

ARTICLE IX

GENERAL REGULATIONS

SECTION 9.0 PURPOSE: General regulations shall apply to all districts.

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

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

SECTION 9.3 VISION CLEARANCE AT CORNERS, CURB CUTS, AND RAILROAD CROSSINGS: 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, the minimum front yard depth shall be provided on at least one street frontage, with the other frontage having a minimum of one-half the required minimum front yard depth, except that when such lots abut an arterial street, as herein defined, the minimum front yard depth shall be provided for each street.

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

- A. Such facilities shall be essential for the immediate area or for the proper functioning of the total utility system of which the element is a part.

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

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

SECTION 9.7 EXCAVATION, MOVEMENT OF SOIL, TREE REMOVAL, AND EROSION AND SEDIMENTATION CONTROL

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

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

SECTION 9.8 UNSIGHTLY OR UNSANITARY STORAGE: No rubbish, salvage materials, junk, or miscellaneous refuse shall be openly stored or kept in the open, and weeds shall not be allowed to go uncut within any zones, when the same may be construed to be a menace to public health and safety by the appropriate health department, or have a depressing influence upon property values in the neighborhood, in the opinion of the zoning administrator. Salvage and junkyards shall be adequately enclosed with a solid fence or wall, as regulated by Article XIII, and an approved permanent planting screen may be required as regulated by Section 9.17 of this ordinance.

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

SECTION 9.10 APPLICATION OF ZONING REGULATIONS

- A. Except as 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.

- B. Except as herein provided, every structure hereafter erected shall be located on a lot, as herein defined, and in no case shall there be more than one (1) principal building and permitted accessory structure on one (1) lot, nor shall any building be erected on any lot which does not abut a public right-of-way.
- C. Except as herein provided, accessory structures and uses shall not be permitted within any required minimum front yard or side yard (on each side of the lot) in any zone. Accessory structures and uses may be permitted to extend into the minimum rear yard areas, as defined herein, in all zones, provided that such structures are set back from the rear lot line a minimum of ten (10) feet, and required minimum side yard clearances are maintained. Location of off-street parking, loading and/or unloading areas, fences, and signs, are governed by their respective sections, as provided herein.
- D. Permitted Obstructions in Minimum Required Yards: Except as herein provided, the following shall not be considered to be obstructions when located in the minimum required yards specified:
1. In All Minimum Required Yards - Driveways, providing they are not closer than two (2) feet to the property line to which they run approximately parallel to; steps, four (4) feet or less above grade, projecting not more than four (4) feet into the minimum required yards which are necessary for access to a lot from a street or alley; fire escapes and chimneys, projecting not more than eighteen (18) inches into the minimum required yards; arbors and trellises; flag poles; bird baths; trees; plants; shrubberies; ornaments; utility poles and wires; and outdoor furniture; fences and walls, subject to the requirements in Article XIII; and off-street parking as provided for in Article XI of this ordinance.
 2. In Minimum Front Yard Depths - Bay windows, projecting three (3) feet or less into the minimum required yard; overhanging eaves and gutters, projecting not more than three (3) feet into the minimum required front yard; air conditioning equipment; and awnings and canopies, extending not more than four (4) feet into the minimum required front yard.
 3. In Minimum Rear Yard Depths - Bay windows, overhanging eaves and gutters, and air conditioning equipment, projecting not more than three (3) feet into the minimum required rear yard; awning and canopies, provided they not extend more than ten (10) feet into the minimum required rear yards.

4. In Minimum Side Yard Width - Air conditioning equipment, excluding compressor for central air conditioning unit; and overhanging eaves and gutters, projecting not more than eighteen (18) inches into the minimum required side yard; awning and canopies, providing that they extend not more than two (2) feet into the minimum required side yard.

SECTION 9.11 SPECIAL REQUIREMENTS GOVERNING HOME OCCUPATIONS:

Home occupations shall include the use of the premises for services rendered other than by direct contact with customers at that location (for example, where the bulk of the business is by telephone - actual work is performed in home and customer is contacted in other than that location). 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 utilization of trucks, that will indicate from the exterior that the building is being utilized, in part, for any purpose other than that of a dwelling unit, except that a name plate, as regulated by Article XIV of this ordinance, shall be permitted.
- D. No home occupation shall be conducted in any accessory building, nor shall there be any exterior storage of any materials on the premises.
- E. There shall be no commodity sold upon the premises in connection with such home occupation.
- F. No traffic shall be generated by such home occupation in greater volumes or than would normally be expected in a residential neighborhood.
- G. No equipment or process which creates noise, vibration, glare, fumes, odors, or electrical interference, detectable to the normal senses off the lot, shall be used in such home occupation. In the case of electrical interference, no equipment or process which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises, shall be used.

SECTION 9.12 NONCONFORMING LOTS, NONCONFORMING USES, NONCONFORMING STRUCTURES, REPAIRS AND MAINTENANCE, AND NONCONFORMING SIGNS

A. NONCONFORMING LOTS OF RECORD:

1. Any lot of record which does not meet the requirements of this ordinance shall be considered a nonconforming lot of record.
2. Nonconforming lots of record which have been approved by the planning commission since January 1, 1967, and which were in conformance with the area and lot width requirements of the zoning ordinance in effect at the time of such approval, shall be permitted to be sold and developed as approved and recorded.
3. Nonconforming lots of record established prior to 1967 shall comply with the following:
 - a. If four (4) or more lots or combinations of lots and portions of lots with contiguous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this ordinance, the lands involved shall be considered to be an undivided parcel for the purpose of this ordinance, and no portion of said parcel shall be used or sold which does not meet lot width and area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance.
 - b. Where more than one (1) but less than four (4) lots of record exist, having a lot area or lot width less than required by the particular zone district, development may be permitted on such lots provided that the lot width and lot area of such lots are not less than seventy-five (75) percent of the required minimum area and width. When the lot width and/or area are less than seventy-five (75) percent of the minimum requirement, the lots shall be combined to provide lot areas and widths that are not less than the permitted twenty-five (25) percent variance. In no case, however, shall the lot width at the building setback line be less than fifty (50) feet.
 - c. Where a single nonconforming lot of record exists having a lot area 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 lot is of

separate ownership from all adjacent and contiguous parcels; the adjacent and contiguous parcels exist in such a manner as to preclude reasonable acquisition of additional area to achieve conformity, such as when such lots exist as developed building lots, dedicated street rights-of-ways, or undeveloped parcels which cannot be reasonably obtained in whole or in part. Development on a single nonconforming lot of record shall not be permitted unless a minimum lot width of fifty (50) feet is provided at the building setback line.

B. NONCONFORMING USES

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

- c. Whenever the structure, in which the nonconforming use is operated, becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such structure as of the date of the official order under the applicable ordinance and a determination is made by the board of adjustment that this structure should not be reconstructed.
 - d. Whenever said nonconforming use is determined to be detrimental or injurious to the public health, safety, or general welfare.
4. ZONE CHANGE: The foregoing provisions shall apply to uses which become legally nonconforming due to zone changes which take place thereafter.

C. NONCONFORMING STRUCTURES

- 1. CONTINUANCE: Except as herein provided, any lawful nonconforming structure, existing at the time of adoption of this ordinance, may be occupied, operated, and maintained in a state of good repair, but no nonconforming structure shall be enlarged or extended unless the enlargement or extension can be, and is, made in compliance with all of the provisions of this ordinance.
- 2. TERMINATION: In all cases, the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to operate a nonconforming structure based on any of the following conditions, and if the decision is to do so, the board shall state its bases, in writing, for such determination.
 - a. Whenever the nonconforming structure is damaged in any manner whatsoever and the cost of repairing such damage exceeds fifty (50) percent of the market value of such structure and a determination is made by the board of adjustment that the structure should not be reconstructed.
 - b. Whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such nonconforming structure in lawful compliance with the applicable ordinance exceeds fifty (50) percent of the market value of such nonconforming structure as of the date of the official order under the applicable ordinance and a determination is made

by the board of adjustment that the structure should not be reconstructed.

- c. Whenever said nonconforming structure is determined to be detrimental or injurious to the public health, safety, or general welfare.

- 3. ZONE CHANGE: The foregoing provisions shall apply to structures which become legally nonconforming due to zone changes which take place thereafter.

- D. REPAIRS AND MAINTENANCE: On any building devoted in whole, or in part, to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the cubic content of the building, as it existed at the time of passage or amendment of this ordinance which rendered it nonconforming, shall not be increased.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring, to a safe condition, of any building, structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, except for the conditions as stated in Section 9.12, B., 3., b., or 9.12, C., 2., b.

E. NONCONFORMING SIGNS

- 1. CONTINUANCE: Except as herein provided, any lawful nonconforming sign, existing at the time of adoption of this ordinance, may be continued provided, however, that no such sign shall be changed unless it is changed in compliance with all provisions of this ordinance.
- 2. TERMINATION: In all cases, the board of adjustment shall hold a public hearing in accordance with the applicable requirements of Section 18.2 of this ordinance. Following that hearing, the board may terminate the right to operate a nonconforming sign based on any of the following conditions and, if the decision is to do so, the board shall state its bases, in writing, for such determination.
 - a. Not meeting the requirements for sign regulations, as regulated in Article XIV of this ordinance.
 - b. Nonuse or abandonment of said nonconforming sign for a period of twelve (12) consecutive months.
- 3. ZONE CHANGE: The foregoing provisions shall also apply to signs which become legally nonconforming due to zone changes which take place thereafter.

