

## **NOTICE**

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## **CHAPTER 1133 DEFINITIONS**

***ACCESSORY STRUCTURE*** - An accessory structure is any structure detached from the principal building on the same lot and serving a purpose incidental and subordinate to the principal building or use.

***ACCESSORY USE*** - An accessory use is any use of land or of a building or portion thereof serving a purpose incidental and subordinate to the principal use of the land or building and located on the same lot with such principle use.

***ACRE*** - An acre is a measure of land area. One acre shall equal forty-three thousand, five hundred sixty (43,560) square feet.

***ADJACENT PROPERTY*** - An adjacent property is a lot or parcel which is entirely or partially within two hundred (200) feet of any property line of another lot or parcel of land, whether or not the properties are contiguous.

***ADJOIN*** - To adjoin is to physically touch or border upon; or to share a common property line.

***ADULT ARCADE*** - Means any place to which the public is permitted or invited, wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at one time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting "specified sexual activities" or "specified anatomical areas."

***ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE*** - means a commercial establishment which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

- (1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, compact discs in any format (e.g., cd-rom, cd-r, cd-rw), digital video discs in any format (e.g., dvd), or other visual representations in any tangible medium, which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas;"  
or

- (2) instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas," and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

Adult novelty store shall not include any establishment which, as a substantial portion of its business, offers for sale or rental to persons employed in the medical, legal or educational professions anatomical models, including representations of human genital organs or female breasts, or other models, displays, and exhibits produced and marketed primarily for the use in the practice of medicine or law or for use by an educational institution.

***ADULT CABARET*** - A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (1) persons who appear semi-nude; or
- (2) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;"  
or
- (3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas."

***ADULT MODEL STUDIO*** - Any establishment open to the public where a person who appears "nude" or "semi-nude" or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by other persons who pay money or any form of consideration. Adult model studio shall also include any establishment which offers for sale or for viewing any apparel or other items which are displayed by models who appear in person in a state of "nudity" or "semi-nudity". Adult model studio shall not include:

- (1) A proprietary school which has a valid certificate of registration issued by the State of Ohio, junior college

or university supported entirely or in part by public taxation;

- (2) A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or
- (3) A structure which has no sign visible from the exterior of the structure and no other advertising that indicates a model is available for viewing; where in order to participate in a class a student must enroll at least three days in advance of the class; and where no more than one nude or semi-nude model is on the premises at any one time.

***ADULT MOTEL*** - A hotel, motel, or similar commercial establishment, which:

- (1) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of same by a sign(s) visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, ads in newspapers, magazines, leaflets or pamphlets, or ads on radio or television; or
- (2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

***ADULT MOTION PICTURE THEATER*** - A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, digital video discs, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

***ADULT THEATER*** - A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear "nude" or "semi-nude," or

live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

**ARBOR** - An arbor is a structure characterized by a lattice work enclosure, on top or sides, which may be attached to or be detached from a principal structure.

**ARTERIAL STREET** - An arterial street is any officially designated street with signals at important intersections and stop signs on the side streets, and which collects and distributes traffic to and from other streets. Major or minor arterial streets are designated on the Official Thoroughfare Plan of the City of Kettering.

**AUTOMOBILE REPAIR** - Automobile repair is of three kinds, namely:

A. **MINOR REPAIR**

"Minor repair" means installation of minor parts, replacement of parts, reconditioning of engines and motor service to passenger cars and trucks not exceeding one and one-half (1-1/2) tons capacity.

B. **MAJOR REPAIR**

"Major repair" means general servicing of passenger cars and trucks (excluding items listed under "Minor Repair"), incidental body, frame, fender or painting work and rebuilding of engines.

C. **BODY WORK**

"Body work" means exterior repair of motor vehicles or trailers; collision service, including body, frame or fender straightening or repair; overall painting or paint shop; and vehicle steam cleaning.

