. The width of the court shall not be less than two and one - half (2-1/2) times the width of the side yard as required in the district in which such court apartments or multi - dwellings are located.
 - c. Where a roadway is provided in the court, the width allowed for such roadway shall be in addition to that required in the foregoing regulation.
 - d. All other requirements, including front, side, and rear yards shall be complied with in accordance with the regulations of the district in which such court apartments or multi - family dwellings, are located.
 - e. Every part of a required minimum yard or court shall be open from its lowest point to the sky unobstructed, except for permitted obstructions in minimum required yards as specified in Section 9.10, G. of this Ordinance.
 - C. OTHER EXCEPTIONS: Service stations or gasoline filling stations shall be so constructed that the centerlines of the pumps shall be at least twenty - five (25) feet from any street right - of - way line.
 - D. FRONT YARD VARIANCE:
 1. In any zone where the average depth of existing front yards within three hundred (300) feet of the lot in question and within the same block front, is greater than the minimum front yard depth prescribed elsewhere in this Ordinance, the minimum required front yard depth on such lot shall be modified to be the average depth of said existing front yards provided, however, that the depth of the front yard on any such lot shall not be greater than sixty (60) feet.
 2. In any residential zone, no front yard shall be required to exceed the average depth of existing front yards on the same side of the street within the same block front, when fifty one (51) percent or more lots within that block front are improved with residential buildings, provided that in no case shall a front yard depth be less than twelve (12) feet.
 - E. EXCEPTION TO AREA, AND YARD REGULATIONS:
-

1. Where existing or proposed development within the multi - family (R-2 and R-3) and commercial (NC, PO, SC, and LHS) Zones is to be subdivided, the minimum area and yard requirements may be less than required by this ordinance provided that:
 - a. The maximum density of the zone is not exceeded and/or the minimum site for the total development must not be less than that required by the respective zone.
 - b. A community association or other responsible entity is established prior to the approval by the planning commission of any subdivision of land. The association shall be obligated and empowered to own, operate, and maintain all common areas (as specifically identified on the submitted site plan required by Item c. of this section) including such items as open space, recreational facilities, access drives, parking areas, pedestrian walkways, etc., and all facilities constructed thereon.
 - c. A site plan, as regulated by the applicable requirements of Section 9.12 of this ordinance, including the proposed area and yard requirements for the development, is submitted for review and approval by the planning commission.
2. In addition, the planning commission may waive the requirement that all lots abut a minimum frontage along a dedicated right - of - way provided that those lots that do not abut a dedicated right - of - way are assured an unencumbered and maintained accessway by the association to a dedicated right - of - way.

F. SIDE YARD VARIANCE:

On a lot within any residential zone, where an existing principal structure that was lawfully placed when constructed but that does not comply with the minimum required side yard setback for that zone, additions to the principal structure may be made which have the same side yard setback as the existing structure, provided that in no case shall a side yard depth be less than five (5) feet.

G. FRONT AND SIDE YARD VARIANCE FOR VERTICAL EXPANSIONS:

On a lot within any residential zone, an existing principal structure that was lawfully placed when constructed but that does not comply with the required building setbacks may be expanded vertically, provided that all other requirements of this ordinance are met and in no case shall a side yard depth be less than five (5) feet or a front yard depth less than twelve (12) feet.

SECTION 9.13 CONDITIONAL USES:

- A. **DETERMINATION:** The Board of Adjustment may authorize a conditional building and use to be located within any zone in which the particular conditional use is permitted by the use regulations of this ordinance, if the evidence presented by the applicant is such as to establish, beyond any reasonable doubt:
1. That the proposed building and use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community; and
 2. That such building and use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and
 3. That the proposed building and use will comply with any regulations and conditions specified in this ordinance for such building and use.
- B. **CONDITIONAL USE PERMITS:** In accordance with KRS 100.237, the Board of Adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein which may be suitable only in specific locations in the zone only if certain conditions are met.
1. The Board of Adjustment may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be approved, 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, said conditional use permit shall be recorded in the office of the County Clerk and one copy of said permit attached to the deed for the property for which it is issued. The Board shall have the power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.
 2. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this Ordinance, the building code, housing code, and other regulations of the city of Park Hills.

3. In any case where a conditional use permit has not been exercised within twelve (12) consecutive calendar months from date of issuance, if no specific time limit has been set, such conditional use permit shall not revert to its original designation, unless there has been a public hearing. Exercised as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement has been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
4. The Zoning Administrator shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permits.

If the landowner is not complying with all of the conditions listed on the conditional use permit, the Zoning Administrator shall report the fact in writing to the chairman of the Board of Adjustment. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time that it is furnished to the chairman of the Board of Adjustment.

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

5. Once the Board of Adjustment has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the Zoning Administrator, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the

copy of the conditional use permit which is on file with the county clerk, as required in KRS 100.344. Thereafter, said use, if it continues to meet the other requirements of this Ordinance, will be treated as a permitted use.

SECTION 9.14 BUILDING REGULATIONS: No structure shall be designed, erected, or altered, except in accordance with the following regulations:

- A. PUBLIC WATER AND SANITARY SEWERS: No building may be constructed in any zone unless such building is connected to a public water and centralized sewer system and approved by the proper authorities.

SECTION 9.15 MOVE AND SET:

- A. No building, structure, or improvement shall be moved or set from or upon land located in any area or transported upon any public street, road, or highway in the city of Park hills, until and unless a building permit to move and set and a transport permit has been obtained therefore and said building, structure, or improvement complies with the provisions of this section.
- B. All buildings, structures, and improvements shall comply with the city of Park Hills Building Code.
- C. PROCEDURE:
1. Any person who wishes to obtain a building permit, to move and set in compliance herewith shall apply at the office of the Building Inspector requesting an inspection of the building, structure, or improvement to be moved and set, and that an application for such permit be filed with the Building Inspector.
 2. The applicant shall submit, with his application for said building permit, a plot plan, footing and foundation plan, and construction plans for any new construction. Said plans shall comply with the city of Park Hills Building Code.
 3. If the building, structure, or improvement is located in the city of Park Hills, all outstanding property taxes shall be paid and the applicant shall submit with his application a statement from the city of Park Hills City Treasurer showing that all past and current taxes have been paid before any permit shall be issued.
 4. Upon receipt of the foregoing items, the Building Inspector shall inspect said building, structure, or improvements, and the proposed location where same will be set within the city of Park Hills and determine that the proposed development complies with Building Code.