SECTION 9.13 EXCEPTIONS AND MODIFICATIONS

A. EXCEPTIONS TO HEIGHT LIMITS

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

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

C. FRONT YARD VARIANCE

1. Where the average depth of existing front yards within three hundred (300) feet of the lot in question and within the same block front, is greater than the minimum front yard depth required by this ordinance, the required minimum front yard depth on such lot shall be modified to be the average depth of said existing front yards.
2. In any residential zone, no front yard shall be required to exceed the average depth of existing front yards on the same side of the street within the same block, when fifty-one (51) percent or more of lots within that block are improved with residential buildings, provided that in no case shall a front yard depth be less than twelve (12) feet.

D. EXCEPTION TO AREA AND YARD REGULATIONS

1. Where existing or proposed developments within the two-family, multi-family, commercial, and industrial 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 9.19 of this ordinance, including the proposed area and yard requirements for the development, is submitted for review and approval by the planning commission.
- d. In addition, the planning commission may waive the requirement that all lots abut a minimum frontage along a dedicated right-of-way provided that those lots that do not abut a dedicated right-of-way are assured an unencumbered and maintained accessway by the association to a dedicated right-of-way in accordance with Subsection 9.13, D., 1., b.

SECTION 9.14 CONDITIONAL USES

- A. DETERMINATION: Subject to the requirements of Section 18.7, the board of adjustment may authorize a conditional use to be located within any zone in which such conditional use is permitted, if the evidence presented by the applicant is such as to establish, beyond any reasonable doubt:
 - 1. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community; and
 - 2. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.
- B. CONDITIONAL USE PERMITS: In accordance with KRS 100.237, the board of adjustment shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein which may be suitable only in specific locations in the zone only if certain conditions are met:
 - 1. The board of adjustment may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under

consideration. In addition, a certificate of Land Use Restriction shall be filed pursuant to Section 9.31 of this ordinance. The board shall have the power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the board shall have the right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

2. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, the building code, housing code, and other regulations of the city.
3. In any case, where a conditional use permit has not been exercised within the limit set by the board, or within twelve (12) consecutive calendar months from date of issuance, such conditional use permit shall not revert to its original designation, unless there has been a public hearing. Exercised as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement has been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
4. The zoning administrator shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permits.

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

The board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the board of adjustment finds that the facts alleged in the report of the zoning administrator are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the

hearing, the board of adjustment may authorize the zoning administrator to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

5. Once the board of adjustment has completed a conditional use permit, and all the conditions required are of such type that they can be completely and permanently satisfied, the zoning administrator, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file. Thereafter said use, if it continues to meet the other requirements of this ordinance, will be treated as a permitted use.

6. When an application is made for a conditional use permit for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, an owner of every parcel of property adjoining the property to which the application applies, and such other persons as this ordinance or board of adjustment bylaws shall direct. Written notice shall be by first class mail with certification by the board's secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the board the name and address of an owner of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners.

SECTION 9.15 BUILDING REGULATIONS AND WATER AND SANITARY SEWER SERVICE

- A. **BUILDING REGULATIONS:** All structures shall be designed, erected, or altered in accordance with the legislative body's housing and building codes.

- B. **WATER AND SANITARY SEWER SERVICE:** No building may be constructed in any zone unless such building is connected to a public water and central sanitary sewer system of adequate capacity and design, and approved by proper authorities.

Where existing buildings are presently unserved by a public sanitary sewer system, and are located within a reasonable distance of an existing or newly

extended sanitary sewer line, as determined by the legislative body and/or the Northern Kentucky District Board of Health, said building shall be required to connect with the public sanitary sewer system and the private sewage disposal system shall be prohibited.

SECTION 9.16 MOVE AND SET

- A. **REQUIREMENTS:** No building, structure, or improvement shall be moved or set from or upon land located in any area or transported upon any public street, in the legislative body, until and unless both: (1) a building permit to move and set; and (2) a transport permit, have been obtained, and said building, structure, or improvement complies with the provisions of this section.
- B. **COMPLIANCE:** All buildings, structures, and improvements shall comply with the legislative body's housing and building code, and all other applicable codes and regulations.
- C. **PROCEDURE-PERMITS:** The applicant shall submit to the building inspector, the following:
 - 1. An application for a building permit requesting an inspection of the building, structure, or improvement to be moved or set;
 - 2. A plot plan, footing and foundation plan, and construction plans for any new construction;
 - 3. A statement from the applicable legislative body(s) insuring that all past and current taxes have been paid.
 - 4. Upon receipt of the foregoing items, the building inspector shall inspect said building, structure, or improvements, and the proposed location where same will be set within the legislative body and determine if the proposed development will comply with all applicable codes and regulations.
 - 5. The move and set shall be referred to the zoning administrator for approval or denial of compliance with this ordinance.
 - 6. Upon approval by the zoning administrator and building inspector, a building permit to move and set shall be issued. The legislative body's engineer shall then be notified of same and shall issue a transport permit. The legislative body's engineer or his agent will designate the route to be traveled. The transport permit is good only for the date specified on permit. The transport permit will not be issued if ninety (90) consecutive calendar days or more have lapsed from the date of inspection by the

building inspector. The transport permit provided for in this section shall not be in lieu of any other permits which may be required by the legislative body.

7. 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 Kentucky Department of Transportation, and the county road supervisor, whichever is applicable.

D. FEES

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

SECTION 9.17 SCREENING AREA: Screening areas shall be provided for the purpose of minimizing the friction between incompatible land uses and improving the aesthetic and functional quality of new development.

A. **SCREENING AREA REQUIREMENTS:** All screening areas shall be approved by the zoning administrator (or planning commission, where required by this ordinance) according to a submitted site plan, as regulated by the applicable requirements of Section 9.19 of this ordinance. Screening areas shall be designed, provided, and maintained according to the following:

1. Where vegetative and/or topographic conditions that provide a natural screening and buffer exist prior to development of properties in question, every effort shall be made to retain such conditions. In such cases,

additional screening may not be required, provided that provision is made for maintenance of such areas.

2. Whenever screening is required, it shall be provided as follows:
 - a. All screening shall be provided by the construction of a Class 1 or Class 5 fence, as regulated by Article XIII of this ordinance, and/or evergreen trees;
 - b. All trees shall be a minimum of ten (10) feet in height measured from ground level when planted, however, smaller trees (a minimum of five feet in height from ground level) may be utilized in combination with berms (e.g., earthen mounds) to provide the minimum 10-foot height requirement; berms must be covered with suitable vegetation, such as grass, ivy, and shrubs, to preclude erosion of the berm;
 - c. Trees which are intended to provide screening to separate multi-family development from single-family development, shall not be planted further than 15 feet apart; parking facilities which are located adjacent to the single-family areas shall be additionally screened to a minimum height of three (3) feet (via an earth berm, depressed parking, solid fence, etc.) to reduce automobile headlight glare onto adjacent property;
 - d. Trees which are intended to separate commercial and industrial development from residential development (single-family and multi-family) shall not be planted further than ten (10) feet apart; parking facilities which are located adjacent to residential areas shall be additionally screened to a minimum height of three (3) feet (via an earth berm, depressed parking, solid fence, etc.) to reduce automobile headlight glare onto adjacent property.
3. All trees, shrubs and other planting materials shall be living plants (not artificial) and shall be suitable to the Northern Kentucky Area and the specific conditions of the site in question, such as, but not limited to, soil conditions, slopes, reduction of noise pollution, maintenance necessary, and the type of screening needed.
4. Screening areas shall be provided in such a manner as to obscure the view into the development from adjacent properties. In those cases where property is adjacent to property within another governmental jurisdiction, screening shall be provided in the same manner as would be required if the adjacent area was within the jurisdiction of this legislative body.

5. In the case where a zoning map change occurs, resulting in adjacency to a different zoning district than was previously the case, and where development has already occurred on property in the unchanged district, required additional setbacks and screening requirements (as required in each district's regulations) shall be provided for the property in the district where the zone change has occurred.
- B. **PROVISION AND MAINTENANCE:** Required screening areas shall be provided as a condition of development by the owner and/or developer. All required screening (including the planting of trees and other vegetation) shall be maintained by the property owner.
- C. **INCLUSION ON SITE PLAN AND/OR SUBDIVISION IMPROVEMENT DRAWINGS:** Areas to be set aside as screening areas shall be identified on the required site plans, as regulated in Section 9.19, and where applicable, on the improvement drawings as regulated by the subdivision regulations. Sufficient bond, adequate to cover the required improvements as determined by the legislative body, may be required to be posted. It shall be unlawful to occupy any premises unless the required screening has been installed in accordance with the requirements as provided herein.

SECTION 9.18 OUTDOOR SWIMMING POOLS

- A. **PRIVATE SWIMMING POOLS:** All private swimming pools shall be regulated according to the following requirements:
1. Except as herein provided, (see Section 9.10, C.) no swimming pool or associated equipment shall be permitted within any required yards.
 2. Swimming pools which are constructed in-ground shall be required to have a fence or wall, including a self-closing or self-latching door or gate around the pool or the property on which the pool is located. Such fence or wall shall be at least four (4) feet, but not more than seven (7) feet in height (only classes 1, 3, or 5 fences are permitted, as regulated in Article XIII of this ordinance); such fences or walls shall be constructed in such a manner that a small child may not reach the pool from the street or any property without climbing the fence or wall or opening the gate or door.
 3. Swimming pools which are located above-ground shall be required to have a fence or wall, including a self-closing or self-latching door or gate around the pool or property upon which the pool is located. Such fence or wall shall be at least four (4) feet, but not more than seven (7) feet in height (only classes 1, 3, and 5 are permitted, as regulated by Article XIII of this ordinance). Such fence or wall shall be constructed in such a manner that a small child may not reach the pool from the street or any

adjacent property without scaling a fence or wall or opening the gate or door. Said wall may be the wall of the above-ground pool, providing that said wall is at least four (4) feet in height above the surrounding ground level.