**AUTOMOBILE SERVICE STATION** - An automobile service station is any building, or land area used or intended to be used for the retail dispensing or sales of vehicular fuels; and including as an accessory use the sale and installation of lubricants, tires, batteries and similar accessories.

**BALCONY** - A balcony is a platform, enclosed by a parapet or railing, projecting from the upper portion of a wall of a building.

**BASEMENT** - A basement is a story that is all or partly underground but having at least one-half (1/2) of its story height below the average level of the adjoining ground. A basement, when designed for habitable use, shall be counted as a story for purposes of height measurement and as a half-story for purposes of side yard determination.

**BLOCK** - A block is a unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any barrier to the continuity to development.

***BUFFERYARD*** - A bufferyard is a unit of land, together with a specified type and amount of planting thereon, and any structures which may be required to eliminate or to minimize conflicts between land uses.

***BUILDING*** - A building is any structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of person, animals or property.

***BUILDING HEIGHT*** - Building height is the vertical distance from the average ground elevation at the front wall of the building to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip or gambrel roofs.

***CALIPER*** - Caliper is the diameter of a tree trunk, measured six (6) inches up the trunk from ground level.

***CAMPUS*** - Campus is a site under common ownership containing the grounds and buildings of a single institution with multiple principal structures.

***CANDLEPOWER*** - Candlepower is the amount of light that will illuminate a surface one (1) foot distant from a light source to an intensity of one (1) footcandle. Maximum (peak) candlepower is the largest amount of candlepower emitted by any lamp, light source, or luminary.

***CARPORT*** - A carport is a roofed shelter, open on at least two (2) sides, used as a shelter for operable automobiles. A carport may be free-standing or may be formed by extension of a roof from the side or rear of another building.

***CELLAR*** - A cellar is a basement used only for mechanical equipment accessory to the principal structure and not for habitable use. A cellar shall not be counted as a story in the computation of the intensity of land use development.

***CHILD DAY-CARE CENTER*** - See Section 1151.08 - Day Care Center.

***CITY COUNCIL*** - City Council is the legislative body of the City of Kettering, Ohio.

***CLEARING*** - Clearing means the grubbing, scalping, removal and disposal of vegetation and debris from a site, and the conditions resulting therefrom.

***CLINIC*** - A clinic is a place for the care, diagnosis, or treatment of persons who are ailing, sick, injured, infirm, or in the need of medical attention, but are not provided room, board or kept overnight on the premises.

***COLLECTOR STREET*** - A collector street is any officially designated street which collects traffic from residential streets or commercial or industrial properties and which

connects with arterial streets or thoroughfares. Collector streets are designated on the Official Thoroughfare Plan of the City of Kettering.

**COMMERCIAL COLLECTOR** - A commercial collector is a collector street that adjoins a commercial or industrial property.

**COMMERCIAL VEHICLE** - A commercial vehicle is any vehicle licensable by the State of Ohio as a commercial vehicle.

**CUL-DE-SAC** - A cul-de-sac is the turnaround at the end of a dead-end street; or a street with only a single means of ingress and egress and having a turnaround.

**CUSTOMER ENTRANCE** - A customer entrance is any building entrance which is designed for use by customers or is used by customers at a place where business is transacted or negotiated.

**DAYTIME** - Daytime for this Zoning Ordinance shall be considered to be between the hours of 7:00 a.m. and 10:00 p.m.

**DECIBEL** - The decibel (dBA) is a unit for expressing the relative intensity of sounds on a logarithmic scale.

**DECIDUOUS** - Deciduous means plant material which normally sheds its foliage at the end of the growing season.

**DECK** - A deck is an open platform attached to some portion of a building.

**DENSITY** - Density is the measure of residential land use intensity which is expressed as the maximum number of dwelling units permitted per acre.

**DETACHED** - Detached means not connected to any other structure in any manner by walls, roof or other structural supports; free standing.

**DEVELOPER** - A developer is any person or entity who commences proceedings under this ordinance to bring about development or redevelopment on land.