5. The move and set shall be referred to the Zoning Administrator for approval or denial of compliance with this Ordinance.
6. Upon approval by the Zoning Administrator and Building Inspector, a permit shall be issued to permit the move and set. The city of Park Hills Engineer shall then be notified of same and shall issue a transport permit. The city of Park Hills Engineer, or his agent, will designate the route to be traveled. The transport permit is good only for the date specified on permits except Saturday, Sunday, or holidays. The transport permit will not be issued if ninety (90) consecutive calendar days or more have lapsed from the date of inspection by the Building Inspector.
7. There will be a building permit fee of fifty dollars (\$50.00) to cover the costs of investigation and inspection for determining the structural soundness of buildings, structures, or improvements to be moved which fee is payable in advance and must accompany the application provided for herein. The inspection shall determine what will be necessary to bring buildings, structures, or improvements into compliance with the city of Park Hills Building Code should the building not comply. This fee is not returnable. If buildings, structures, or improvements are found to be capable of complying with the city of Park Hills Building Code, and this Ordinance, a building permit will be issued at the regular fees as determined by the valuation of said building, structure, or improvements as published in the Building Code. This fee is in addition to the fifty dollars (\$50.00) fee first listed.
8. The transport permit provided for in this section shall not be in lieu of any building permits which may be required by the city.
9. No transport or building permit to move and set shall be issued until the applicant has first obtained the necessary permits from the telephone company, public utilities companies, railroad companies, and the State Highway Department of Kentucky and the Kenton County Road Supervisor unless it can be shown by the applicant, that these agencies are not interested in the matter.
10. No transport or building permit to move and set shall be issued for any building, structure, or improvement exceeding the dimensions as approved by the Zoning Administrator and Building Inspector.
11. No person, corporation, or company shall transport, move, or set any building, structure, or improvement in the city of Park Hills, until and unless such person, corporation, or company shall post with the Building Inspector a good and sufficient indemnity bond in the amount of five

thousand dollars (\$5,000.00) in favor of the city of Park Hills. Such bond shall be made by a Surety Corporation authorized to do business in the Commonwealth of Kentucky; said bond may be issued on an annual basis but shall not be in excess of such period of time.

SECTION 9.16 LANDSCAPE REGULATIONS

- A. **PURPOSE:** The purpose of these regulations is to promote and to protect the health, safety and welfare of the community through reduction of noise, air, and visual pollution, air temperature and headlight glare and to improve the aesthetic character of the community by improving the appearance of vehicular use areas and property adjoining public/private road rights-of-way and driveways, preserving existing trees, and requiring screening between land uses.
- B. **WHO PROVIDES LANDSCAPING:** Landscaping required to fulfill these regulations shall be provided by the property owner. If an adjacent property has landscaping fulfilling perimeter landscaping requirements, the requirement for perimeter landscaping along the common boundary may be waived if deemed appropriate by the Zoning Administrator.
- C. **TYPES OF LANDSCAPING REQUIRED:** Landscaping required per these regulations includes perimeter landscaping, vehicular use area (parking lot) or interior landscaping, and landscaping for screening of dumpsters.
- D. **LANDSCAPE REQUIREMENTS TABLE:** The Landscape Requirements Table (Table 9-1) contains landscape requirements for perimeter, vehicular use or interior landscaping per these regulations.
- E. **SITES AFFECTED:** Landscaping as required in the Landscape Requirements Table (Table 9-1), shall be required as follows:
 - 1. All new building development and construction or development requiring a zoning map amendment, except for single and two-family residential.
 - 2. **EXISTING DEVELOPED SITES:**
 - a. New parking lot construction, including the expansion, moving or relocation of existing parking. This requirement shall only affect those newly paved areas of five (5) spaces or larger, or any paved area larger than 1500 square feet. The number of parking spaces added shall also include any spaces added within one (1) calendar year prior to the building permit application for the new spaces. This requirement shall, in no instance, be deemed as retroactively affecting sites prior to the adoption of this amendment.

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

Where Existing Structure Is	Substantial Increase An Addition Of
0 - 1,000 sq. ft.	50% or greater
1,001 - 10,000 sq. ft.	20% or greater
10,001 - 25,000 sq. ft.	15% or greater
25,001 - 50,000 sq. ft.	10% or greater
50,001 sq. ft. and above	5% or greater

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

- c. When a land use changes to a different land use.

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

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

- PLANT LIST A: SHADE TREES (Mature height greater than 30 ft.)
- PLANT LIST B: FLOWERING AND NON - FLOWERING TREES
(Mature height less than 30 ft. for use under power lines.)
- PLANT LIST C: EVERGREEN/BROADLEAF TREES
- PLANT LIST D: DECIDUOUS SHRUBS
- PLANT LIST E: EVERGREEN/BROADLEAF SHRUBS
- PLANT LIST F: STREET TREES
- PLANT LIST G: UNACCEPTABLE SHRUBS AND TREES

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

G. MISCELLANEOUS REGULATIONS

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

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

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

H. LANDSCAPE MATERIALS

1. WALLS AND FENCES: When walls or fences are used to fulfill screening requirements, they shall be indicated on the landscape plan. They are to be of weather-proof materials. This includes the use of synthetic or other construction materials or pressure treated lumber or painting of lumber if it is not redwood or cedar and using aluminum or galvanized hardware. Chain link fences with wood or synthetic slat material shall not be used to meet the requirements of these regulations.
2. PLANTS AND TREES: All plants are to be healthy and part of the acceptable plants listed in the Planting Manual. All plants must be replaced if they die. A plant manual should be obtained from the legislative body that outlines recommended plant material.
 - a. Quality: Plant materials used in conformance with provision of this ordinance shall comply with the American Standards for Nursery Stock (ANSI Z60. 1-1990, or most current edition) as prepared and published by the American Association of Nurserymen which is on file at the City Hall. In addition all plant materials shall have passed any inspection required under state and/or local regulations.
 - b. Deciduous Trees (trees which normally shed their leaves in the fall): Shall be species having an average mature crown spread of greater than fifteen (15) feet in Kenton County and having trunk(s) which can be maintained with a minimum of seven (7) feet of clear wood in areas which have visibility requirements. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by a grouping of the same so as to create the equivalent of a fifteen (15) foot crown spread. A minimum of six to eight (6-8) feet overall height or a minimum caliper (trunk diameter, measured by 6 inches above ground for trees up to 4 inches caliper) of at least 1 1/2 inch immediately after planting shall be required. Trees of species whose roots are known to cause damage to public roadways or other public works shall not be planted closer than fifteen (15) feet from such public works, unless the tree root system is completely contained within a barrier for which the minimum interior container dimensions shall be five feet square and five feet deep and for which the construction requirements shall be four (4) inches thick reinforced concrete.