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.

4. Glare from lights used to illuminate the swimming pool area shall be directed away from adjacent properties.
 5. All swimming pools and associated equipment shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the legislative body. Water used in the swimming pool, which is obtained from other than a public source, shall be approved by the Northern Kentucky District Health Department.
 6. All swimming pools existing at the time of adoption of this ordinance, which are unprotected by a surrounding fence or wall, including gates or doors, as regulated herein, shall be required to comply with the provisions of this ordinance section within sixty (60) days after its adoption.
 7. All pools shall be located or designed to provide for adequate drainage of the pool. Water drained from the pool shall be retained on-site or channeled directly into the city's storm drainage system.
- B. PUBLIC, SEMI-PUBLIC, AND COMMERCIAL SWIMMING POOLS: All public, semi-public, and commercial swimming pools shall be regulated according to the following requirements:
1. Except as herein provided, no swimming pool and associated equipment shall be permitted within any required yards or within the limits of any public utility right-of-way easement.
 2. The swimming pool, or the property on which the pool is located, shall be surrounded by a fence or wall, including a self-closing and self-locking door or gate (only classes 1, 3, and 5 fences are permitted, as regulated by Article XIII of this ordinance). Such fence or wall shall be 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 climbing the wall or fence or opening a gate or door.

3. Glare from lights used to illuminate the swimming pool area shall be directed away from adjacent properties.
4. All swimming pools and associated equipment of the swimming pool shall be constructed and erected in accordance with all applicable codes, ordinances, and regulations of the city (county). Water used in the operation of the swimming pool, which is obtained from other than a public source, shall be approved by the Northern Kentucky District Health Department.
5. No mechanical device for the reproduction or amplification of sounds used in connection with swimming pools shall create a nuisance to adjacent residential properties.

SECTION 9.19 SITE PLAN REQUIREMENTS: No building shall be erected or structurally altered nor shall any grading take place on any lot or parcel in zones where a site plan is required, except in accordance with the regulations of this section and an approved site plan as hereinafter required. Before a permit is issued for construction, one (1) copy of the site plan of the area at a scale no smaller than one (1) inch to one hundred (100) feet, shall be filed with Planning and Development Services of Kenton County and (1) copy with the building inspector and the zoning administrator. The site plan shall identify and locate, where applicable, the information as listed in Section 9.20, B. -- Stage II Plan Requirements.

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

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 phases, provided all of the procedures required have been complied with.

SECTION 9.20 PLAN REQUIREMENTS - STAGES I, II, AND RECORD PLAT:

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- A. STAGE I -- PLAN REQUIREMENTS: The Stage I Plan shall identify and provide the following information:
1. Plan(s) of the subject property, drawn to a scale not smaller than one (1) inch equals one hundred (100) feet showing:
 - a. The total area in the project;
 - b. The present zoning of the subject property and all adjacent properties;
 - c. All public and private rights-of-way and easement lines located on or adjacent to the subject property which are proposed to be continued, created, enlarged, relocated, or abandoned;
 - d. Existing topography, and approximate delineation of any topographical changes shown by contour with intervals not to exceed five (5) feet;
 - e. Delineation of all existing and proposed residential areas in the project with a statement indicating net density of the total project:
 - (1) Detached housing - location and approximate number of lots, including a typical section(s) identifying approximate lot sizes and dimensions, and setback and height of buildings;
 - (2) Attached housing - location and description of the various housing types (i.e., townhouse, fourplex, garden apartment, etc.) including approximate heights of typical structures, and the approximate number of units by housing type;
 - f. Delineation of all existing and proposed nonresidential uses in the project:
 - (1) Commercial uses - location and type of all uses including approximate number of acres, gross floor area and heights of buildings;
 - (2) Open Space/Recreation - the approximate amount of area proposed for common open space, including the location of recreational facilities, and identification of unique natural features to be retained;

- (3) Other public and semi-public uses - location and type of all uses, including approximate number of acreage, and height of buildings;
- g. Location of proposed pedestrian walkways, identifying approximate dimensions;
- h. Location of proposed streets, identifying approximate dimensions of pavement, right-of-way widths, and grades;
- i. Location of all existing and proposed water, sanitary sewer, and storm drainage lines, indicating approximate pipe sizes. Indication should also be given regarding the provision of electric and telephone service.
- j. Certification from appropriate water and sewer agencies that services will be available.
- k. Identification of the soil types and geologic formations on the subject property, indicating anticipated problems and proposed methods of handling said problems.
- l. Other information that may be determined necessary for description and/or to insure proper integration of the proposed project in the area.
- m. A schedule of development, including the staging and phasing of:
 - (1) Residential area, in order of priority, by type of dwelling unit;
 - (2) Streets, utilities, and other public facility improvements, in order of priority;
 - (3) Dedication of land to public use or set aside for common ownership; and
 - (4) Non-residential buildings and uses, in order of priority.

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

- B. STAGE II -- PLAN REQUIREMENTS: The Stage II Plan shall conform to the following requirements:

1. Plan(s) of the subject property drawn to a scale of not smaller than one (1) inch equals one hundred (100) feet, that identifies and provides the following information:
 - a. The existing and proposed finished topography of the subject property shown by contours with intervals not to exceed five (5) feet. Where conditions exist that may require more detailed information on the proposed topography, contours with intervals of less than five (5) feet may be required by the planning commission;
 - b. All housing units on the subject property:
 - (1) Detached housing - Location, arrangement, and number of all lots, including lot dimensions and setbacks, and maximum height of buildings;
 - (2) Attached housing - Location, height, and arrangement of all buildings, indicating the number of units in each building, and, where applicable, location, arrangement and dimensions of all lots;
 - c. Location, height, arrangement, and identification of all nonresidential buildings and uses on the subject property and, where applicable, location and arrangement of all lots with lot dimensions;
 - d. Location and arrangement of all common open space areas, and recreational facilities, including lot dimensions. Methods of ownership and operation and maintenance of such lands shall be identified;
 - e. Landscaping features, including identification of planting areas and the location, type, and height of walls and fences;
 - f. Location of signs indicating their orientation and size and height;
 - g. All utility lines and easements:
 - (1) Water distribution systems, including line sizes, width of easements, type of pipe, location of hydrants and valves, and other appurtenances;
 - (2) Sanitary sewer system, including pipe sizes, width of easements, gradients, type of pipes, invert elevations,

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

- (3) Dedication of land to public use or set aside for common ownership; and
- (4) Non-residential buildings and uses, in order of priority.

The aforementioned information required may be combined in any suitable and convenient manner so long as the data required is clearly indicated.

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

SECTION 9.21 REGULATIONS CONCERNING AIR RIGHTS: Any proposed use of air rights, as defined herein, shall be in the form of a site plan (as regulated in Section 9.19 of this ordinance) submitted to the planning commission, or its duly authorized representative, for its review.

SECTION 9.22 REGULATIONS CONCERNING DESIGN AND CONSTRUCTION OF IMPROVEMENTS: Any proposed development which does not constitute a subdivision, shall be required to provide streets (including curb and gutters), sidewalks, sewers (sanitary and storm), and water lines. Improvements to be provided shall be designed and constructed in accordance with the applicable articles and sections of the Subdivision Regulations, unless specifically waived.

SECTION 9.23 REGULATIONS PERTAINING TO PARKING OR STORING OF TRAILERS, MOBILE HOMES, CAMPER, INOPERABLE VEHICLES, AND OTHER SUCH TYPE EQUIPMENT

- A. No vehicle which is abandoned, nonfunctional, in a state of disrepair, or lacking a valid license, shall be stored in excess of seventy-two (72) hours in any zone, unless it is in a completely enclosed building.
- B. It shall be unlawful for any person(s) to live in any boat, automobile, camper, recreational vehicle, or truck, within the jurisdiction of the legislative body.
- C. The outside storage in excess of seventy-two (72) hours, of any trailer, recreational vehicle, camper, boat, or similar type equipment, shall be restricted to the rear yard of all lots within the jurisdiction of the legislative body, except as herein provided, and in cases where, due to unique conditions, topographic or other, which do not allow use of the rear yard, the board of adjustment may permit such storage to be located in the side yard of the lot following review and

approval by said board. The board may impose certain requirements (such as provided in Section 9.17 of this ordinance) to insure that said vehicle and related equipment is properly screened from view of adjacent property. In no case shall more than one of the aforementioned vehicles or similar type equipment be permitted outside of an enclosed building on any lot or parcel of land.

- D. It shall be unlawful to park or to keep any truck of in excess of six thousand (6,000) pounds gross vehicle weight, at any place located within a residential district zone, except in a completely enclosed garage.
- E. Any property which does not comply with the provisions of Section 9.23, A., at the time of adoption of this ordinance, shall be given a period of sixty (60) days from the date of adoption of this ordinance to comply with all of the provisions of this section. Further, any property which does not comply with the provisions of Section 9.23, C., and 9.23, D., of this ordinance at the time of its adoption shall be given a period of six (6) months from the date of adoption of this ordinance to comply with all of the provisions of these sections.