**DEVELOPMENT** - Development is the improvement of land for uses authorized under this Zoning Code.

**DRIVEWAY** - A driveway is a roadway, not dedicated to public ownership, to provide access for vehicles to a parking space, garage, dwelling or other structure.

**DWELLING** - A dwelling is a structure or portion thereof designed or used exclusively as the residence or sleeping place of one (1) or more persons, but not including a tent, cabin, trailer, trailer coach or anything not permanently attached to land.

A. ***EFFICIENCY DWELLING***

An efficiency dwelling is a dwelling unit in a multi-family structure consisting of not more than one (1) habitable room, together with kitchen or kitchenette and sanitary facilities.

B. ***MULTI-FAMILY DWELLING***

A multi-family dwelling is a structure or portion thereof designed for or used by three (3) or more families or housekeeping units, each housekeeping unit having its separate living, cooking, sleeping, bathing and toilet facilities separated from the facilities of other housekeeping units by a wall or lockable door.

C. ***SINGLE-FAMILY DWELLING***

A single-family dwelling is a structure designed for or used exclusively for residence purposes by one (1) family or housekeeping unit.

D. ***TWO-FAMILY DWELLING***

A two-family dwelling is a structure designed for or used exclusively by two (2) families or housekeeping units, each housekeeping unit having its separate living, working, sleeping, bathing and toilet facilities separated from the facilities of other housekeeping units by a wall or lockable door.

***EDUCATIONAL INSTITUTION*** - An educational institution is any non commercial use of a structure or portion thereof which is designed or used as a preparatory, elementary, junior high or high school, college, university or continuing education facility.

***ESCORT*** - A person who, for any form of consideration, and for another person, agrees or offers: (1) to privately model in a state of “nudity” or “semi-nudity; or (2) to privately perform a striptease.

***ESCORT AGENCY*** - A person or business association that for any form of consideration furnishes, offers to furnish, or advertises to furnish, escorts.

***ESSENTIAL SERVICES*** - Essential services are the erection, construction, alteration, or maintenance of underground, surface or overhead electrical, gas, steam, water and sewerage transmission and collection systems and the equipment and appurtenances necessary for such systems to furnish an adequate level of public service; also, the equipment, structures and activities necessary for the provision of police, fire, and paramedic services.

***EVERGREEN*** - An evergreen is living plant material that has foliage that remains green throughout the year. Cactus plants are not meant to be included in this definition of evergreen.

***FAMILY*** - A family is one or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants, or a number of persons, not exceeding four, living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage. (Village of Belle Terre v. Borras, 416 U.S. 1, 39 L.Ed.2d 797 (1974).)

***FAMILY CARE HOME*** - See Section 1151.05(B)(1) - Family Care Homes.

***FENCE*** - A fence is a barrier constructed of non-living materials in order to enclose, screen or secure areas of land.

***FINANCIAL ESTABLISHMENT*** - A financial establishment is a bank, savings and loan company, credit union, stock brokerage office, small loan company or mortgage company.

***FINISHED MASONRY FENCE*** - A finished masonry fence is a solid wall which is constructed with the same finished masonry material on any given side, and which is constructed on both sides with a finished material. Specifications as to what constitutes finished masonry material is provided in the City of Kettering Environmental Standards Manual.

***FOOTCANDLE*** - A footcandle is a unit of illumination produced on a surface, all points of which are one (1) foot from a uniform point source of one (1) candle.

***GARAGE, PRIVATE RESIDENTIAL*** - A private residential garage is a structure which is accessory, attached or detached, to a residential structure and which is used for the parking and storage of vehicles owned and operated by the residents thereof, and which is not a separate commercial enterprise available to the general public.

***GATE*** - A gate is a portion of a wall or fence used for gaining access.

***GLARE*** - Glare is the brightness of a light source which causes eye discomfort.

***GROUP CARE HOMES*** - See Section 1151.05(B)(2) - Group Care Homes.

***HEDGE*** - A hedge is a boundary formed by a dense row of shrubs.

***HIGH RISE APARTMENT*** - See section 1151.04 - High Rise Apartment Development.

***HOME OCCUPATION*** - A home occupation is a lawful activity carried out for gain by a resident conducted as an accessory use in the resident's dwelling.