-
- c. Evergreen Trees: Shall be a minimum of five (5) feet high with a minimum caliper of 1-1/2 inches immediately after planting.
 - d. Shrubs and Hedges: Shall be at least 15" - 20" in average height when installed. All plants shall conform to opacity, mature height, and other requirements within four (4) years after the date of the final approval of each planting or replanting. Privet, Ligustrum species cannot meet the opacity requirements and may not be used to satisfy the requirements of this Article. The height of the planting shall be measured from the level of the surface of the vehicular use area at the edge closest to the screening.
 - e. Grass or Ground Cover: Grass of the fescus (Gramineae) or Bluegrass (Poaceae) family shall be planted in species normally grown as permanent lawns in Kenton County, and may be sodded, plugged, sprigged, or seeded; except in swales or other areas subject to erosion, where solid sod, erosion reducing net, or suitable mulch shall be used, nurse-grass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Ground cover shall be planted not more than 15 inches on center and in such a manner as to present and have 75% of complete coverage after two complete growing seasons.
3. EARTH MOUNDS: Earth mounds shall be constructed with slopes which allow easy maintenance of grass or other ground cover. Differences in elevation between areas requiring screening does not constitute an earth mound.
4. MAINTENANCE AND INSTALLATION: All landscaping materials shall be installed according to accepted planting procedures (see Planting Manual). The Owner of the property shall be responsible for the continued property maintenance of all landscaping materials, including existing trees, and shall keep them in a proper, neat and orderly appearance, free from refuse and debris at all times. All unhealthy or dead plant material shall be replaced within one year, or by the next planting period, whichever comes first; while other defective landscape material shall be replaced or repaired within three months. Topping trees or cutting of limbs to stubs larger than three (3) inches in diameter within the tree crown to such a degree as to remove the normal canopy shall not be considered proper for the maintenance of trees as required by this Article. Tree pruning cuts shall be made sufficiently close to the trunk or parent limb without cutting into the branch collar or leaving a protruding stub so that closure can readily start under normal conditions. All branches that are so heavy as to cause bark splitting or peeling are to be precut. Violation of these installation and
-

maintenance provisions shall be grounds for the legislative body to refuse a building occupancy permit, require replacement of the landscape material or institute legal proceedings to enforce the provisions of this Article.

I. SUBMISSION REQUIREMENTS

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

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

J. PLANTING ADJUSTMENTS

1. The Zoning Administrator shall have the authority to grant a waiver of any of the requirements in this section upon receipt of a written request which outlines the rationale for the planting adjustment. The Zoning Administrator shall review each written request and grant a waiver only: (1) under unusual or extreme circumstances which cause an unreasonable hardship such as the size of the lot; (2) when an innovative or alternative approach can be made which still meets the intent and purpose of this section; or (3) when the requirements of this section are impractical or unreasonable because of the existence of conditions specified in subsection J., 4. Of this section. All decisions made by the Zoning Administrator may be appealed to the Board of Adjustment, pursuant to this ordinance and Kentucky Revised Statutes.
2. **PLANNING COMMISSION - TO HEAR AND DECIDE APPLICATIONS FOR PLANTING ADJUSTMENTS**
 - a. An applicant, at the time of filing of the application for a map amendment, Stage I Development Plan review, or Stage II Development Plan review, may elect to have any planting adjustments for the same development to be heard and finally decided by the planning commission at the same public hearing set for the map amendment, Stage I Development Plan review, or Stage II Development Plan review, or by the Zoning Administrator as otherwise provided for in this section.
 - b. The planning commission shall review each adjustment request per the requirements of this ordinance and shall forward its findings to the Zoning Administrator. The ruling on the planting adjustment request shall be binding on the Zoning Administrator.
3. **PLANTING ADJUSTMENTS:** If the property owner wishes to request a planting adjustment of the Landscape Requirements of this article, an application shall be filed with the Zoning Administrator.
4. **REVIEWING ADJUSTMENT REQUESTS:** The Zoning Administrator or the planning commission, in its review of requests for adjustments, shall in making its decision consider all of the following criteria:
 - a. The need for the adjustment is due to circumstances typical of the land in the general vicinity of the site or in the same zone.
 - b. The strict application of the Landscape Ordinance would deprive the applicant of a reasonable use of the land or create an unnecessary hardship.

- c. Circumstances necessitating an adjustment are not the result of an action by the applicant subsequent to the passage of the Landscape Ordinance.
- d. Adherence to the Landscape Ordinance will adversely affect the health, safety and welfare of the public or will adversely alter the general character of the general vicinity.
- e. When an innovative or alternative approach can be made which still meets the intent and purpose of this section.
- f. The existence of significant grade separations between adjoining developments or properties.
- g. The horizontal distance between the proposed development and the adjoining property.
- h. The existence of natural features (water bodies, tree lines, creeks or streams) that are proposed to be maintained.
- i. The different land use intensities that can be found within the same land use categories (i.e., a small single tenant office use or a 24 hour gasoline/convenience store can both be developed in a commercial zone).

**TABLE 9-1
LANDSCAPE REQUIREMENTS TABLE**

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
Any commercial, institutional, or professional office zone or land use, or any conditional land use	Any residential zone or land use	20 feet	<p>Choose one of the following:</p> <ol style="list-style-type: none"> 1 tree per 35 linear feet, or fraction thereof, from List A* (shade trees), plus double row hedge from list E (evergreen/broadleaf shrubs) 1 tree per 20 linear feet, or fraction thereof, from List B (flowering and non-flowering trees), plus double row hedge from List E (evergreen/broadleaf shrubs) 1 tree per 40 linear feet, or fraction thereof, from List A (shade trees), plus a hedge from List D, plus a 6 foot wall, fence, or earth mound 1 tree per 40 linear feet, or fraction thereof, from List B (flowering and non-flowering trees), plus a hedge from List D, plus a 6 foot wall, fence, or earth mound Double row, staggered planting of trees from List C at 15 feet on center

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

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

page 2 of 5

Table 9-1 (continued)

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

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

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

Table 9-1 (continued)

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

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

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

Table 9-1 (continued)

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

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

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

page 5 of 5

Table 9-1 (continued)

DEVELOPING ZONE/USE	ADJOINING ZONE/USE	MINIMUM PLANTING STRIP	PLANT MATERIAL/OPTIONS
A Vehicular Use Area (VUA) associated with any zone or land use, except single-family	Any public or private street	10 foot perimeter screening easement	Choose one of the following: 1. 1 tree per 40 linear feet, or fraction thereof, from List A* (shade trees), plus 8 shrubs per 40 linear feet, or fraction thereof, from either List D (deciduous shrubs) or List E (evergreen/broadleaf shrubs) 2. 1 tree per 25 linear feet, or fraction thereof, from List B (flowering and non-flowering trees), plus 8 shrubs per 40 linear feet, or fraction thereof, from either List D (deciduous shrubs) or List E (evergreen/broadleaf shrubs)
		-----	-----
		If over 25 feet	If the planting strip exceeds 25 feet in width, shrubs are not required
	--PLUS --	--PLUS --	--PLUS --
	in all cases	5% interior landscaped area (2)	1 tree per 250 square feet of interior landscaped area from either List A (shade trees) or List B (flowering and non-flowering trees) (1 tree minimum)

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

1. Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.