SECTION 9.24 HILLSIDE DEVELOPMENT CONTROLS

- A. This section is designed to ensure, when development is proposed in those areas of the community which have physical characteristics limiting development (hillside slopes of 20 percent or greater), that said development shall occur in a manner harmonious with adjacent lands so as to minimize problems of drainage, erosion, earth movement, and other natural hazards.
- B. Areas of land on which development is physically restricted due to excessive hillside slopes shall be limited according to the following requirements:
 - 1. Development proposed on land areas identified on the Comprehensive Plan as "Developmentally Sensitive Areas", and any other areas which have slopes of 20 percent or greater, shall require approval before development may occur. In those areas which are identified in the Comprehensive Plan as "Developmentally Sensitive Areas" and containing slopes less than 20 percent, the requirements contained herein may be waived; if, after review of the proposed site plan by the engineer, it is determined that said development will not result in any significant hillside slippage or soil erosion.
 - 2. No excavation, removal, or placement of any soil, foundation placement, or construction of buildings or structures of any nature within the area identified as a Developmentally Sensitive Area in (1) above, may occur until plans and specifications for such work have been submitted in the form of a site plan as regulated by Section 9.19 of this ordinance. In addition to site plan requirements, the following shall also be submitted:

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

After consideration of the recommendations, the city's zoning administrator may authorize use of the site in accordance with the submitted plans.

4. If, after review of the plans required by this section of the ordinance, the city's zoning administrator, determines that said proposed plans will not minimize hillside slippage, the zoning administrator shall deny a permit for the development of said land.

SECTION 9.25 GARAGE SALES

- A. **PERMIT REQUIRED:** No garage sale may be conducted within the city without a permit having first been issued for such sale by the zoning administrator. Such permit shall set forth and restrict the time and location of such garage sale. No more than two (2) such permits may be issued to one residence and/or household during any calendar year. Such permits shall be limited in time to no more than the daylight hours of two (2) consecutive days.
- B. **DISPLAY OF SALE PROPERTY:** No property offered for sale or sold shall be displayed outside the permanent structures of the residence, including houses, garages, and carports, except such property as might normally be located in the lawn or yard (i.e., lawn furniture, swing sets, lawn mowers, etc.) or in the rear yard of the premises. Display in front yards, driveways, or elsewhere not specifically permitted above is prohibited.

- C. SIGNS: One (1) temporary sign of not more than four (4) square feet shall be permitted to be displayed on the property of the residence where a garage sale is being conducted. Such signs shall be displayed only during the times of the sales, as delineated on the permit. In no case shall the sign be placed on any property other than the property of the residence to which the permit has been issued, nor shall any sign be located closer than five (5) feet from the property line.
- D. GENERAL RETAIL SALES PROHIBITED: The conduct of general retail sales or commercial activities in residential areas is, except as otherwise expressly authorized under this ordinance, prohibited. Garage sales are permitted only insofar as they are conducted consistent with the limitations set forth herein.

SECTION 9.26 PHASED ZONING REGULATIONS

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

to an industrial zone. At the time of the zone change, the temporary R-1C(P) Zone is removed and the area is developed according to the regulations of the new zone, which is in conformance with the adopted comprehensive plan.

SECTION 9.27 LAND USED FOR AGRICULTURAL PURPOSES: Pursuant to KRS 100, any land which is used for agricultural purposes (exclusive of land and building used for residences) shall have no regulations, except:

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

SECTION 9.28 REGULATIONS CONCERNING TELEVISION AND RADIO STATIONS

- A. TELEVISION: Earth stations for the reception and/or transmittal of TV signals, programs, messages, etc., may be installed as accessory structures in any zone, in compliance with the following regulations:
 - 1. Such structures, including support equipment, shall not be permitted within any front yard or side yard (on each side of the lot) in any zone. Such structures may be permitted to extend into the minimum rear yard depth, as defined herein, in all zones, provided that such structures are set back from the rear lot line a minimum of ten (10) feet, and side yard clearances are maintained.
 - 2. Structures may be ground mounted or roof mounted, provided that maximum height limitations are maintained. If the structure is roof mounted, it shall be located in a manner so as to detract as little as possible from the architectural character of the building.
 - 3. Structures shall be constructed to withstand a wind load of eighty (80) miles per hour.
 - 4. Structures shall be grounded electrically and shall not cause to disturb, restrict, or impede the reception of equipment on adjoining properties.

- B. RADIO: Earth stations for the reception and/or transmittal of radio signals, programs, messages, etc., may be installed as accessory structures in any zone, in compliance with the following regulations:
1. Such structures, including tower, mast, antenna, guy wires, support equipment, etc., shall not be permitted within any front yard or side yard (on each side of the lot) in any zone. Such structures may be permitted to extend into the minimum rear yard depth, as defined herein, in all zones, provided that such structures are set back from the rear lot line a minimum of ten (10) feet, and side yard clearances are maintained.
 2. Such structures, including tower, mast, antenna, guy wires, support equipment, etc., shall not exceed seventy (70) feet in height, as measured from ground level to the highest point of the structure.
 3. Structures shall be constructed to withstand a wind load of eighty (80) miles per hour.
 4. Structures shall be grounded electrically and shall not cause to disturb, restrict, or impede the reception of equipment on adjoining properties.

SECTION 9.29 REGULATIONS OF SEXUALLY ORIENTED BUSINESSES

- A. The Fiscal Court of Kenton County, after consultation among the mayors, councils, commissioners and staffs of the municipalities and the county within the County, found that a substantial need exists to revise significantly the ordinances regarding sexually oriented businesses within Kenton County.
- B. The Fiscal Court, in association with Planning and Development Services of Kenton County and the Fiscal Court of adjacent Campbell County its cities in the Northern Kentucky Community, retained Duncan Associates to conduct a study of existing sexually oriented uses and related businesses in Kenton and Campbell Counties, which is part of a single, larger community.
- C. Duncan Associates assigned two nationally-known planners, Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP, to conduct that study
- D. Kelly and Cooper have completed that study, including the following elements:
1. Field study, involving visits to all identified existing sexually oriented businesses in Kenton and Campbell Counties;
 2. Meetings with stakeholder groups involved in these businesses;
 3. Consultation with the Kenton County, Campbell County Attorney, and the city attorneys for certain cities, and the community at large on this issue;

4. Consultation with the professional staff of Planning and Development Services of Kenton County on this issue;
 5. Review of studies and litigation concerning sexually oriented businesses in other communities;
 6. Investigation of regulatory approaches to massage therapy;
 7. Review of existing ordinances in Kenton and Campbell Counties;
 8. Review of similar ordinances in a number of communities outside the Commonwealth of Kentucky;
 9. Review of Kentucky statutes related to regulating sexually oriented businesses.
- E. Duncan Associates has summarized this work and presented recommendations to Planning and Development Services of Kenton County and Kenton and Campbell Counties and their cities in an August 2003 report entitled "Site Visit Analysis: Sexually Oriented and Related Businesses in Kenton and Campbell Counties" (hereinafter called simply the "Kelly and Cooper Study").
- F. That study has also been made available to the legislative bodies of Kenton and Campbell Counties for their consideration and use.
- G. That study has been accepted and used by the Fiscal Court of Kenton County in adopting the countywide licensing ordinance, Kenton County Ordinance No. 451.9, as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus in 2004.
- 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 Elsmere 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 Elsmere to balance the Constitutional rights of businesses that present sexually oriented entertainment with the city of Elsmere 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 Elsmere 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 Elsmere recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the city of Elsmere 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 Elsmere 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 Elsmere 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 Elsmere 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 Elsmere 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 Elsmere finds that the following principles are essential to effective zoning controls of sexually oriented businesses:
 - 1. Sexually oriented businesses should, to the maximum extent practicable, be separated from one another by a distance that is greater than a convenient walking distance, because experience elsewhere has shown that the location of such businesses near one another may increase the adverse secondary effects, particularly those related to crime, by a greater than arithmetic factor;
 - 2. Although there are currently several such businesses located near one another in Covington's downtown area, the Covington City Commission

- has determined that the City will not attempt to require these existing businesses be relocated;
3. Sexually oriented businesses have the greatest adverse effect on residential neighbourhoods and should thus be separated to the maximum extent practicable from residential neighbourhoods;
 4. Sexually oriented businesses are likely to attract criminal elements that prey on “soft targets,” including children, and it is thus important to separate sexually oriented businesses from schools, parks, recreation centers, and religious institutions, all of which are places where children are likely to congregate, often without parental protection;
 5. Also because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people and others who are vulnerable, are likely to walk in going about their day-to-day business. Thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented business;
 6. Experiences in other communities show that private booths, back rooms, “VIP” rooms and other small and private spaces in sexually oriented businesses create the opportunity for casual sexual activity and create logistical difficulties and risks of physical endangerment for police officers responsible for dealing with such activities. For that reason, it is essential that movies, performances and other activities at sexually oriented businesses should be permitted only in large rooms that are open and visible to management, other patrons and code and police officers who may visit the establishment during operating hours.
- X. FINDINGS: The facts and other matters set forth in the previous clauses that form the preamble to this ordinance are hereby adopted as findings of fact in support of the legislative action of the city of Elsmere in adopting this amendment to the Zoning Ordinance. Upon adoption of this zoning amendment, these shall be incorporated into the Zoning Code by reference as if fully set forth therein to the adopting Resolution.
- Y. DEFINITIONS:
1. CABARET OR THEATER, SEXUALLY ORIENTED – a building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to “adult entertainment,” “strippers,” “showgirls,” “exotic dancers,” “gentleman’s club,” “XXX” or similar terms, shall be considered evidence that an

establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.

