

**CITY OF BERKLEY PUBLIC NOTICE  
SPECIAL JOINT WORK SESSION OF THE  
CITY COUNCIL AND  
PLANNING COMMISSION**

7 P.M. Tuesday, July 9, 2024

2<sup>nd</sup> Floor Public Safety Building  
248-658-3300

**CALL TO ORDER  
APPROVAL OF AGENDA  
PLEDGE OF ALLEGIANCE  
PUBLIC COMMENT  
ORDER OF BUSINESS**

1. **DISCUSSION:** Matter of discussing [updates to the Draft Zoning Ordinance](#).

**ADJOURN**

The City of Berkley will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon four working days' notice to the City. Individuals with disabilities requiring auxiliary aids or services should contact the City by writing or calling: Victoria Mitchell, ADA Contact, Berkley City Hall, 3338 Coolidge Highway, Berkley, MI 48072 (1-248-658-3310).

Note: Official minutes of City Council Meetings and supporting documents for Council packets are available for public review in the City Clerk's Office during normal working hours. Anyone wishing to submit correspondence for the meeting may send an email to [clerk@berkleymich.net](mailto:clerk@berkleymich.net) or call 248-658-3310 by 5 p.m. on the day of the meeting. in the City Clerk's Office during normal working hours



**Carlisle | Wortman**  
ASSOCIATES, INC.

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**TO:** Berkley City Council and Planning Commission  
**FROM:** Megan Masson-Minock, AICP, Principal  
Michelle Marin, AICP  
**DATE:** June 25, 2024  
**RE:** Summary memo of recent updates to the Draft Zoning Ordinance

Thank you for participating in rewriting the City of Berkley’s Zoning Ordinance. The draft zoning ordinance is complete and ready for your final review. This memo summarizes the recent decisions, including regulations that were discussed with the community during the January public workshops, recent additions made by the steering committee by consensus, and decisions made by the Planning Commission where steering committee consensus was not reached. A table detailing the major changes by article in the draft Zoning Ordinance is included at the end of this memo.

**Public Workshops & Final Draft Comparison**

During the Public Workshops in January, participants were asked to vote on specific pending regulations on which the steering committee had not yet reached a consensus. The table below summarizes the public response to those draft regulations and the final draft regulations that appear in the full zoning ordinance draft.

	<b>Public Workshop Results</b>	<b>Final Draft Regulation</b>
<b>ADUs</b>	Opinions on the changes to ADUs were starkly split.  Location/design: Upper level of house and above a detached garage received the most support. Basement level of a house received the least support.	ADUs are proposed to be permitted in all residential zoning districts when accessory to a single family residence. They may be located above an attached or detached garage, as a standalone structure, or within the upper level or ground level of a single family dwelling. Design guidelines require them to look like a single family dwelling.
<b>Duplexes</b>	Opinions on proposed changes were generally negative. Little support for permitting duplexes in single family zoning districts.	Duplexes are proposed to be permitted in the Two-Family and Low Density Multiple-Family zoning districts, and on Greenfield and Eleven Mile in the

Benjamin R. Carlisle, *President* John L. Enos, *Vice President* Douglas J. Lewan, *Principal*  
David Scurto, *Principal* Sally M. Elmiger, *Principal* R. Donald Wortman, *Principal* Craig Strong, *Principal*  
Paul Montagno, *Principal* Megan Masson-Minock, *Principal* Laura Kreps, *Principal*  
Richard K. Carlisle, *Past President/Senior Principal*

	<b>Public Workshop Results</b>	<b>Final Draft Regulation</b>
		Residential Corridor zoning district. Duplex setback requirements match those for single family dwellings.
<b>Multiple family residences in corridor zoning districts</b>	Opinions on proposed changes were generally negative. Common concerns centered on parking burdening the single-family neighborhoods and the desire for Ellwood to retain its single family character.	Low-rise multiple family dwellings are proposed to be permitted in the Residential Corridor zoning district, either fronting a Corridor Street (Greenfield and Eleven Mile) or having frontage on both Greenfield and Ellwood. For double frontage lots, the design of the units facing Ellwood must be similar to single-family houses in design and height, and no driveway access is allowed from Ellwood.
<b>Multiple Family Parking Spaces</b>	Most support for 1.5 Spaces for a studio or 1- bedroom unit with an additional 0.5 spaces for each additional bedroom.	After consideration, the Planning Commission identified an alternative preferred option that differed from the options presented at the public workshops: 1 space for studio and 1-bedroom units, and 0.5 for each bedroom thereafter (1.5 spaces for a two-bedroom, 2 spaces for a three-bedroom, etc.)