***HOSPITAL*** - A hospital is a facility providing medical or surgical services for sick or injured persons primarily on an in-patient basis, and including ancillary services for

out-patient and emergency treatment, training, research, administration, and services to patients, employees, and visitors.

**HOUSEHOLD PET** - A household pet is any dog, cat or other specie of animal, fish, fowl, amphibian or reptile which species is commonly deemed in this city to be tame and domesticated or which is commonly accepted in this city as a pet kept inside a residence.

**IMPERVIOUS SURFACE** - An impervious surface is any material which reduces or prevents absorption of storm water into land.

**IMPERVIOUS SURFACE RATIO** - The impervious surface ratio is the maximum proportion of a site that may be occupied by surfaces that do not absorb water.

**INDUSTRY** - Industry is storage, repair, manufacture, preparation or treatment of any article, substance or commodity.

**KENNEL** - A kennel is an establishment in which more than five (5) household pets over four (4) months in age, in any combination of the following types, are housed, groomed, bred, boarded, trained or sold.

- A. Dogs
- B. Cats
- C. Rabbits; or
- D. Other household pets commonly kept outdoors or in an accessory structure. (Ord. 3508-91, passed 8/27/91)

**LANDSCAPING** - Landscaping is the alteration and arrangement of lawns, trees, plants, decorative features of land, walks, patios and street furniture on a tract of land.

**LIGHT CUTOFF** - A light cutoff is the point at which all light rays emitted by a lamp, light source, or luminary are completely eliminated (cutoff) at a specific angle above the ground.

**LIGHT CUTOFF ANGLE** - A cutoff angle is the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from any light source, above which no light is emitted.

**LOT** - A lot is a designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed or built upon as a unit.

A. **LOT AREA**

The lot area is the total land area, measured in square feet or acres, contained within the lot lines.

B. **LOT DEPTH**

The lot depth is the mean horizontal distance between the front and the rear lot lines.

C. ***LOT FRONTAGE***

The lot frontage is the distance between the side lot lines, measured by a line drawn parallel with the front lot line at the point of required minimum front yard depth, or "setback".

D. ***LOT WIDTH***

The lot width is measured in the same way as lot frontage.

E. ***LOT, CORNER***

A corner lot is a lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.

F. ***LOT, DOUBLE FRONTAGE***

A double frontage lot is a lot having frontage on two (2) streets that do not have an intersection contiguous to the lot.

G. ***LOT, FLAG***

A flag lot is a lot not fronting on or abutting a public road and where access to a public road is by a long, narrow private driveway.

H. ***LOT, INTERIOR***

An interior lot is a lot other than a corner lot.

I. ***LOT OF RECORD, NONCONFORMING***

A nonconforming lot of record is any land use, lot of record, or sign legally established prior to the effective date of this ordinance or subsequent amendment to it which would not be permitted by, or is not in full compliance with, the regulations of this ordinance.

J. ***LOT LINES***

Lot lines are the property lines bounding a lot.

1. A front lot line is the line separating the lot from a street. In the case of a corner lot, the narrowest side fronting on a street shall be considered to be the front of the lot.
2. A side lot line is any lot line other than a front or rear lot line. A side lot line separating a lot from a street shall be a street side lot line. A side lot line separating a lot from another lot or lots shall be an interior side lot line.

3. A rear lot line is the lot line opposite and most distant from the front lot line.

**LOT-LINE HOUSE** - See Section 1151.03 - Lot-Line House.

**LUMINARY** - A luminary is a complete lighting unit consisting of a light source and its mechanical, electrical and decorative parts.

**MAXIMUM PERMITTED ILLUMINATION** - The maximum permitted illumination is the maximum illumination measured in footcandles at the interior bufferyard line at ground level in accordance with the standards of Section 1169.19 - Environmental Performance Standards.