2. Interior requirements are not required on parking lots smaller than 5 spaces, and/or 1,500 square feet of paved area. Interior landscape areas must be 100 square feet minimum in size. Plants may be no closer than 36 inches to pavement in the vehicle use area unless concrete wheel stops are used to prevent plant damage by cars. Six inch (minimum) curb required around all landscaped islands.

3. If the vehicle use area is located in the front, side or rear yard, the required interior vehicular use area landscaping and the 5 feet perimeter screening easement will be included as counting towards the total front yard landscaping required.

4. In all cases where an earth mound or berm is used, the easement provided must be adequate to accommodate a mound with a maximum side slope of 2.5 to 1.

5. The Zoning Administrator may allow a mixture or combination of tree categories, provided that the required number of trees is provided.

6. In no case shall the minimum planting strip be required to exceed the minimum setback requirement established by the zoning district.

FIGURE 9-1
REQUIRED PERIMETER LANDSCAPING FOR BUILDING ADDITIONS

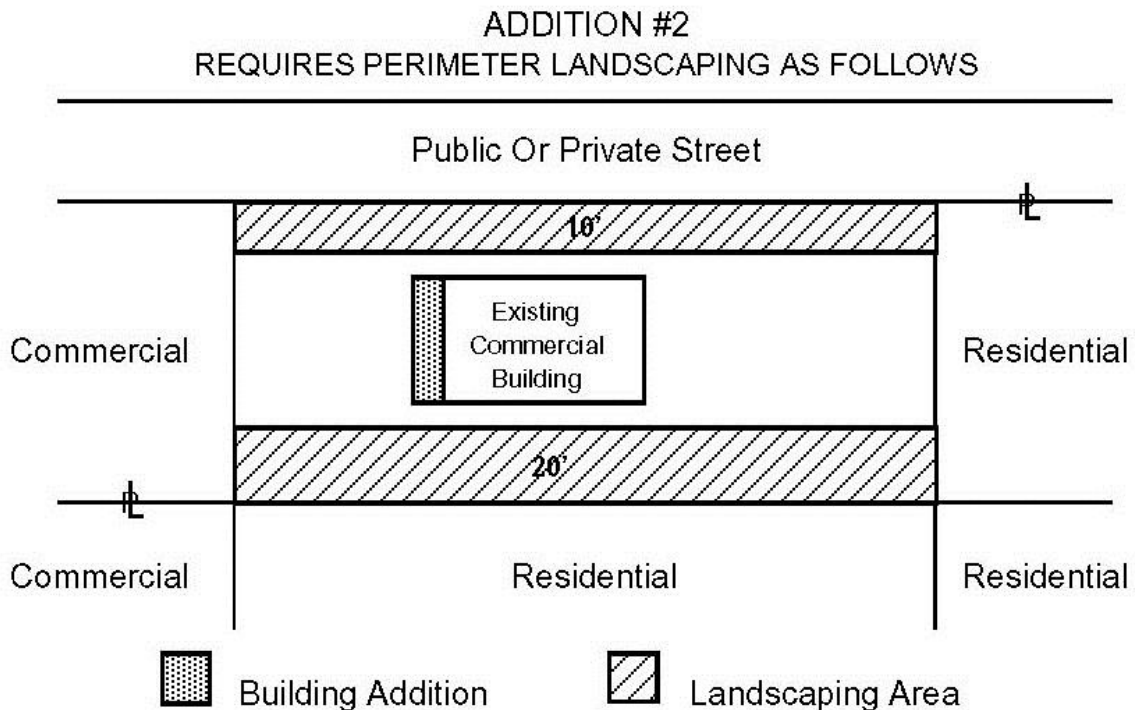
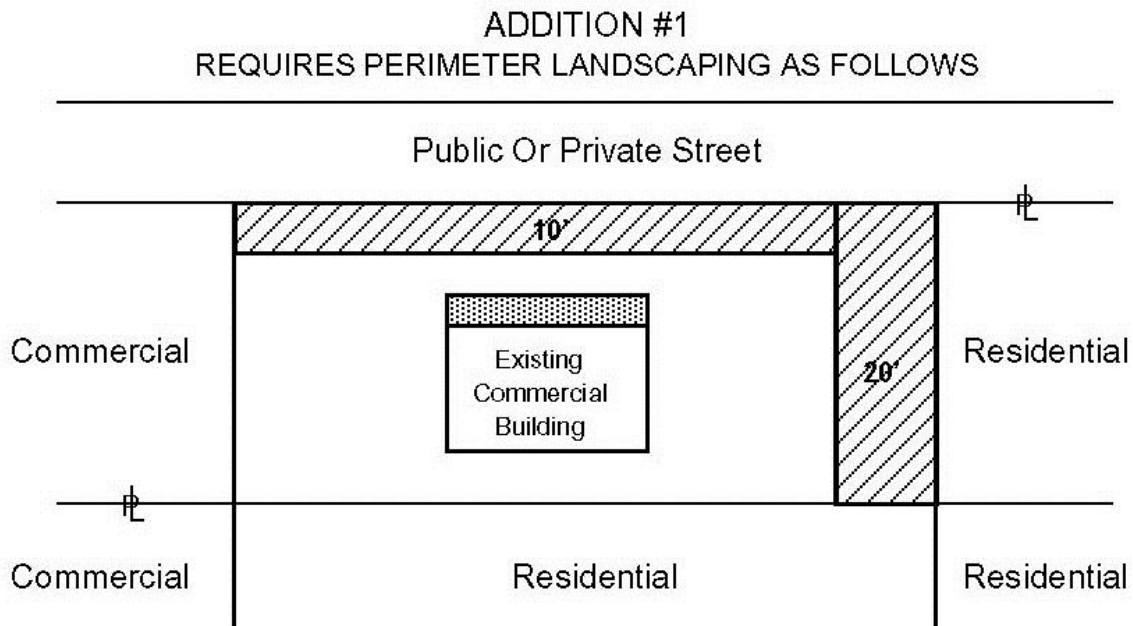
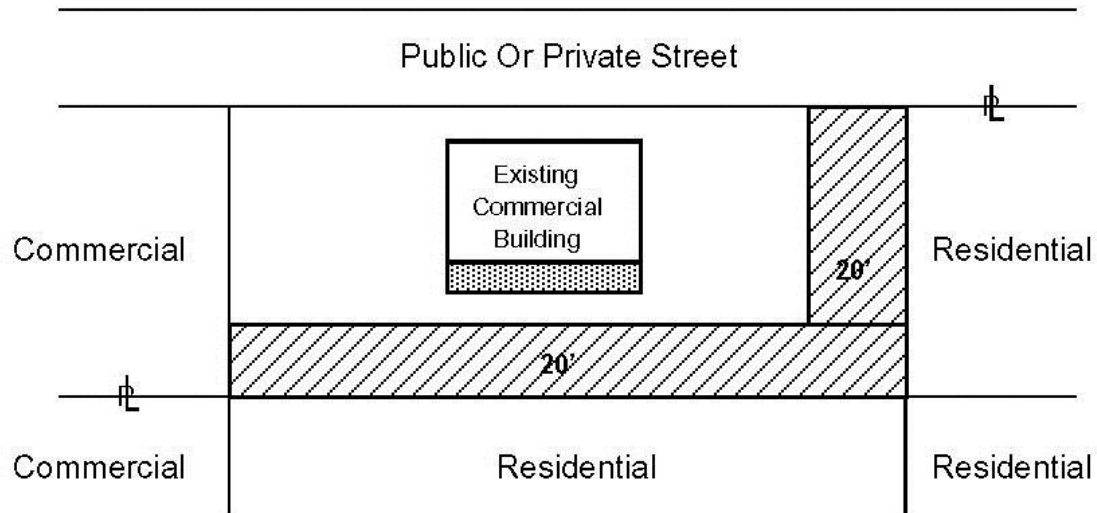
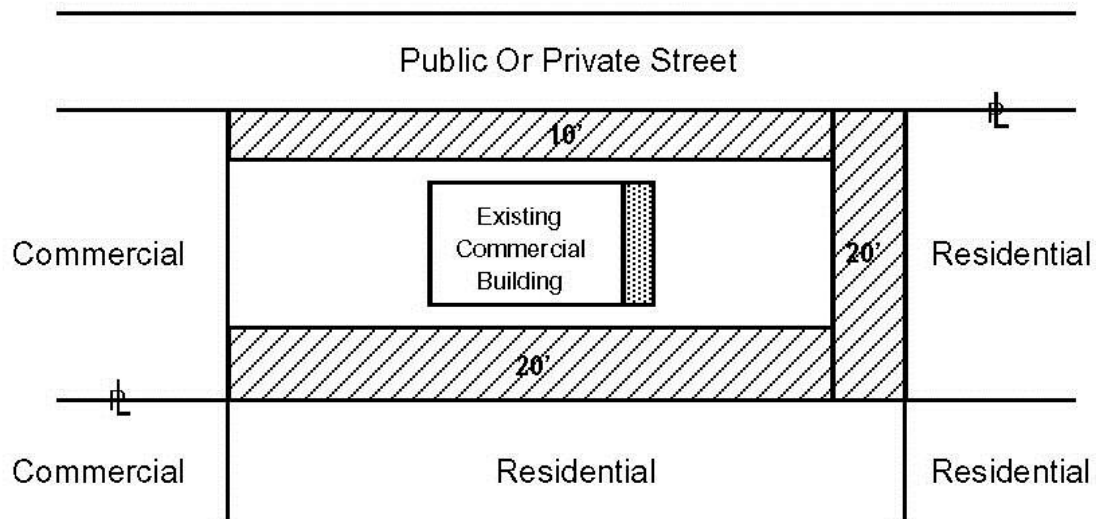