**Recent Additions from the Steering Committee**

The steering committee last met on May 8, 2024, and feedback was provided before, during, and after the meeting. This feedback has been incorporated within the entire draft ordinance with larger-scale changes impacting the following provisions:

- Article 6, Site Design Based District: This draft article includes the regulations, including design requirements, impacting the districts regulated by site design. Regulating plans identify allowable uses and permissible development with these districts based on the site type and site layout.
- Article 7, PUDs: The Planning Commission or City Council is to determine the standards that are relevant to the project. All relevant standards must be met to receive approval. Deviations from the zoning ordinance must be proportional to the community benefits proposed.
- Article 5, Use-Based Districts: 5.03(E) includes new design standards for duplexes in the Two-Family zoning district. These standards are based on feedback from the January public workshop and several steering committee meetings. Required

setbacks for duplexes match single family dwellings and include a larger lot size requirement.


- Article 9, General Provisions: Section 9.14 includes updated regulations for special events, seasonal sales, and other temporary uses. This section offers more simplified regulations.

The full zoning ordinance draft was finished on June 21, 2024, and is now ready for review by the Planning Commission and City Council. Any provided feedback will be incorporated into the final version of the Zoning Ordinance, which will be shared with the public for comment in August and September of 2024. We anticipate the Zoning Ordinance to come before the Planning Commission and City Council for adoption in the fall of 2024.

Please let us know if you have any questions regarding this memo or the Zoning Ordinance rewrite process. Thank you again for including CWA in this process!

Sincerely,

  
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CARLISLE/WORTMAN ASSOC., INC  
Megan Masson-Minock, AICP  
Principal

  
\_\_\_\_\_  
CARLISLE/WORTMAN ASSOC., INC.  
Michelle Marin, AICP  
Community Planner

**Appendix – Proposed Major Changes by Article**

The table below details the major proposed changes to the Zoning Ordinance by Article in the drafts reviewed by the Steering Committee.

Article	Proposed Changes
Article 1: Title, Purpose, Legal Clauses	<ul style="list-style-type: none"> <li>• Language updated as needed</li> </ul>
Article 2: Definitions	<ul style="list-style-type: none"> <li>• All definitions are proposed to be consolidated in Article 2</li> <li>• Regulations are proposed to be moved out of definitions.</li> <li>• Several definitions, such as home-based business, have been updated.</li> </ul>
Article 3: Administration and Enforcement	<ul style="list-style-type: none"> <li>• The sections on amendments, variances, appeals, special land uses, and site plan review have been moved to different and/or separate articles.</li> <li>• Duties have been assigned to the Community Development Director or their designee.</li> <li>• The submittal requirements for a certificate of zoning compliance are more detailed than current requirements.</li> <li>• A Completion of Construction section is proposed, stating that anything under construction before the Zoning Ordinance is adopted is not subject to it retroactively.</li> <li>• The public hearing section lists exemptions, per the Michigan Zoning Enabling Act.</li> <li>• New sections for performance guarantees and development agreements are proposed.</li> <li>• Violations remain municipal civil infractions but a process for dealing with violations is proposed and sub-sections on requiring compliance and public nuisance per se are proposed.</li> </ul>
Article 4: Establishment of Districts	<ul style="list-style-type: none"> <li>• R-1A, R-1B, R-1C, and R-1D are proposed to be consolidated into two zoning districts R-1AB &amp; R-1CD, using the R-1B and R1-C minimum lots sizes and widths, respectively.</li> <li>• The R-2, R-M, R-M-H, Community Centerpiece, and Cemetery Districts remain.</li> <li>• The Woodward, Downtown and Gateway districts are proposed to be site design based districts. New site design based districts, Flex and Residential Corridor, are proposed. The Office, Local Business, Industrial, and Eleven Mile, Twelve Mile and Coolidge Districts are proposed to be replaced by the site design based districts.</li> </ul>
Article 5: Use-Based Districts	<ul style="list-style-type: none"> <li>• In all residential districts, all non-residential buildings are proposed to comply with the Community Centerpiece dimensional requirements.</li> </ul>