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

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

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

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

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

12. ESCORT BUREAU, SEXUALLY ORIENTED – an escort bureau that operates in any of the following manners:
 - a. engages in fraudulent, misleading, or deceptive advertising that is designed to make the prospective client believe that acts of prostitution (as defined under Kentucky law) will be provided; or,

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

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

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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.

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

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

AB. PERMITTED ZONING DISTRICTS:

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

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

1. Zoning Permit and License Required
 - a. Permit and license required. Each sexually oriented business or service oriented escort bureau is required to obtain a Zoning Permit under the City of Covington's Zoning Code and License under the countywide licensing ordinance, Kenton County Ordinance No. 451.9 as amended, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus. However,

no license is required for a media store with some sexually oriented media.

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

AD. GENERAL STANDARDS:

1. General Standards related to sexually oriented businesses and service oriented escort bureaus.
 - a. Separation distances. No retail-only sexually oriented business (sexually oriented media store or sex shop) or service oriented escort bureau shall be located within 500 feet of any area within the zoning districts having the designation of "residential" as the district classification or within 500 feet of any parcel of land occupied by a school, religious institution, park, library, public recreation area, or day care center (considered "protected uses") in any other district.
 - b. Separation distances. No sexually oriented business offering on-premise entertainment (sexually oriented motion picture theatre, cabaret or theatre) shall be located within 1000 feet of any area within the zoning districts having the designation of "residential" as

- the district classification or within 1000 feet of any parcel of land occupied by a school, religious institution, park, library, public recreation area, or day care center in any other district.
- c. Separation distances. No sexually oriented business shall be located within 1,000 feet of any other sexually oriented business or service oriented escort bureau; this restriction shall require such a separation regardless of whether it is located within the city or within the county.
 - d. Single use. There shall be no more than one type of sexually oriented business or service oriented escort bureau at any one location.
 - e. Nonconformity. No legally established and permitted sexually oriented business or service oriented escort bureau shall become nonconforming through subsequent establishment of a school, religious institution, park, library, public recreation area, or day care center (protected uses); nor shall a Zoning Permit for a sexually oriented business or service oriented escort bureau be denied based on the filing of a Zoning Permit application for a protected use after the filing of such application for a sexually oriented business.
 - f. Measurement method. Where this section requires that one use be separated from another use, measurements shall be made in accordance with this subsection. For a use which is the only use or the principal use on a lot or parcel, the measurement shall be made from property line to property line from a point nearest to the use for which the measurement is being made. If the use is located in a multi-tenant building, then the distance shall be measured from the portion of the building of the leasehold or other space actually controlled or occupied that is nearest to the use for which the measurement is being made. Measurements between properties or spaces under this section shall be made by the shortest distance between the two properties and/or spaces.
2. Standards for Parking: An Off-Street Parking Plan shall be submitted as a part of the application for a Zoning Permit. All off-street parking shall be in accordance with Article XI with specific standards related as follows:
- a. A sexually oriented media store, sex shop or service oriented escort bureau: 5.5 spaces per 1,000 square feet of gross public floor area.
 - b. A sexually oriented cabaret or theatre: 1 parking space for each 100 square feet of floor area used for dancing or assembly, or 1 space for each 4 persons based on design capacity, whichever is greater, plus 1 space for each 2 employees on shift of largest employment.

- c. A sexually oriented motion picture theatre: 1 parking space for each 4 seats, based on a maximum seating capacity, plus 1 additional space for each 2 employees on shift of largest employment.
3. Standards for Exterior Lighting and Signage: An Exterior Lighting and Signage Plan shall be submitted with the application for a Zoning Permit. The required lighting shall be as follows:
- a. Exterior lighting of the entries and private parking areas shall be a minimum of 15 footcandles as measured 3 feet from the ground or paving.
 - b. For a business on a single lot or parcel, no lighting shall illuminate any property not in control of the business by more than 5 footcandles as measured at the nearest adjacent property.
 - c. All signage shall be in accordance with the Article XIV.

AE. INDIVIDUAL BUSINESS STANDARDS:

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

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

- b. Performance stage. All entertainment shall take place on stage elevated at least 24 inches above the surrounding floor area, with a minimum area of 100 square feet, and with a horizontal separation of at least 60 inches between the edge of the stage and the nearest space to which customers have access—the horizontal separation shall be physically enforced by a partial wall, rail, or other physical barrier, which may be located either on the stage (to keep the entertainers back from the edge) or on the floor (to keep the customers back from the stage);
- c. Lighting. The lighting level in the area occupied by customers shall be at least 15 footcandles as measured 3 feet from the floor.
- d. Seating. Seating shall consist of chairs or open booths; no couches, beds, or loose cushions or mattresses, or of any form shall be provided.

AF. ZONING ADMINISTRATOR REVIEW AND EXPIRATION OF ZONING PERMIT:

- 1. Determination of Completeness: Within 5 business days of submission of the sexually oriented land use permit application, the Zoning Administrator shall determine if the application is complete. If the application is incomplete, the Zoning Administrator shall return the application to the applicant with a letter or form specifying the items that are missing. The application shall not be further processed unless and until the applicant submits a complete application.
- 2. Review, Decision: If the Zoning Administrator determines that an application is complete, the Zoning Administrator shall review the application and, within 20 calendar days of submittal of the complete application, grant or deny the permit. If the permit is denied, the denial shall be made in writing, by letter or on a form, and shall specify the reasons why the application was denied, citing the specific provisions of this ordinance or other provisions of the City's ordinances that provide the basis for such denial. If the Zoning Administrator fails to act on a complete application within the 20-day period, the application is deemed denied. Upon denial or deemed denial, the applicant may appeal that denial to the Board of Adjustment.
- 3. The applicant may, at its option, pursue other or additional administrative remedies available under the zoning ordinance; by doing so, applicant shall be deemed to have waived any right to a decision within a particular time period and shall be subject to all of the terms, conditions and timelines applicable to such administrative remedies under the zoning ordinance.

4. Expiration of Zoning Permit: The issuance of the Zoning Permit shall be conditioned on the applicant obtaining and retaining a Kenton County Occupational License for the use represented by the Zoning Permit. If a no license has been granted within 6 months after the issuance of the Zoning Permit, then the Zoning Permit shall expire; provided, however, that the expiration date for the Zoning Permit shall be extended until 30 days after the end of any administrative or judicial appeal of the Zoning Permit.

AG. APPEAL PROCEDURES:

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

shall be taken within 30 calendar days after the final action of the Board of Adjustment. The Board of Adjustment shall be a party in any such appeal filed in the circuit court. All final actions which have not been appealed within 30 days shall not be subject to judicial review and shall become final.

- b. After the appeal is taken, the procedure shall be governed by the Rules of Civil Procedure. When an appeal has been filed, the Clerk of the Circuit Court shall issue a summons to all parties, including the Board of Adjustment in all cases, and shall cause it to be delivered for service as in any other law action.

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

SECTION 9.30 FLOOD PROTECTION DEVELOPMENT CONTROLS

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

1. STATUTORY AUTHORIZATION

The Legislature of the Commonwealth of Kentucky has in Kentucky Revised Statutes 151.230 delegated to local government units the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the legislative body of the City of Elsmere, Kentucky, hereby adopts the following floodplain management ordinance, as follows:

2. FINDINGS OF FACT

- a. The flood hazard areas of the City of Elsmere are subject to periodic inundation which result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all which adversely affect the public health, safety, and general welfare.
- b. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increased flood height and

velocity, and by the location in flood hazard areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damage.

3. STATEMENT OF PURPOSE

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

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

4. OBJECTIVES

The objectives of this ordinance are to:

- a. Protect human life and health;
- b. Minimize expenditure of public money for costly flood control projects;
- c. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. Minimize prolonged business interruptions;
- e. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines; streets and bridges located in areas of special flood hazard;
- f. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard or other flood-prone areas in such a manner as to minimize future flood blighted areas caused by flooding;

- g. Ensure that potential homebuyers are on notice that property is in a Special Flood Hazard Area; and,
- h. Ensure that those who occupy a Special Flood Hazard Area assume responsibility for their actions.

B. DEFINITIONS

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

1. A Zone - Special Flood Hazard Areas inundated by the 1% annual chance flood (100-year flood). Base flood elevations (BFEs) are not determined.
2. Accessory structure (Appurtenant structure) - A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and should be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.
3. Accessory use - A use which is incidental and subordinate to the principal use of the parcel of land on which it is located.
4. Addition (to an existing structure) - Any walled and roofed expansion to the perimeter or height of a structure.
5. AE zones - Special Flood Hazard Areas inundated by the 1% annual chance flood (100-year flood). Base flood elevations (BFEs) are determined.
6. AH zone - An area of 100-year shallow flooding where depths are between one and three feet (usually shallow ponding). Base flood elevations are determined.
7. AO zone - An area of 100-year shallow flooding where water depth is between one and three feet (usually sheet flow on sloping terrain). Flood depths are determined.
8. Appeal - A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or from the floodplain administrator's ruling on a request for a variance.