FIGURE 9-1 (continued)
REQUIRED PERIMETER LANDSCAPING FOR BUILDING ADDITIONS

ADDITION #3
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS



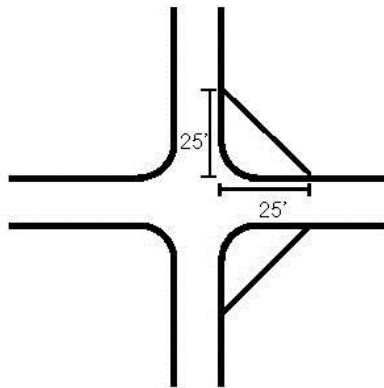
ADDITION #4
REQUIRES PERIMETER LANDSCAPING AS FOLLOWS



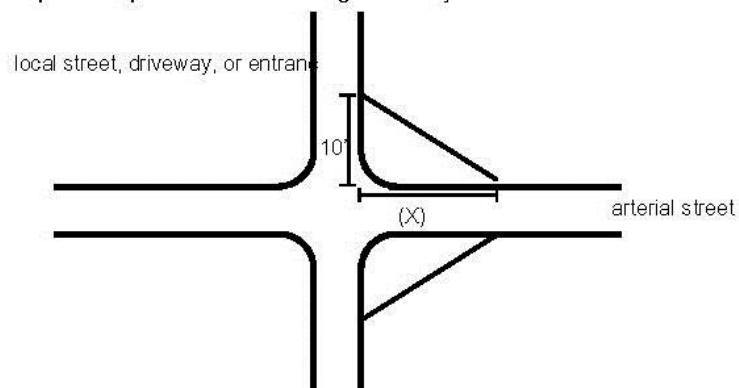
 Building Addition  Landscaping Area

FIGURE 9-2
CITY STREETS/STATE HIGHWAY SIGHT TRIANGLES

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



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



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

TABLE 9-2
DUMPSTER SCREENING TABLE

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

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

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

SECTION 9.17 OUTDOOR SWIMMING POOLS:**A. PRIVATE SWIMMING POOLS:** All private swimming pools shall be regulated according to the following requirements:

1. Swimming pools shall be permitted to be located only to the rear of the principal permitted dwelling or dwellings.
2. Except as herein provided, no swimming pool, including the apparatus and equipment pertaining to the operation of the swimming pool shall be permitted within any required yards of the lot nor within the limits of any public utility right - of - way easement.
3. Swimming pools which are constructed in - ground shall be required to have a fence or wall, including a self - closing or self - latching door or gate around the pool or the property on which the pool is located of at least four (4) feet in height, but not exceeding seven (7) feet (only classes 1, 3, 4, or 5 fences are permitted, as regulated in Article XVI of this Ordinance) and of such construction that a small child may not reach the pool from the street or any adjacent property without scaling a fence or wall or opening a gate or door.
4. Swimming pools which are located above - ground shall be required to have a fence or wall, including a self - closing or self - latching door or gate around the pool or property upon which the pool is located, of at least four (4) feet in height, but not exceeding seven (7) feet (only classes 1, 3, 4, and 5 are permitted, as regulated by Article XVI of this Ordinance) and of such construction that a small child may not reach the pool from the street or any adjacent property without scaling a fence or wall or opening a gate or door. Said wall may be the wall of the above - ground pool, providing, however that said wall is at least four (4) feet in height.