Article	Proposed Changes
	<ul style="list-style-type: none"> <li>• The R-1AB &amp; R-1CD are proposed to use the current R-1B and R1-C minimum lots sizes and widths, respectively.</li> <li>• Minimum floor areas are proposed to be reduced to 1,000 square feet in the R-1AB and 800 square feet in the R1-CD.</li> <li>• In the R-2, smaller lot sizes, consistent with the R1-CD, are proposed and a minimum lot size of 5,000 square feet for duplexes is proposed. The minimum lot size was based on existing duplexes in Berkley.</li> <li>• The P-1 Parking District is proposed to become an overlay district where the principal and special uses of the underlying zoning district are allowed and off-street parking lots or parking structures as the primary use are special uses.</li> </ul>
<p>Article 6: Site Design Based Districts</p>	<ul style="list-style-type: none"> <li>• New site design based zoning districts are proposed</li> <li>• Uses are allowed as use group, instead of a list of individual uses</li> <li>• Site layouts (size and setbacks) of buildings are determined by site types and street types.</li> </ul>
<p>Article 7: PUD</p>	<ul style="list-style-type: none"> <li>• The intent (preamble in the current ZO) is more descriptive.</li> <li>• The minimum of 0.5 acre is proposed to be removed.</li> <li>• Expanded standards of approval and more specific examples of recognizable and material benefits.</li> <li>• The approval process is proposed as follows: pre-application meeting with staff; optional meeting with adjacent neighborhoods and properties; optional sketch plan meeting with the Planning Commission; preliminary plan with a Planning Commission public hearing and recommendation and City Council public hearing and action; and final development plan with a recommendation by Planning Commission and action by City Council.</li> <li>• Expanded requirements for preliminary application and plan set.</li> <li>• Final application and plan set requirements in addition to those required for site plan review.</li> <li>• Instead of a single year to begin construction after approval, the applicant would have 2 years after preliminary approval to apply for final approval and 3 years for final approval to begin construction. The applicant may apply for an extension for either preliminary or final approval.</li> <li>• Regulations on abandonment are proposed.</li> <li>• It is specified that the ZBA has no authority over PUDs.</li> <li>• A section on violations is proposed.</li> </ul>

Article	Proposed Changes
<p>Article 8:                      Specific Use Provisions</p>	<ul style="list-style-type: none"> <li>• Instead of embedding specific use provisions within the district regulations where they are permitted, we propose a separate article to apply to all districts where a specific use may be permitted.</li> <li>• A two-tier system for home-based businesses is proposed. A home office is allowed as an accessory use and does not need a permit. Any home-based business with customers, employees, parking or signs is proposed to require a require a Commercial Business License and Zoning Certificate.</li> <li>• Adult oriented uses regulations have been updated per most up to date case law.</li> <li>• Sections, based on current regulations with updates, are proposed for: single family dwellings; multiple family dwellings with six or more units; nursing homes, senior assisted living facilities and convalescent centers, automotive uses, funeral homes and mortuaries, contractor’s yards, garden centers and nurseries, drive-through and drive-in facilities, open air businesses, self-storage facilities, adult foster care facilities, child care facilities, places of assembly (private clubs and places of worship), indoor recreation areas, outdoor service areas, marihuana business regulations, tobacco and vape shops, outdoor storage, and accessory dwelling units (new).</li> </ul>
<p>Article 9:                      General Provisions</p>	<ul style="list-style-type: none"> <li>• Definitions are proposed to be moved to Article 2.</li> <li>• The following sections are proposed to move to their own articles: lighting, nonconforming buildings and uses.</li> <li>• The following sections are proposed to be removed (the current regulations are hyperlinked to the name of the sections proposed to be removed): voting places, continuing obligations of owners, bulk regulations, incomplete dwellings, and interpretation of use.</li> <li>• The following sections dealing with specific uses are proposed: Solar Energy, and Wireless Communication Facilities.</li> <li>• Accessory buildings and structures remain essentially unchanged.</li> <li>• For the exterior appliances section, a sub-section allowing generator testing Mon-Fri 9 am – 6 pm and a section on nonconforming exterior appliances are proposed.</li> <li>• Seasonal sales, seasonal events, and other temporary uses combined into one section with regulations by type of event, including circus, sidewalk sales, and promotional events.</li> <li>• The fence regulations remain mostly unchanged. Instead of a fence certificate, a zoning permit is required. Language has been added to prevent underground encroachments into adjacent properties from footers of fences or walls.</li> <li>• The wind energy section does not have proposed changes.</li> </ul>