9. AR/A1 – A30, AR/AE, AR/AH, AR/AO, and AR/A zones - Special Flood Hazard Areas (SFHAs) that result from the de-certification of a previously accredited flood protection system that is in the process of being restored to provide a 100-year or greater level of flood protection. After restoration is complete these areas will still experience residual flooding from other flooding sources.
10. A99 zone - That part of the SFHA inundated by the 100-year flood which is to be protected from the 100-year flood by a Federal flood protection system under construction. No base flood elevations are determined.
11. Area of shallow flooding - A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) where the base flood depths range from one to three feet, there is no clearly defined channel, the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
12. Base flood - A flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.
13. Base Flood Elevation (BFE) - The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.
14. Basement - any area of a structure having its floor sub-grade (below ground level) on all sides.
15. Building - See definition for structure.
16. Community - A political entity having the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.
17. Community Rating System (CRS) - A program developed by the Federal Insurance Administration to provide incentives to those communities in the Regular Program to go beyond the minimum floodplain management requirements to develop extra measures for protection from flooding.
18. Community Flood Hazard Area (CFHA) - An area that has been determined by the Floodplain Administrator (or other delegated, designated, or qualified community official) from available technical studies, historical information, and other available and reliable sources, which may be subject to periodic inundation by floodwaters that can

adversely affect the public health, safety and general welfare. This includes areas downstream from dams.

19. Critical facility - Any property that, if flooded, would result in severe consequences to public health and safety or a facility which, if unusable or unreachable because of flooding, would seriously and adversely affect the health and safety of the public. Critical facilities include, but are not limited to: housing likely to contain occupants not sufficiently mobile to avoid injury or death unaided during a flood; schools, nursing homes, hospitals, police, fire and emergency response installations, vehicle and equipment storage facilities, emergency operations centers likely to be called upon before, during and after a flood, public and private utility facilities important to maintaining or restoring normal services before, during and after a flood, and those facilities or installations which produce, use or store volatile, flammable, explosive, toxic and/or water-reactive materials, hazardous materials or hazardous waste.
20. D zone - An area in which the flood hazard is undetermined.
21. Development - Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of equipment or materials.
22. Elevated structure – For insurance purposes, a non-basement structure built to have the lowest floor elevated above ground level by foundation walls, shear walls, posts, piers, pilings or columns.
23. Elevation Certificate - A statement certified by a registered professional engineer or surveyor on the FEMA-approved form in effect at the time of certification that verifies a structure's elevation and other related information to verify compliance with this ordinance.
24. Emergency Program - The initial phase under which a community participates in the NFIP, intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.
25. Enclosure - That portion of a structure below the lowest floor used solely for parking of vehicles, limited storage, or access to the structure.
26. Encroachment - The physical advance or infringement of uses, plant growth, fill, excavation, structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

27. Existing construction - Any structure for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as existing structures.
28. Existing Manufactured Home Park or Subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management ordinance adopted by a community.
29. Expansion to an existing Manufactured Home Park or Subdivision - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
30. Five-Hundred Year Flood - The flood that has a 0.2 percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate risk of flooding.
31. Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
 - d. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

32. Flood Boundary and Floodway Map (FBFM) -A map on which the Federal Emergency Management Agency (FEMA) has delineated the areas of flood hazards and the regulatory floodway.
33. Flood Hazard Boundary Map (FHBM) -A map on which the boundaries of the flood, mudslide (i.e. mudflow), and flood-related erosion areas having special hazards have been designated as Zones A, M, and/or E by the Federal Emergency Management Agency (FEMA).
34. Flood Insurance Rate Map (FIRM) - A map on which the Federal Emergency Management Agency (FEMA) has delineated special flood hazard areas and risk premium zones.
35. Flood Insurance Study - The report provided by the Federal Emergency Management Agency (FEMA) containing flood profiles, the Flood Insurance Rate Map (FIRM), and/or the Flood Boundary Floodway Map (FBFM), and the water surface elevation of the base flood.
36. Floodplain or flood-prone area - Any land area susceptible to being inundated by flood waters from any source.
37. Floodplain Administrator - The individual appointed by the community to administer and enforce the floodplain management ordinances.
38. Floodplain Management - The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management ordinances, and open space plans.
39. Floodplain Management Regulations - This ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control), and other applications of police power, which control development in flood-prone areas. This term describes federal, state and/or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
40. Floodproofing - Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.
41. Floodproofing Certificate - A certification by a registered professional engineer or architect, the FEMA form in effect at the time of certification

stating that a non-residential structure, together with attendant utilities and sanitary facilities is watertight to a specified design elevation with walls that are substantially impermeable to the passage of water and all structural components are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy and anticipated debris impact forces.

42. Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as the “regulatory floodway”.
43. Floodway fringe - That area of the floodplain on either side of the regulatory floodway.
44. Freeboard - A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood. Freeboard must be applied not just to the elevation of the lowest floor or floodproofing level, but also to the level of protection provided to all components of the structure, such as building utilities, HVAC components, etc.
45. Fraud and victimization - As related in Article 6, Appeals and Variance Procedures, of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City of Elsmere will consider the fact that every newly constructed structure adds to government responsibilities and remains a part of the community for fifty to one hundred years. Structures that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages may incur. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.
46. Functionally dependent use facility - A facility, structure, or other development, which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

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47. Governing body - The local governing unit, i.e. county or municipality that is empowered to adopt and implement ordinances to provide for the public health, safety and general welfare of its citizenry.
 48. Hazard potential - The possible adverse incremental consequences that result from the release of water or stored contents due to failure of a dam or misoperation of a dam or appurtenances. The hazard potential classification of a dam does not reflect in any way the current condition of a dam and its appurtenant structures (e.g. safety, structural integrity, flood routing capacity).
 49. Highest adjacent grade - The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
 50. Historic Structure - Any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
 - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
 51. Increased Cost of Compliance (ICC) – Increased cost of compliance coverage means under the standard flood insurance policy the cost to repair a substantially flood damaged building that exceeds the minimal repair cost and that is required to bring a substantially damaged building into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are floodproofing (nonresidential), relocation, elevation, demolition, or any combination thereof.

52. ICC coverage is available on residential and non-residential buildings (this category includes public or government buildings, such as schools, libraries, and municipal buildings) insured under the NFIP.
53. Letter of Map Change (LOMC) – An official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's include the following categories:
 - a. Letter of Map Amendment (LOMA) – A revision based on technical data showing that a property was inadvertently included in a designated SFHA. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.
 - b. Letter of Map Revision (LOMR) - A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features.
 - c. Letter of Map Revision – Based on Fill (LOMR-F) – A determination that a structure or parcel has been elevated by properly placed engineered fill above the BFE and is, therefore, excluded from the SFHA.
54. Levee - A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
55. Levee System - A flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.
56. Limited storage - An area used for storage and intended to be limited to incidental items which can withstand exposure to the elements and have low flood damage potential. Such an area must be of flood resistant material, void of utilities except for essential lighting, and cannot be temperature controlled.
57. Lowest adjacent grade – The lowest elevation of the sidewalk, patio, attached garage, deck support, basement entryway or grade immediately next to the structure and after the completion of construction.
58. Lowest Floor - The lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, structure access, or storage in an area other than a basement area is not considered a structure's lowest floor, provided that

such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

59. **Manufactured Home** - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected or attached to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. The term “manufactured home” does not include a “recreational vehicle” (see Recreational Vehicle).
60. **Manufactured home park or subdivision** - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
61. **Map** - The Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Federal Emergency Management Agency (FEMA).
62. **Map Panel Number** - The four-digit number on a flood map, followed by a letter suffix, assigned by FEMA. The first four digits represent the map panel. The letter suffix represents the number of times the map panel has been revised. (The letter “A” is not used by FEMA, the letter “B” is the first revision.)
63. **Market value** - The property value (as agreed between a willing buyer and seller), excluding the value of the land as established by what the local real estate market will bear. Market value of the structure can be established by independent certified appraisal; replacement cost depreciated by age of structure (Actual Cash Value) or adjusted assessed values.
64. **Mean Sea Level (MSL)** - The average height of the sea for all stages of the tide. For the purposes of the National Flood Insurance Program, the MSL is used as a reference for establishing various elevations within the floodplain as shown on the community’s FIRM. For purposes of this ordinance, the term is synonymous with either National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988.
65. **Mitigation** - Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the costs of disaster response and recovery.

66. Mudslide (i.e. mudflow) - Describes a condition where there is a river, flow, or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain. A mudslide (i.e. mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Floodplain Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.
67. Mudslide (i.e. mudflow) area management - The operation of and overall program of corrective and preventative measures for reducing mudslide (i.e. mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and floodplain management regulations.
68. Mudslide (i.e. mudflow) prone area - An area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.
69. National Flood Insurance Program (NFIP) - The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.
70. National Geodetic Vertical Datum (NGVD) - As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used as the vertical datum on the older FIRM's. Refer to FIRM legend panel for correct datum.)
71. New Construction - Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
72. New manufactured home park or subdivision - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.
73. Non-Residential – Structures that are not designed for human habitation, including but is not limited to: small business concerns, churches, schools, farm structures (including grain bins and silos), pool houses, clubhouses,

recreational structures, mercantile structures, agricultural and industrial structures, warehouses, and hotels or motels with normal room rentals for less than 6 months duration.