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

5. Glare from flood lights used to illuminate the swimming pool area for night bathing shall be directed away from adjacent properties.
6. All swimming pools, including the apparatus and equipment pertaining to the operation of the swimming pool, shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the city of Park Hills. Any water used in the operation of a swimming pool, other than from a public source, shall be approved by the appropriate

Health Department. The swimming pool shall have a filtration system approved by the appropriate Health Department.

7. All swimming pools existing at the time of adoption of this Ordinance which are unprotected by a surrounding fence or wall, including gates or doors, as regulated by subsections A., 3 and A., 4 of this section of the Ordinance, shall be required to comply with the provisions of this section within sixty (60) days after adoption of this Ordinance.

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

1. Except as herein provided, no swimming pool, including the apparatus and equipment pertaining to the operation of the swimming pool shall be permitted within any required yards of the lot or within the limits of any public utility right - of - way easement.
2. The swimming pool, or the property on which the pool is located, shall be surrounded by a fence or wall (only classes 1, 3, 4, and 5 fences are permitted, as regulated by Article XVI of this Ordinance) at least five (5) feet in height, but not exceeding the height as permitted herein, and of such construction that a small child may not reach the pool from the street or from adjacent property without opening a door or gate or scaling a wall or fence.
3. Glare from flood lights used to illuminate the swimming pool area for night bathing shall be directed away from adjacent properties.
4. All swimming pools including the apparatus and equipment pertaining to the operation of the swimming pool shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the city of Park Hills. Any water used in the operation of the swimming pool, including the filtration system, other than from a public source, shall be approved by the appropriate Health Department.
5. No mechanical device for the reproduction or amplification of sounds used in connection with swimming pools shall create a nuisance to adjacent residential properties through the emission of noises, voices, or music which is loud enough to cause complaints from said adjacent residential property owners.

SECTION 9.18 SITE PLAN REQUIREMENTS: No building shall be erected or structurally altered nor shall any grading take place on any lot or parcel in zones where a site plan is required, except in accordance with the regulations of this section and an

approved site plan as hereinafter required. Before a permit is issued for construction, one (1) copy of the site plan of the area at a scale no smaller than one (1) inch equals one hundred (100) feet shall be filed with the city of Park Hills and one (1) copy with Planning and Development Services of Kenton County setting forth, identifying, and locating the following:

- A. Total area in development project including legal description.
- B. Present zoning of property in question and adjacent properties.
- C. All public and private rights - of - way and easement lines located on and adjacent to the property which are proposed to be continued, created, enlarged, relocated, or abandoned.
- D. Existing topography with a maximum of two foot contour intervals. Where existing ground is on a slope of less than two (2) percent, either one foot contours or spot elevations where necessary, but not more than fifty (50) feet apart in both directions.
- E. The proposed finished grade of the development area shown by contours with intervals not larger than two (2) feet, supplemented where necessary by spot elevations.
- F. The location of every existing and proposed building in the described parcel or parcels, the use or uses to be continued therein, the number of buildings including dimensions and height, the gross floor area and number of floors.
- G. Location and dimensions of all curb cuts, driving lanes, off - street parking and loading and/or unloading areas, including number of spaces, angle of stalls, grades and illumination facilities.
- H. All walks, malls, and other open spaces and recreational areas.
- I. Location of all walls, fences, and screen plantings.
- J. Location, size, height, and orientation of all signs.
- K. Types of surfacing proposed on the various off - street parking and driveways including cross sections and drainage plans.
- L. Location of all existing and proposed streets, highways, and alleys.
- M. All existing and proposed water and sanitary sewer lines, indicating pipe sizes, types, and grades.

-
- N. A drainage plan of the area showing size and location of each existing and proposed structure. The approximate volume of water generated by development of the subject area and the proposed method of disposing of said water. Provisions shall be included for adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction.
- O. A schedule of development, including the staging and phasing of:
1. Residential area, in order of priority, by type of dwelling unit;
 2. Streets, utilities, and other public facility improvements, in order of priority;
 3. Dedication of land to public use or set aside for common ownership with a preliminary statement indicating how maintenance of the latter will be handled; and
 4. The construction of non - residential buildings, in order of priority.
- P. Such other information with regard to the development area as may be required by the Planning Commission to determine conformance with this Ordinance.

All such site plans shall be reviewed by the legislative body, or its duly authorized representative, and the factual determination approving or rejecting such plans shall be made in accordance with requirements of this or other applicable sections of this Ordinance and the Area - Wide Comprehensive Plan for Kenton County as adopted by the Kenton County and Municipal Planning and Zoning Commission, However, no action of approving or rejecting any site plan shall be taken unless and until a review of the proposal has been made and submitted by Planning and Development Services of Kenton County.

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

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

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

SECTION 9.19 REGULATIONS CONCERNING AIR RIGHTS: Any proposed use of air rights, as defined herein, shall be in the form of a site plan, as regulated in Section 9.18 of this Ordinance, submitted to the Planning Commission for its review.

SECTION 9.20 REGULATIONS CONCERNING DESIGN AND CONSTRUCTION OF IMPROVEMENTS: Proposed development requiring the construction of streets (including curb and gutters), sidewalks, sewers (sanitary & storm), water lines or other improvements, which does not constitute a subdivision, as herein defined, shall be required to be designed and constructed in accordance with the applicable articles and sections of the Subdivision Regulations, as adopted by the Kenton County and Municipal Planning and Zoning Commission.

SECTION 9.21 REGULATIONS PERTAINING TO PARKING OR STORING OF INOPERABLE VEHICLES, TRAILERS, MOBILE HOMES, CAMPERS, AND OTHER SUCH TYPE EQUIPMENT:

- A. No motor vehicle which is inoperable shall be stored on any lot in any zone or parcel of ground unless it is in a completely enclosed building. Parking shall be limited to the number of operable vehicles regularly used by members of a resident family and their guests.
- B. It shall be unlawful for any person, or persons, to live in any boat, automobile, camper, mobile home, or truck, within the limits of the city of Park Hills.
- C. Except as provided for herein, it shall be unlawful to store any trailer, mobile home, camper, boat, or other such type equipment within any place or location in the city of Park Hills. Said storage shall be restricted only within the rear yard of any lot, as herein defined, except that said storage may be permitted by the Zoning Administrator, on some other portion of the lot, due to extraordinary and topographic conditions or some other extraordinary condition of the site that would not allow said storage within the rear yard.