Article	Proposed Changes
	<ul style="list-style-type: none"> <li>• A Driveway and Curb Cut section is proposed. The residential driveway requirements of current Section 138-222 (3) are in this section. New provisions for driveway spacing for commercial uses are proposed, including references to engineering standards.</li> <li>• All of the performance standards except grading are proposed to move to the Site Design Based Districts since those uses would have the impacts regulated.</li> <li>• A section on structure completion is proposed.</li> <li>• A section on use per lot is proposed, per a request from the City Attorney.</li> <li>• Current regulations on height exceptions, porches, and projections have been moved into the zoning district articles, articles 5 and 6.</li> <li>• Current regulations on buildable lots are proposed to be moved to the Nonconformities Article.</li> <li>• The essential services section is proposed to remain the same.</li> <li>• The section on yard regulations is proposed for deletion. We feel that these regulations, which deal with multiple-family building setbacks, are better handled in in the articles regulating the zoning districts where multiple-family buildings are allowed, articles 5 and 6.</li> <li>• A section on prohibited materials in residential zoning districts is proposed.</li> <li>• A section requiring all parcels to be developed to have frontage on a public street is proposed.</li> <li>• A section on open-air structures is proposed.</li> <li>• Calculating gross floor area, grade, and building height are proposed to be moved out of Definitions into General Provisions to call out those provisions and not bury regulations in the definitions.</li> </ul>
<p>Article 10:                      Special Land                      Uses</p>	<ul style="list-style-type: none"> <li>• The Intent section is proposed to be updated.</li> <li>• The Special Land Use approval process is proposed to be described in more detail, including the effect of the different possible Planning Commission actions.</li> <li>• The review standards have been expanded.</li> <li>• Instead of valid approval for 1 year with no extensions possible, special land use approval is proposed to be valid for 2 years, with a single 2-year extension allowed.</li> <li>• Regulations for amendments, expansions, changes in use, inspections, and revocation are proposed.</li> </ul>
<p>Article 11: Signs</p>	<ul style="list-style-type: none"> <li>• Sign regulations are moved from a stand-alone ordinance into the Zoning Ordinance.</li> <li>• A robust Intent section is proposed, consistent with other ZO articles.</li> </ul>