74. North American Vertical Datum (NAVD) – As corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used on the newer FIRM's and Digitally Referenced FIRM's (DFIRM's). (Refer to FIRM or DFIRM panel legend for correct datum.)
75. Obstruction - Includes but is not limited to any dam, wall, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, structure, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.
76. One-Hundred Year Flood (100-Year Flood) (see Base Flood) - The flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to inundation by the 100-year flood. Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood with the SFHA.
77. Participating Community - A community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.
78. Pre-FIRM Construction - New construction or substantial improvements for which start of construction occurred on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.
79. Post-FIRM Construction – New construction or substantial improvements for which start of construction occurred after December 31, 1974, or on or after the effective date of the initial FIRM of the community, whichever is later.
80. Probation – A FEMA imposed change in community's status resulting from violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

81. Program Deficiency - A defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management standards.
82. Public Safety and Nuisance - Anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.
83. Recreational Vehicle - A vehicle that is:
 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. Designed to be self-propelled or permanently towable to a light duty truck; and
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
84. Regular Program - The phase of a community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and flood elevations determined in the FIS.
85. Regulatory floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. See Base Flood.
86. Remedy a violation - The process by which a community brings a structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impact of non-compliance. Reduced impact may include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing state or federal financing exposure with regard to the structure or other development.
87. Repair - The reconstruction or renewal of any part of an existing structure.
88. Repetitive Loss - Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

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- 89. Repetitive Loss Property - Any insurable building for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling 10-year period, since 1978. At least two of the claims must be more than ten days apart but, within ten years of each other. A RL property may or may not be currently insured by the NFIP.
 - 90. Riverine - Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
 - 91. Section 1316 - That section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.
 - 92. Severe Repetitive Loss Structure - Any insured property that has met at least one of the following paid flood loss criteria since 1978, regardless of ownership:
 - a. Four or more separate claim payments of more than \$5,000 each (including building and contents payments); or
 - b. Two or more separate claim payments (building payments only) where the total of the payments exceeds the current market value of the property.

In either case, two of the claim payments must have occurred within ten years of each other. Multiple losses at the same location within ten days of each other are counted as one loss, with the payment amounts added together.
 - 93. Sheet flow area - see "Area of shallow flooding".
 - 94. Special flood hazard area (SFHA) - That portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zone A, AE, A1 – A30, AH, AO, or AR.
 - 95. Start of Construction (includes substantial improvement and other proposed new development) - The date a building permit is issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement is within 180 days

of the permit date. The actual start means the first placement of permanent construction of a structure (including manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the structure.

96. Structure - A walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.
97. Subdivision - Any division, for the purposes of sale, lease, or development, either on the installment plan or upon any and all other plans, terms and conditions, of any tract or parcel of land into two (2) or more lots or parcels.
98. Subrogation – A legal action brought by FEMA to recover insurance money paid out where all or part of the damage can be attributed to acts or omissions by a community or other third party.
99. Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
100. Substantial Improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during a 1-year period in which the cumulative percentage of improvements equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:
 - a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions, or

- b. Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

- 101. Substantially improved existing manufactured home parks or subdivisions - Repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equaling or exceeding 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

- 102. Suspension - Removal of a participating community from the NFIP for failure to enact and/or enforce floodplain management regulations required for participation in the NFIP.

- 103. Utilities – Include, but not limited to, electrical, heating, ventilation, plumbing, and air conditioning equipment that service the structure and the site.

- 104. Variance - Relief from some or all of the requirements of this ordinance.

- 105. Violation - Failure of a structure or other development to fully comply with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

- 106. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically.

- 107. Water surface elevation - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

- 108. Watershed - All the area within a geographic boundary from which water, sediments, dissolved materials, and other transportable materials drain or are carried by water to a common outlet, such as a point on a larger stream, lake, or underlying aquifer.

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

- 110. X (unshaded) and C zones - Areas determined to be outside the 500-year floodplain.
- 111. Zone - A geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

C. GENERAL PROVISIONS

1. LANDS TO WHICH THIS ORDINANCE APPLIES

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

2. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Kenton County, dated May 16, 2013, with the accompanying Flood Insurance Rate Maps (FIRMS), other supporting data and any subsequent amendments thereto, are hereby adopted by reference and declared to be a part of these regulations by the City of Elsmere, and for those land areas acquired by the City of Elsmere through annexation. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City Council by the Floodplain Administrator and are enacted by City Council pursuant to statutes governing land use management regulations. The FIS and/or FIRM are permanent records of the City of Elsmere and are on file and available for review by the public during regular business hours at PDS offices at 2332 Royal Drive, Fort Mitchell, Kentucky, 41091.

3. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be required in conformance with the provision of this ordinance prior to the commencement of any development activities in the special flood hazard areas (SFHA). See Section 9.30.D.2 for instructions and explanation.

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

4. COMPLIANCE

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

5. ABROGATION AND GREATER RESTRICTIONS

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

6. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- a. Considered minimum requirements;
- b. Liberally construed in favor of the governing body; and
- c. Deemed neither to limit nor repeal any other powers granted under state statutes.

7. WARNING AND DISCLAIMER OF LIABILITY

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

8. ENFORCEMENT, VIOLATION NOTICE AND PENALTIES

- a. Civil Offense: If, at any time, development occurs which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications, such development shall constitute a civil offense.
- b. Notice of Violation: If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications thereof, a duly authorized employee of the Floodplain Administrator shall issue a notice to the person responsible for the violation and/or the property owner, stating the facts of the offense or violation, the section of this ordinance and/or of the permit violated, when it occurred, how the violation is to be remedied to bring the development into conformity with this ordinance or with the approved permit, and within what period of time the remedy is to occur, which period of time shall be reasonable and shall be determined by the nature of the violation and whether or not it creates a nuisance or hazard. The remedy may include an order to stop work on the development. The notice shall also state that a citation may be forthcoming in the event that the requested remedies and corrective actions are not taken, which citation will request a civil monetary fine and shall state the maximum fine which could be imposed. See below.
- c. Notice of Citation: If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications thereof, a duly authorized employee of the Floodplain Administrator may issue a citation to the offender stating the violation, prior notices of violation issued, how the violation is to be remedied to bring the development into conformity with this ordinance or with the approved permit, and within what period of time the remedy is to occur, and what penalty or penalties are recommended. When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued by either carrying out the remedies and corrections set forth in the citation, paying the civil fine set forth in the citation or requesting a hearing before the governing body. If the person to

whom the citation is issued does not respond to the citation within seven (7) days, that person shall be deemed to have waived the right to a hearing and the determination that a violation occurred shall be considered final.

- d. Penalties: Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with granting of a variance or special exceptions, shall constitute a Class A misdemeanor offense. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 and/or imprisoned for not more than 12 months, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful action as is necessary to prevent or remedy any violation.

D. ADMINISTRATION

1. DESIGNATION OF LOCAL ADMINISTRATOR

The legislative body of the City of Elsmere hereby appoints the Zoning Administrator to administer, implement, and enforce the provisions of this ordinance by granting or denying development permits in accordance with its provisions, and is herein referred to as the Floodplain Administrator.

2. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be obtained before any construction or other development begins within any special flood hazard area established in Section 9.30.C.2. Application for a Development Permit shall be made on forms furnished by Floodplain Administrator prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Endorsement of floodplain administrator is required before a state floodplain construction permit can be processed. Specifically, the following information is required.

a. Application Stage

- (1) Proposed elevation in relation to Mean Sea Level (MSL) of the proposed lowest floor (including basement) of all

- structures in Zone A and elevation of highest adjacent grade;
or
- (2) Proposed elevation in relation to Mean Sea Level to which any non-residential structure will be flood-proofed;
- (3) All appropriate certifications from a registered professional engineer or architect that the non-residential flood-proofed structure will meet the flood-proofing criteria in Section 9.30.E.2.b and Section 9.30.E.4.b;
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

b. Construction Stage

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

When flood proofing is utilized for a particular structure, said certification shall be prepared by or under the direct supervision of a certified professional engineer or architect. Any continued work undertaken prior to the submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood proofing elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

3. DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

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

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

- a. Permit Review: Review all development permits to ensure that:
 - (1) Permit requirements of this ordinance have been satisfied;
 - (2) All other required state and federal permits have been obtained: review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334.;
 - (3) Flood damages will be reduced in the best possible manner;
 - (4) The proposed development does not adversely affect the carrying capacity of affected watercourses. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.
- b. Review and Use of Any Other Base Flood Data. When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer the provisions of Article 5. Any such information shall be submitted to the legislative body for adoption.
- c. Notification of Other Agencies:
 - (1) Notify adjacent communities, the Kentucky Division of Water, and any other federal and/or state agencies with statutory or regulatory authority prior to any alteration or relocation of the watercourse, and
 - (2) Submit evidence of such notification to the Federal Emergency Management Agency (FEMA); and
 - (3) Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.
- d. Documentation of Floodplain Development. Obtain and maintain for public inspection and make available as needed the following:

- (1) Certification required by Section 9.30.E.2.a (lowest floor elevations) as shown on an accurately completed and certified Elevation Certificate. Verify and record the actual elevation (in relation to Mean Sea Level) of the lowest floor (including basement) of all new and substantially improved structures, in accordance with Section 9.30.D.2.b;
 - (2) Certification required by Section 9.30.E.2.b (elevation or floodproofing of nonresidential structures) as shown on an accurately completed and certified FEMA floodproofing certificate. Verify and record the actual elevation (in relation to Mean Sea Level) to which the new and substantially improved structures have been flood-proofed, in accordance with Section 9.30.D.2.a;
 - (3) Certification required by Section 9.30.E.2.c (elevated structures),
 - (4) Certification of elevation required by Section 9.30.E.5.a (subdivision standards),
 - (5) Certification required by Section 9.30.E.2.e (floodway encroachments),
 - (6) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;
 - (7) Review certified plans and specifications for compliance; and
 - (8) Remedial Action. Take action to remedy violations of this ordinance as specified in Section 9.30.C.8.
- e. Map Determinations. Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas, for example, where there appears to be a conflict between a mapped boundary and actual field conditions.
- (1) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 9.30.F.3.a;
 - (2) When base flood elevation data and floodway data have not been provided in accordance with Section 9.30.C.2, then the Floodplain Administrator shall obtain, review, and reasonable utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of Section 9.30.E;