**MULCHING** - Mulching is the application of dead plant or tree materials to the soil surface to conserve moisture, hold soil in place and to aid in the establishment of plant cover.

**NIGHTTIME** - Nighttime for this chapter shall be considered to be between the hours of 10:00 p.m. and 7:00 a.m.

**NONCONFORMING SIGNS** - See Section 1171.14(A) - Nonconforming Signs.

**NONCONFORMITIES** - See Section 1137.02 - Definitions.

**NOISE** - Noise is any sound that is undesirable because it interferes with speech and hearing, or is intense enough to damage hearing, or is otherwise annoying.

**NUDE, NUDITY, OR A STATE OF NUDITY** - The showing, representation, or depiction of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or of the female breast with less than a fully opaque covering of any part of the nipple, or of the covered male genitals in a discernibly turgid state.

**NURSE GRASS** - Nurse Grass is any annual grass seed which is fast growing and helps produce an immediate lawn area sufficient to prevent erosion, and which is free of noxious weeds and weed seeds.

**NURSING HOME** - A nursing home is a structure used for the reception and care of individuals who, by reason of illness or physical or mental impairment, require skilled nursing care and/or personal assistance (care) but excludes “personal services” as defined in this chapter. Nursing homes may also be referred to as “nursing and personal care facilities”.

**OPEN SPACE** - Open space is land within or related to a development, not individually owned by occupants of the development or dedicated for public use, which is designed and intended for the common use or enjoyment of the occupants of the development.

**PARCEL** - A parcel is a lot or tract of land.

**PARKING AREA, OFF-STREET** - An off-street parking area is any open area other than a street or public right-of-way used for the temporary storage of automobiles and available to the public whether for a fee, free or as an accommodation for clients or customers.

**PARKING SPACE** - A parking space is a permanently surfaced area for the temporary parking of a motor vehicle.

**PASSENGER VEHICLE** - A passenger vehicle is any motor vehicle designed and used for carrying not more than nine (9) persons.

**PATIO (TERRACE)** - A patio (terrace) is an unenclosed or partially enclosed area permanently surfaced or constructed, the use of which is incidental to that of the main use of the land and which is located on the same lot with the main building or use.

**PERFORMANCE STANDARDS** - See Environmental Performance Standards at the end of Chapter 1177.

**PERSON** - A person is any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Ohio, the federal government, or any combination thereof.

**PERSONAL SERVICE** - Excluding offices of physicians and dentists, establishments engaged in providing services involving the care of a person or involving the care of personal goods or apparel. Such establishments include: laundries; clothing rental establishments; nail care establishments; barber shops; hair removal establishments; hair care and styling establishments; electrolysis establishments; health clubs; establishments providing facials or body treatments or make-up application; steam baths; body massage establishments; beauty shops; shoe, leather and handbag repair establishments; dry cleaners; tailors; toning or tanning establishments; and hair or body salons.

**PLANNED UNIT COMMERCIAL DEVELOPMENT** - See Section 1153.02(A) - Planned Unit Commercial Development.

**PLANNED UNIT RESIDENTIAL DEVELOPMENT** - See Section 1153.01(B) - Planned Unit Residential Development.

**PORCH** - A porch is a roofed open area attached to or part of a building and with direct access to or from, a building. A porch may be screened. A porch becomes a room when the space enclosed is heated, air conditioned or if glazed.

**PRINCIPAL USE** - A principal use is the primary or predominant use of any land or improvement on it.

**PRIVATE STABLE** - A private stable is any building incidental to an existing residential principal use, which building shelters a horse or pony used exclusively by the occupants of the premises.

**PROFESSIONAL SERVICE** - Services provided by and offices of architects, engineers, accountants, insurance agencies, attorneys, urban and city planners, real estate brokers and agents, advertising agencies, management offices; plus the offices of physicians, surgeons and dentists.