Article	Proposed Changes
	<ul style="list-style-type: none"> <li>• Reorganization is proposed to minimize the number of tables, reduce redundancies, and simplify some dimensional regulations to offer more consistency.</li> <li>• Permanent signs split into two tables: freestanding and building-mounted signs. Temporary signs on a third table.</li> <li>• Removal of all content-based regulations is proposed</li> <li>• A design section is proposed to include recommendations from the Downtown Design Guidelines that are possible to regulate.</li> <li>• The illumination section was retooled to offer consistent requirements across all illuminated sign types and use best practices for modern technology.</li> <li>• Pole-mounted signs proposed to only be permitted in the Woodward Zoning District.</li> </ul>
<p>Article 12: Landscaping Standards</p>	<ul style="list-style-type: none"> <li>• Landscaping requirements proposed for screening between land uses, parking lots, general site landscaping, and along streets.</li> <li>• Tree replacement calculations proposed to include the size of the required replacement trees in addition to the number.</li> <li>• A description of required landscape plan details is proposed, along with planting standards.</li> <li>• Screening standards for commercial waste bins are proposed.</li> <li>• Proposed stormwater management practices integrated to reflect Downtown Design Guidelines and Master Plan.</li> </ul>
<p>Article 13: Lighting Standards</p>	<ul style="list-style-type: none"> <li>• Separate article for exterior lighting standards.</li> <li>• Lighting under canopies is proposed to be recessed or full cutoff luminaires aimed straight down.</li> <li>• Illumination for uses adjacent to residentially zoned or used property is proposed to not exceed 0.5 footcandles at ground level along common property lines. Lighting for uses adjacent to nonresidential properties must not exceed 1.0 footcandles at property lines. This reflects the Downtown Design Guidelines.</li> <li>• A 3500 Kelvin maximum light color standard is proposed.</li> <li>• Proposed dimming at night that the lighting must be reduced to at least fifty (50%) percent of the light level at full illumination one (1) hour after closing.</li> <li>• The list of exemptions is proposed to be expanded, including exemptions for residential lighting fixtures for seasonal lighting, decorative landscape lighting, flag illumination, and single-family houses, duplexes, accessory dwellings, and associated accessory buildings.</li> </ul>

Article	Proposed Changes
<p>Article 14: Off-Street Parking, Loading and Access Standards</p>	<ul style="list-style-type: none"> <li>• The intent is more descriptive.</li> <li>• The minimum number of parking spaces is updated to reflect the standards recommended by the recent Berkley parking study, the consensus of the steering committee, and in the case of multiple-family parking, the recommendation by the Planning Commission.</li> <li>• A clear vision zone section has been provided.</li> <li>• The shared use provision provides more specific requirements.</li> <li>• A process for exceptions has been provided.</li> <li>• The exception for sites within 500 feet of a municipal parking lot no longer have the restriction of not crossing a major road.</li> <li>• The design descriptions for residential uses are less prescribed than the current ordinance.</li> <li>• Lighting and landscaping/screening standards reference those articles instead of detailing them in this article.</li> <li>• A payment-in-lieu option has been added.</li> <li>• Bicycle parking requirements are proposed and the bicycle parking credit for off-street parking spaces provision is to be removed.</li> <li>• Plug-in EV parking standards are proposed.</li> <li>• Off-street loading requirements have been updated to allow more flexibility in application.</li> </ul>
<p>Article 15: Site Plan Review Procedures and Requirements</p>	<ul style="list-style-type: none"> <li>• The intent section is proposed to be updated.</li> <li>• A required site plan is proposed for new or expansions of building types subject to special approval.</li> <li>• Instead of a single site plan review by the Planning Commission, a preliminary approval by the Planning Commission and final site plan approval by the Community Development Director is proposed.</li> <li>• Administrative site plan is proposed for façade changes that bring a structure closer to compliance with the Zoning Ordinance, the number or size of windows is increasing, minor changes required by an outside governmental agency, expansion of a structure by 1,000 square feet or 5% percent of the gross floor area, (whichever is less), changes to the landscape plan to bring it closer to compliance with the Zoning Ordinance, parking lot changes that comply with the Zoning Ordinance.</li> <li>• Site plan review standards are proposed to be expanded.</li> <li>• An optional pre-application meeting with staff and consultants is proposed.</li> <li>• Instead of 1 year with two 1-year extensions possible, final site plan approval is proposed to be valid for 2 years, with multiple 1-year extensions allowed.</li> </ul>