SECTION 9.22 REGULATIONS OF SEXUALLY ORIENTED BUSINESSES

- A. The City of Park Hills, 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 Park Hills, 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 Park Hills respects the Constitutional rights of its citizens, including the right to present certain types of entertainment that may not appeal to the entire population. Through this ordinance, it is the desire of the City of Park Hills to balance the Constitutional rights of businesses that present sexually oriented entertainment with the City of Park Hills interests in ensuring that this community not suffer from the same sorts of adverse effects that Covington and Newport have long suffered.
- Q. From long experience in Covington and Newport, as well as from the following studies and others not listed, the City of Park Hills also finds that such businesses may have primary and secondary effects involving crimes related to

the activities in the establishments, of which prostitution and crimes of violence are those of greatest concern. See for example:

1. "Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard," Richard W. McCleary, Ph.D., James W. Meeker, J.D., Ph.D., October 23, 1991.
 2. "Survey of Appraisers: Fort Worth and Dallas – Effects of Land Uses on Surrounding Property Values," Duncan Associates, Eric Damian Kelly, FAICP, and Connie B. Cooper, FAICP, September 2004.
 3. "Adult Entertainment Businesses in Indianapolis, An Analysis," 1984.
 4. "Adult Business Study," by City of Phoenix Planning Department, May 25, 1979.
 5. "Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul," June 1978, City of Saint Paul Division of Planning, Department of Planning and Management; and Community Crime Prevention Project, Minnesota Crime Control Planning Board.
 6. "Staff Report, Whittier City Planning Commission; Subject: Adult Business Regulations," July 11, 1994.
 7. "Adult Entertainment Study," Department of City Planning, City of New York, Second Printing, November 1994.
 8. "Adult Use Study," Newport News Department of Planning and Development, March 1996.
 9. "A Report on the Secondary Impact of Adult Use Businesses in the City of Denver," prepared by multiple city departments for Denver City Council, January 1998.
 10. "Survey of Appraisers in Monroe County, New York," Summer 2000. For detailed results of the survey, see Kelly and Cooper, Everything You Always Wanted to Know about Regulating Sex Businesses, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.
 11. The Tucson "study" consisting of two memos: one from the Citizens Advisory Planning Committee, addressed to the Mayor and City Council, and dated May 14, 1990; and the other from an Assistant Chief of Police to the City Prosecutor, regarding "Adult Entertainment Ordinance," dated May 1, 1990.
- R. The City of Park Hills recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the City of Park Hills finds, nevertheless, that addressing the establishments that have live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, for three reasons:

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

- W. Based on the recommendations of Kelly and Cooper, which are based on their experience in other communities and their review of the studies cited above and other local efforts to address such secondary effects, the City of Park Hills finds that the following principles are essential to effective zoning controls of sexually oriented businesses:
1. Sexually oriented businesses should, to the maximum extent practicable, be separated from one another by a distance that is greater than a convenient walking distance, because experience elsewhere has shown that the location of such businesses near one another may increase the adverse secondary effects, particularly those related to crime, by a greater than arithmetic factor;
 2. 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 Park Hills.
- Y. City of Park Hills currently has no sexually oriented businesses in the community.
- Z. City of Park Hills currently has no area zoned for any type of commercial use.
- AA. City of Park Hills currently has only limited areas zoned for commercial use, and those areas are small and adjacent to residential areas.
- AB. City of Park Hills has within its limited commercial areas only small, local businesses generally serving the convenience needs of residents.

-
- AC. City of Park Hills 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 Park Hills can not recall ever receiving any applications for or inquiries about the establishment of any sexually oriented business in the City of Park Hills.
- AE. City of Park Hills thus finds that the physical context and experience of the City of Park Hills support the findings by Kelly and Cooper.
- AF. City of Park Hills 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 Park Hills 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 Park Hills therefore finds that there are no suitable locations for sexually oriented businesses in the City of Park Hills 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 Park Hills in adopting this amendment to the Zoning Ordinance. Upon adoption of this zoning amendment, these shall be incorporated into the Zoning Code by reference as if fully set forth therein to the adopting Resolution.
- AJ. DEFINITIONS:
1. CABARET OR THEATER, SEXUALLY ORIENTED – a building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to “adult entertainment,” “strippers,” “showgirls,” “exotic dancers,” “gentleman’s club,” “XXX” or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.
-

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

escort;" for purposes of this ordinance, the term "escort" shall not include any person who would be understood by a reasonably prudent person as providing "babysitting" services or working as an assisted living companion to the elderly, infirm, disabled, or handicapped, and shall further not include licensed health professionals.

9. ESCORT, SERVICE ORIENTED – an escort that:
 - a. operates from an open office;
 - b. does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and
 - c. does not offer to provide sexual conduct.
10. ESCORT BUREAU, SERVICE ORIENTED – an escort bureau that
 - a. maintains an open office at an established place of business;
 - b. otherwise operates in full accordance with the countywide licensing ordinance, Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus, as such ordinance may be amended from time to time.
11. ESCORT, SEXUALLY ORIENTED – an escort who:
 - a. works for (either as an agent, employee, or independent contractor), or is referred to a patron by a sexually oriented escort bureau; or,
 - b. either advertises that sexual conduct will be provided, or works for (either as an employee, agent, or independent contractor), or is referred to a patron by an escort bureau that so advertises; or,
 - c. offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee from an escort patron or a prospective escort patron.
12. ESCORT BUREAU, SEXUALLY ORIENTED – an escort bureau that operates in any of the following manners:
 - a. engages in fraudulent, misleading, or deceptive advertising that is designed to make the prospective client believe that acts of prostitution (as defined under Kentucky law) will be provided; or,
 - b. collects money (whether paid in advance or paid after the promised proscribed act) for the promise of acts of prostitution by its escorts; or,

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

-
20. **MASSAGE THERAPIST** –a person licensed as a massage therapist in accordance with the provisions of Kentucky Rev. Statues §309.350 et seq.
 21. **MEDIA** – anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, DVDs, other magnetic media, and undeveloped pictures.
 22. **MEDIA, SEXUALLY ORIENTED** – magazines, books, videotapes, movies, slides, CDs, DVDs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.”
 23. **MEDIA STORE WITH SOME SEXUALLY ORIENTED MEDIA** – a retail book, video or other media store that has sexually explicit media that constitutes more than 10 percent but not more than 40 percent of its inventory or that occupies more than 10 percent but not more than 40 percent of its gross public floor area.
 24. **MEDIA STORE, SEXUALLY ORIENTED** – an establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests:
 - a. More than forty percent (40%) of the gross public floor area is devoted to sexually oriented media; or
 - b. More than forty percent (40%) of the stock in trade consists of sexually oriented media; or
 - c. It advertises or holds itself out in any forum as a “XXX,” “adult” or “sex” business, or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater, or sexually oriented cabaret.
 25. **MODELING STUDIO, SEXUALLY ORIENTED** – an establishment or business that provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples, or small groups in a space smaller than 600 feet.
 26. **MOTEL, SEXUALLY ORIENTED** – a hotel, motel, or similar commercial establishment that meets any of the following criteria:
-