**RECREATIONAL VEHICLE** - A recreational vehicle is any vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and which is primarily designed as temporary living accommodation for recreational, camping and travel use including, but not limited to camping trailers, converted vans, self-propelled motor homes, tent trailers, travel trailers or truck campers.

**RESIDENTIAL COLLECTOR** - A residential collector is a collector street that adjoins residential property.

**RESIDENTIAL STREET** - A residential street is any street which is not designated as a collector, arterial or thoroughfare on the Official Thoroughfare Plan of the City of Kettering, and which provides access to residential properties.

**RESTAURANT** - A restaurant is of three types:

- A. **"CAFETERIA, BUFFET AND DINING ROOM"** mean any structure which is maintained, advertised or held out to the public as a place where food is served in nondisposable containers for a consideration, to be consumed inside the structure.
- B. **"FAST-FOOD RESTAURANT"** is an establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises.
- C. **"DRIVE-IN RESTAURANT"** is any structure which is laid out, equipped maintained, advertised or help out to the public as a place where food or beverages are served for a consideration to customers in motor vehicles.

**RETAINING WALL** - A retaining wall is a structure constructed to hold back or support an earthen bank.

***RIGHT-OF-WAY*** - A right-of-way is a strip of land taken or dedicated for use as a public way. A right-of-way may be occupied by a road, pedestrian walkway, utility line, railroad line, canal or easement. The right-of-way width shall be as designated by the Official Thoroughfare Plan.

***SEMI-NUDE OR SEMI-NUDITY*** - The showing of the female breast below a horizontal line across the top of the areola, or the showing of the male or female buttocks or pubic area. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

***SETBACK*** - Setback is the distance between a property line and the closest foundation line of a building, or any projection thereof, excluding foundations of or projections by those parts or portions of buildings in compliance with Subsection C of Section 1151.14.

***SEXUAL ENCOUNTER ESTABLISHMENT*** - A business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities." The definition of sexual encounter establishment or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

***SEXUALLY ORIENTED BUSINESS*** - Means any of the following:

- (1) Adult arcade;
- (2) Adult bookstore;
- (3) Adult novelty store;
- (4) Adult video store;
- (5) Adult cabaret;
- (6) Adult model studio;
- (7) Adult motel;
- (8) Adult motion picture theater;
- (9) Adult theater;

- (10) Escort agency; or
- (11) Sexual encounter establishment.

**SHRUB** - A shrub is a woody plant that usually remains or is cut low and produces shoots or trunks from the base; it is not usually tree-like nor single-stemmed.

**SIGNS** - See Section 1171.03 - Classification of Signs.

**SITE** - A site is any lot or parcel of land or combination of contiguous lots or parcels of land.

**SMALL ANIMAL** - Small animal is any domesticated animal which is of a size to be housed in a residential structure.

**SOUND LEVEL (NOISE LEVEL)** - Sound level (noise level) is the weighted sound pressure level obtained by the use of a sound level meter having a standard frequency filter for the attenuating part of a sound spectrum.

**SOUND LEVEL METER (SLM)** - A sound level meter (SLM) is an instrument used for the measurement of noise and sound levels in a specified manner.

**SOURCE OF NOISE** - The source of noise is the activity, person, use or equipment producing a noise.

**SPECIFIED ANATOMICAL AREAS** – Means any the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, or female breast(s) below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES** – Means any the following:

- (1) Human genitals in a state of sexual stimulation or arousal; or
- (2) Acts, real or simulated, of human masturbation, sexual intercourse, sodomy, cunnilingus, or fellatio; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts; or

- (4) Excretory functions as part of or in connection with any activity set forth in (1), (2), or (3) above.

**STORY** - A story is that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and ceiling next above it and including those basements used for the principal uses.

**STREET** - A street is a vehicular way which: (1) is an existing state, county or municipal roadway; (2) is shown upon a plat approved pursuant to law; (3) is approved by other official action or (4) is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning commission with the power to review plats; and includes the land between the street lines, whether improved or unimproved.