Article	Proposed Changes
	<ul style="list-style-type: none"> <li>• Proposed sections on performance guarantees and development agreements.</li> </ul>
<p>Article 16: Nonconformities</p>	<ul style="list-style-type: none"> <li>• Nonconformities is its own Article.</li> <li>• Definitions move to the Article 2 – Definitions</li> <li>• A Purpose and Intent Section is proposed, with elements from the current Section 138-52, to clarify the reasons for the regulations.</li> <li>• A section on nonconforming lots is proposed.</li> </ul>
<p>Article 17: Zoning Board of Appeals</p>	<ul style="list-style-type: none"> <li>• Regulations on the Zoning Board of Appeals, appeals and variances are consolidated into a single Article.</li> <li>• "Written charges" are proposed as part of the process for City Council to remove a member of the ZBA.</li> <li>• Section 17.03 has been expanded to include sub-sections on rules, votes, and representation.</li> <li>• Records are proposed to be kept by the Zoning Administrator instead of the City Clerk.</li> <li>• Section 17.05 has more detailed requirements for variance applications.</li> <li>• A provision is proposed that a variance that has been denied may not be reapplied for within 12 months from the date of denial.</li> <li>• Approval periods remain 12 months, except for a variance associated with a site plan, which is valid for 2 years, in line with the timeline for approved site plans.</li> </ul>
<p>Article 18: Rezoning and Zoning Ordinance Text Amendments</p>	<ul style="list-style-type: none"> <li>• Purpose section proposed to be eliminated.</li> <li>• Expand the amendments to include site or street type changes to the regulating plans in Article 6.</li> <li>• Specify application requirements for rezonings and site or street type changes</li> <li>• Specific criteria for site or street type changes</li> <li>• Specific criteria for rezonings</li> <li>• Specific criteria for text amendments</li> <li>• Process, application requirements and standards for conditional rezonings</li> <li>• Section on amendments required to conform to court decree</li> </ul>

# ARTICLE 1

## TITLE, PURPOSE, AND LEGAL CLAUSES

### SECTION 1.01 TITLE

This Ordinance is known as and may be cited as “The City of Berkley Zoning Ordinance,” or the “Ordinance.”

### SECTION 1.02 AUTHORITY, FINDINGS, AND PURPOSES

- A. The Michigan Zoning Enabling Act (Public Act 110 of 2006, as amended) establishes the authority to adopt comprehensive zoning regulations and empowers the City to enact a Zoning Ordinance and provide for its administration, enforcement, and amendment.
- B. The City deems it necessary to enact said regulations for the purpose of promoting and protecting the health, safety, comfort, convenience, and general welfare of its residents.
- C. The City has prepared and adopted a Master Plan designed to guide growth in a logical and orderly fashion; to lessen congestion on the public streets; to protect and preserve its natural resources; and to ensure a well-balanced community considering its present and potential physical, economic, cultural, and environmental assets.
- D. The City has identified districts on a Zoning Map and prepared regulations in this Zoning Ordinance pertaining to such districts, in coordination with the City of Berkley Master Plan and for the specific purposes of:
  - 1. Promoting and protecting the public health, safety, and general welfare;
  - 2. Protecting the character and stability of the recreational, agricultural, residential, commercial, industrial, and public lands within the City of Berkley;
  - 3. Promoting and regulating growth of the City of Berkley to obtain orderly and beneficial development with a balanced mix of uses that

- will support economic vitality and sustainability;
- 4. Conserving life, parcels, and natural resources;
- 5. Stewarding the expenditure of funds for public improvements and services;
- 6. Providing adequate light, air, and privacy to parcels;
- 7. Lessening and avoiding congestion on highways and streets, and providing safe and convenient access for parcels; and
- 8. Conserving the taxable value of land, buildings, and structures of the City.

### SECTION 1.03 INVALIDITY AND SEVERABILITY

- A. If any court of competent jurisdiction declares any part of this Ordinance to be invalid, such ruling must not affect any other provisions of this Ordinance not specifically included in said ruling.
- B. If any court of competent jurisdiction declares invalid the application of any provision of this Ordinance to a particular parcel, lot, use, building, or structure, such ruling must not affect the application of said provision to any other parcel, lot, use, building, or structure not specifically included in said ruling.

### SECTION 1.04 SCOPE AND CONSTRUCTION OF REGULATIONS

- A. This Ordinance must be liberally construed in such a manner as to best effectuate its purposes. In interpreting and applying the provisions of this chapter, the requirements must be held to the minimum for the promotion of the public health, safety, convenience, comfort, prosperity, and general welfare.
- B. No building or structure, or part thereof, maybe erected, constructed, reconstructed, or altered and maintained, and no new use or change may be made or maintained of any building, structure, or land, or part thereof, except as permitted by and in conformity with the provisions of this Ordinance.