- a. Offers accommodations to the public for any form of consideration and provides patrons with sexually oriented entertainment or transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;”
 - b. Marketed as or offered as “adult,” “XXX,” “couples,” or “sexually oriented.”
27. MOTION PICTURE ARCADE, SEXUALLY ORIENTED – a building or portion of a building wherein coin-operated, slug-operated, or for any other form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images of “specified sexual activities” or “specified anatomical areas.”
28. MOTION PICTURE ARCADE BOOTH, SEXUALLY ORIENTED – any booth, cubicle, stall, or compartment that is designed, constructed, or used to hold or seat customers and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital, or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, CD-ROMs, books, DVDs, magazines or periodicals) to show images of “specified sexual activities” or “specified anatomical areas” for observation by customers therein. The term “booth,” “arcade booth,” “preview booth,” and “video arcade booth” shall be synonymous with the term “motion picture arcade booth.”
29. MOTION PICTURE THEATER, SEXUALLY ORIENTED – a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are frequently shown that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” or that are marketed as or offered as “adult,” “XXX,” or sexually oriented. Frequently shown films, motion pictures, videocassettes, slides or other similar photographic reproductions as characterized herein do not include sexually oriented speech and expressions that take place inside the context of some larger form of expression.
30. NUDE MODELING STUDIO – any place where a person who appears in a state of nudity or semi-nudity and is to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. “Nude model studio” shall not include a proprietary school licensed by the Commonwealth of Kentucky or a college, junior college, or university supported entirely or in part by public taxation; a private college or university that maintains and

operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

31. NUDITY OR STATE OF NUDITY – the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernibly turgid state. See, also, Semi-nude.
32. OPERATOR – any person operating, conducting, or maintaining a business regulated under this Chapter.
33. OWNER(S) – the individual owner of an establishment, or if the legal owner is a corporation, partnership, or limited liability company, the term shall include all general partners, any limited partner with a financial interest of ten percent (10%) or more, all corporate officers and directors, and any shareholder or member with a financial interest of ten percent (10%) or more. “Owner” includes the spouse(s) of any of the above individuals.
34. PERSON – an individual, firm, partnership, joint-venture, association, independent contractor, corporation (domestic or foreign), limited liability company, trust, estate, assignee, receiver or any other group or combination acting as a unit.
35. PREMISES – the physical location at which a business operates; as used in this Chapter, the term shall include all parts of that physical location, both interior and exterior, which are under the control of the subject business, through ownership, lease or other arrangement.
36. PRIMARY ENTERTAINMENT – entertainment that characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.
37. PROTECTED LAND USE – residential zoning district, school, religious institution, park, library, public recreation area, or day care center.
38. PUBLIC AREA – a portion of a sexually oriented business, excluding sexually oriented motels, that is accessible to the customer, excluding restrooms, while the business is open for business.

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

-
44. SEXUALLY ORIENTED TOYS OR NOVELTIES – instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs.
45. SPECIFIED ANATOMICAL AREAS – include:
- a. Less than completely and opaquely covered human genitals, pubic region, or the areola or nipple of the female breast; and
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and
 - c. Areas of the human anatomy included in the definitions of “nude” or “nudity.”
46. SPECIFIED SEXUAL ACTIVITIES – Acts of human masturbation, sexual intercourse, or sodomy. These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human analingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This definition shall include apparent sexual stimulation of another person’s genitals whether clothed or unclothed.
- AK. PROHIBITED USES: The following uses are prohibited in the City of Park Hills 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 be visible outside the room;
2. Age limit. Sexually explicit media shall be available only to persons 18 years or older;
3. Access. Access to the room shall be through a solid door, accessed by an electronic control device monitored by the clerk or manager on duty through direct visual control;
4. Visibility. Customers and activities in the room shall be visible at all times to the clerk or manager on duty through a video system located at the clerk's or manager's counter; and
5. Lighting. The area occupied by customers shall be well lit at a lighting level of least 30 footcandles measured 3 feet from the floor.

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

SECTION 9.23 SPECIAL REQUIREMENTS GOVERNING HOME OCCUPATIONS:

Home occupations shall include the use of the premises for services rendered other than by direct contact with customers, employees, or independent contractors at that location (for example, where the bulk of the business is by telephone - actual work is performed in home and customers are contacted at other than that location). The following requirements shall apply to home occupations when permitted herein and shall be a part of the occupational license:

- A. No persons other than members of the family residing in the premises shall be engaged in such operation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. Not more than twenty-five (25) percent of the gross floor area of any one floor of the dwelling unit (including the basement or cellar) shall be used in the conduct of the home occupation.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, such as the parking or utilization of trucks, that will indicate from the exterior that the building is being utilized, in part, for any purpose other than that of a dwelling unit, except that a name plate, as regulated by Article XV, entitled Sign Regulations, of the Park Hills Official Zoning Ordinance, shall be permitted.
- D. No home occupation shall be conducted in any accessory building, nor shall there be any exterior storage of any materials on the premises.
- E. There shall be no commodity sold upon the premises in connection with such home occupation.
- F. No traffic or parking of vehicles shall be generated by such home occupation in greater volumes or type (e.g., trucks) than would normally be expected in a residential neighborhood.
- 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 shall be used that creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

SECTION 9.24 OUTDOOR DISPLAYS

Outdoor retail sales and display areas must comply with the following standards:

- A. **LOCATION OF SALES AREA.** Outdoor sales areas must be contiguous, located entirely on private property, and outside of any required side and rear setbacks. In zones without required setbacks, outdoor sales areas may not be located within 10 feet of any street-facing lot line.
- B. **MAXIMUM SIZE.** Except for vehicle-sales uses, outdoor sales areas may not exceed 15 percent of the floor area of the uses they serve, unless otherwise expressly stated in the Zoning Ordinance.

- C. LOCATION OF MERCHANDISE. Merchandise may not be displayed where it will encroach upon driveways, walkways, sidewalks, public rights of way, or landscaped areas. Merchandise may not obstruct sight distance or otherwise create hazards for vehicular or pedestrian traffic.
- D. HEIGHT OF MERCHANDISE. Individual items displayed may not exceed 10 feet in height above grade. Stacked items may not exceed a total of 6 feet in height above grade.
- E. LITTER. A permanent trash receptacle must be installed at each entrance and exit to an outdoor sales area.
- F. SCREENING. All outdoor sales areas must be screened from adjacent public streets by decorative walls, fences, or landscaping that are at least 3 feet in height and located in a landscaped area at least 10 feet in width adjacent to a street property line, unless otherwise expressly stated in this chapter.
- G. EXCEPTIONS. The standards of this subsection do not apply to the sales of food, flowers, newspapers, and periodicals from a pedestrian-oriented storefront and the temporary or seasonal sales of pumpkins or Christmas trees.