**STRUCTURAL ALTERATION** - Structural alteration is any change in the structural members of a building.

**STRUCTURE** - A structure is anything permanently constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

**SUBDIVISION** - A subdivision is: (1) The division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two or more parcels, sites or lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be excepted; or (2) The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any allocation of land as open spaces for the common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewer, water, storm drainage or other public facilities.

**TEMPORARY USE** - A temporary use is a use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

**TERMINATION** - Termination is the relinquishment of property, or cessation of the use of a property, by the owner or occupant.

**THOROUGHFARE** - A thoroughfare is a street used primarily for through traffic, carrying heavy loads and a large volume of traffic, usually on a continuous route. Thoroughfares are designated on the Official Thoroughfare Plan of the City of Kettering.

**THOROUGHFARE PLAN** - The Thoroughfare Plan is the Official Thoroughfare Plan of the City of Kettering, establishing the location and official right-of-way widths of principal highways and streets in the City together with all amendments thereto subsequently adopted.

**TREE** - A tree is any self-supporting woody plant which usually produces one main trunk, and a more or less distinct and elevated head with many branches.

**TRAILER** - A trailer is a platform or container standing on wheels, towed or hauled by another vehicle and used for short-term human occupancy, carrying materials, goods or objects, or as a temporary office.

**TREE CROWN** - A tree crown is the upper mass or head of a tree.

**USE** - A use is the purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.

**USE, PRINCIPAL** - The principal use is the primary use of land or structures as distinguished from secondary, ancillary or incidental uses.

**UTILITY** - A utility is (1) any agency which, under public franchise or ownership, or under certificate of convenience and necessity, provides the public with electricity, gas, heat, steam, communication, rail transportation, water, sewage collection, or other similar service; or (2) a closely regulated enterprise with an exclusive franchise for providing public service.

**VARIANCE** - Variance means a modification of the strict terms of the relevant regulations where such modification will not be contrary to the public health, safety and welfare, and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.

**VEHICLE** - Vehicle means anything on wheels or runners, including motorized bicycles, but does not mean vehicles operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles belonging to any police department, municipal fire department, or volunteer fire department or used by such department in the discharge of its functions.

**VEHICLE, MOTOR** - Motor vehicle means any vehicle, including house trailers and recreational vehicles, propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, trailers used to

transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products.

**VEHICLE STORAGE FACILITY** - A vehicle storage facility is an open area, other than a street, used for the storage of new or used vehicles in operable condition and where no repair work is performed.

**VEHICULAR USE AREA** - A vehicular use area is any part of a site used by vehicles not totally enclosed within a structure. This includes parking spaces and aisles, streets, drives, loading areas, and vehicle storage areas. This does not include driveways and permitted off-street parking spaces for single-family residential uses.

**VILLAGE HOUSE** - See Section 1151.02 - Village House.

**WAITING SPACE** - Waiting space is the parking area needed for businesses which provide drive-in service for their customers. Each waiting space shall be at least 10' in width by 20' in length.

**YARD, FRONT** - A front yard is an open space extending the full width of the lot between a building and the front lot line, unoccupied and unobstructed from the ground upward except as hereinafter specified.

**YARD, REAR** - A rear yard is an open space extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward except as hereinafter specified.

**YARD, REQUIRED** - Required yard is the open space required by this ordinance between the lot line and the building except as provided by this ordinance.

**YARD, SIDE** - A side yard is an open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward except as hereinafter specified. If such side yard abuts an interior lot line, it shall be an "interior side yard." If such side yard abuts a right-of-way line or street, it shall be a "street side yard."

**ZONING MAP** - See Section 1135.02.

**Legislative history:** Ord. 3508-91; passed 8/27/91. Ord. 3535-92; passed 1/28/92. Ord. 3626-93; passed 12/14/93. Ord. 3766-97; passed 12/16/97. Ord. 3780-98; passed 5/12/98. Ord. 3911-02; passed 5/14/02. Ord. 3965-04; passed 2/24/04.