- (3) When flood-proofing is utilized for a particular structure, the Floodplain Administrator shall obtain certification from a registered professional engineer or architect, in accordance with Section 9.30.E.2.b a floodproofing certificate;
- (4) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.

f. Right of Entry

- (1) Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the floodplain administrator has reasonable cause to believe that there exists in any structure or upon any premises any condition or ordinance violation which makes such building, structure or premises unsafe, dangerous or hazardous, the floodplain administrator may enter such building, structure or premises at all reasonable times to inspect the same or perform any duty imposed upon the floodplain administrator by this ordinance.
- (2) If such structure or premises are occupied, the floodplain administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of such request entry.
- (3) If entry is refused, the floodplain administrator shall have recourse to every remedy provided by law to secure entry.
- (4) When the floodplain administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the floodplain administrator for the purpose of inspection and examination pursuant to this ordinance.

g. Stop Work Orders

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

performing the work, and shall state the conditions under which work may be resumed.

h. Revocation of Permits

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

i. Liability

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

j. Expiration of Floodplain Construction Permit

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

E. PROVISIONS FOR FLOOD HAZARD REDUCTION

1. GENERAL CONSTRUCTION STANDARDS

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

- a. All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- c. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- d. New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- e. Electrical, heating, ventilation, plumbing, air condition equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and if
- f. Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.
- g. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- h. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- i. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- j. Any alteration, repair, reconstruction, or improvements to a structure, which is not in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance;

- k. Any alteration, repair, reconstruction, or improvements to a structure, which is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.

2. SPECIFIC STANDARDS

In all special flood hazard areas where base flood elevation data have been provided, as set forth in Section 9.30.C.2, the following provisions are required:

- a. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured home) shall have the lowest floor, including basement, mechanical equipment, and ductwork elevated no lower than 2 feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of hydrostatic flood forces on walls shall be provided in accordance with standards of Section 9.30.E.2.c.
 - (1) In an AO zone, the lowest floor shall be elevated above the highest adjacent grade to a height equal to or higher than the depth number specified in feet on the FIRM, or elevated at least two feet above the highest adjacent grade if no depth number is specified.
 - (2) In an A zone, where no technical data has been produced by the Federal Emergency Management Agency, the Floodplain Administrator will determine the method by which base flood elevations are determined. Methods include, but are not limited to, detailed hydrologic and hydraulic analyses, use of existing data available from other sources, approximate methods, use of historical data, best supportable and reasonable judgement in the event no data can be produced. The lowest floor shall be elevated no lower than 2 feet above such base flood elevation. Title 401 KAR (Kentucky Administrative Regulations) Chapter 4, Regulation 060, Section 5(5)a, states as a part of the technical requirements for a State Floodplain Permit: The applicant shall provide cross sections for determining floodway boundaries (and thereby Base Flood Elevations) at any proposed construction site where FEMA maps are not available. All cross sections shall be referenced to mean sea level and shall have vertical error tolerances of no more than + five-tenths (0.5) foot. Cross sections elevations shall be taken at those points which represent significant breaks in slope and

at points where hydraulic characteristics of the base floodplain change. Each cross section shall extend across the entire base floodplain and shall be in the number and at the locations specified by the cabinet. If necessary to ensure that significant flood damage will not occur, the cabinet may require additional cross sections or specific site elevations which extend beyond those needed for making routine regulatory floodway boundary calculations.

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

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

- b. Non-residential Construction. New construction and substantial improvement of any commercial, industrial, or non-residential structure (including manufactured homes used for non-residential purposes) shall be elevated to conform with Section 9.30.E.2.a or together with attendant utility and sanitary facilities:

- (1) Be floodproofed to an elevation 2 feet above the level of the base flood elevation so that the structure is watertight with walls substantially impermeable to the passage of water;
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy and debris;
- (3) A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification along with the design and operational maintenance plans shall be provided to the Floodplain Administrator.
- (4) Manufactured homes shall meet the standards in Section 9.30.E.2.d.
- (5) All new construction and substantial improvement with fully enclosed areas below the lowest floor (including basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be constructed of flood resistant materials to an elevation 2 feet above the base flood elevation, and, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater.

Openings for meeting this requirement must meet or exceed the standards of Section 9.30.E.2.c.

- c. **Elevated Structures.** New construction and substantial improvements of elevated structures on columns, posts, or pilings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
- (1) Openings for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - (i) Provide a minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above foundation interior grade (which must be equal to in elevation or higher than the exterior foundation grade); and
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - (2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and
 - (3) The interior portion of such enclosed areas shall not be finished or partitioned into separate rooms.
- d. **Standards for Manufactured Homes and Recreational Vehicles.**
- (1) All new and substantially improved manufactured homes placed on sites located within A, A1-30, AO, AH, and AE on the community's Flood Insurance Rate Map (FIRM) must meet all the requirements for new construction, including elevation and anchoring. Locations include:
 - i) On individual lots or parcels,
 - ii) In expansions to existing manufactured home parks or subdivisions,
 - iii) In new manufactured home parks or subdivisions or

- iv) In substantially improved manufactured home parks or subdivisions,
- v) Outside of a manufactured home park or subdivision, and
- vi) In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood,

All such manufactured homes must be:

- (i) Elevated on a permanent foundation, and
- (ii) Have its lowest floor elevated no lower than 2 feet above the level of the base flood elevation, and
- (iii) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(2) Except manufactured homes that have incurred substantial damage as a result of a flood, all manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

- (i) The manufactured home is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement, so that either the:
 - o The lowest floor of the manufactured home is elevated no lower than 2 feet above the base flood elevation, or
 - o The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above the highest adjacent grade.

(3) All recreational vehicles placed on sites located within A, A1-30, AO, AH, and AE on the community's Flood Insurance Rate Map (FIRM) must either:

- (i) Be on the site for fewer than 180 consecutive days,
- (ii) Be fully licensed and ready for highway use, or
- (iii) Meet the permit requirements for new construction of this ordinance, including anchoring and elevation requirements for "manufactured homes".

A recreational vehicle is ready for highway use if it is licensed and insured in accordance with the State of Kentucky motor vehicle regulations, is on its wheels or jacking system, is attached to the site only by quick

disconnect type utilities and security devices, and has no permanently attached additions.

- e. Floodways. Located within areas of special flood hazard established in Section 9.30.C.2, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and has erosion potential, the following provisions shall apply:
 - (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in the base flood elevation levels during occurrence of base flood discharge;
 - (2) If Section 9.30.E.2.e is satisfied, all new construction and substantial improvements and other proposed new development shall comply with all applicable flood hazard reduction provisions of Section 9.30.E.

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

Located within the special flood hazard areas established in Section 9.30.C.2, where streams exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply:

- a. No encroachments, including fill material or structures shall be located within special flood hazard areas, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.
- b. New construction and substantial improvements of structures shall be elevated or flood proofed to elevations established in accordance with Section 9.30.C.2.

4. STANDARDS FOR SHALLOW FLOODING ZONES

Located within the special flood hazard areas established in Section 9.30.E.C.2, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet (1 – 3’), where a clearly defined channel does not exist and the water path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- a. All new construction and substantial improvements of residential structures shall:
 - (1) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
- b. All new construction and substantial improvements of non-residential structures shall:
 - (1) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
 - (2) Together with attendant utility and sanitary facilities be completely floodproofed either to the base flood elevation or above or, in Zone AO, to or above the specified flood depth plus a minimum of one foot so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as stated in Section 9.30.E.2.b.

5. STANDARDS FOR SUBDIVISION PROPOSALS

- a. All subdivision proposals shall identify the flood hazard area and the elevation of the base flood and be consistent with the need to minimize flood damage;

- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,
- d. In areas where base flood elevation and floodway data is not available, base flood elevation and floodway data for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall be provided.
- e. All subdivision plans will include the elevation of proposed structure(s) and lowest adjacent grade. If the site is filled above the base flood elevation, the lowest floor and lowest adjacent grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

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

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

- a. Must be non-habitable;
- b. Must be anchored to resist floatation and lateral movement;
- c. Must be provided with flood openings in accordance with the standards of Section 9.30.E.2.c;
- d. Must be built of flood resistant materials to 2 feet above the base flood elevation;
- e. Must elevate utilities 2 feet above the base flood elevation;
- f. Can only be used for storage or parking; and
- g. Must not be modified for a different use after permitting.

7. CRITICAL FACILITIES

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

F. APPEALS AND VARIANCE PROCEDURES

1. Nature Of Variances

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

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

2. Designation of Variance and Appeal Board

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

3. Duties of Board of Adjustment

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

4. Variance Procedures

In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and the:

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

5. Conditions for Variances

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

- a. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- b. Variances shall only be issued upon a determination that the variance is the "minimum necessary" to afford relief considering the flood hazard. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this

means the legislative body need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the legislative body believes will both provide relief and preserve the integrity of the local ordinance.

- c. Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) A determination that the granting of a variance will not result in increased flood height, additional threats to public safety, cause extraordinary public expense, create nuisance (as defined in the definition section under "Public safety and nuisance"), cause fraud or victimization of the public (as defined in the definition section) or conflict with existing local laws or ordinances.
- d. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor being situated below the base flood elevation.
- e. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request
- f. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of Article 6 (4) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

6. Variance Notification

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

- a. The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
- b. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the

Floodplain Administrator in the Office of the Kenton County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

- c. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance or denial, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

7. Historic Structures

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

G. SEVERABILITY

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

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

This ordinance was adopted at a public meeting of the legislative body of the City of Elsmere on March 7, 2013.