## SECTION 1.05 CONFLICTS

- A. Where any condition imposed by any provision of this Ordinance upon the use of any parcels, building, or structure is either more restrictive or less restrictive than any comparable condition imposed by any other provision of this Ordinance or by any other provision of this Code, the provision which is more restrictive, or which imposes a higher standard or requirement must govern.
- B. This Ordinance is not intended to abrogate or annul any easement, covenant, or other private agreement, provided that where any provision of this Ordinance is more restrictive or imposes a higher standard or requirement than such easement, covenant, or other private agreement, the provision of this Ordinance must govern.
- C. Nothing within this Ordinance should be construed to prevent compliance with an order by the appropriate authority to correct, improve, strengthen, or restore to a safe or healthy condition, any part of a building or premises declared unsafe or unhealthy.

## SECTION 1.06 REPEAL OF ORDINANCE

The City of Berkley Zoning Ordinance, and all amendments thereto, and all prior Zoning Ordinances of the City of Berkley, are repealed effective as of the effective date of this Ordinance.

## ARTICLE 2 DEFINITIONS

### SECTION 2.01 INTERPRETATION OF ARTICLE PROVISIONS

- A. In their interpretation and application, the provisions of this Article must be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
- B. Where the conditions imposed by any provisions of this chapter, upon the use of land or buildings or upon the bulk of buildings, are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or of any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive, or which impose higher standards or requirements must govern.
- C. This chapter is not intended to abrogate any easement, covenant, or any other private agreement, provided that where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements, the requirements of this article must govern. The Zoning Administrator cannot enforce private agreements or covenants.
- D. No building, structure or use which was not lawfully existing at the time of the adoption of this ordinance may become or be made lawful solely by reason of the adoption of this chapter; and to the extent that, and in any manner that, such unlawful building, structure or use is in conflict with the requirements of this chapter, such building, structure or use remains unlawful under the ordinance.

### SECTION 2.02 DEFINITIONS

The following words, terms, and phrases, when used in this chapter, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

All words used in the present tense include the future; all words in the singular number include the plural number; and all words in the plural number include the

singular number; the word "building" includes the word "structure" and "dwelling" includes "residence"; the word "person" includes "corporation," "copartnership," "association," as well as an individual; the word "must" is mandatory and not discretionary.

Terms not defined in this Section have the meaning customarily assigned to them.

*Accessory building or accessory structure:* A subordinate building on the same parcel as the principal building, the use of which is incidental to that of the principal building and which is used exclusively by the occupants or owners of the principal building, including garages and carports, studios for private use, greenhouses, hobby shops, and recreation rooms. The various types of accessory buildings and structures are defined, but not limited to as follows:

- A. *Accessory dwelling unit:* A small, independent, residential dwelling unit located as an accessory to a primary residential dwelling.
- B. *Antennas:* Structures or facilities for the reception or transmission of radio, television, and microwave signals.
- C. *Carport:* A covered area for the parking or storage of currently licensed and registered motor vehicles, completely open on one side and partially enclosed on the opposite side.
- D. *Dog houses:* A structure providing shelter for dogs.
- E. *Dog run:* An open air enclosure, attached or detached from the principal structure for the purposes of housing or exercising animals commonly classified as domestic pets.
- F. *Garage:* A structure designed and intended to be used for the periodic parking or storage of one or more private motor vehicles, yard equipment, or recreational vehicles such as, but not limited to, boats, trailers, all-terrain vehicles, and snowmobiles.
- G. *Shed:* A structure designed and intended to be used for the storage of tools, garden tractors, lawn mowers, motorcycles, small recreation vehicles such as, but not limited to, snowmobiles, boats, trailers, all-terrain vehicles, motor scooters, or used as doll houses or children's playhouses.
- H. *Swimming pool for private residential use only:* A swimming pool and the apparatus and equipment pertaining to the swimming pool maintained by an individual for the sole use of their household and guests without charge



for admission and not for the purpose of profit or in connection with any business operated for profit, located on a lot as an accessory use to a residence. This includes hot tubs and jacuzzies as installed outside and accessory to the main residence.

- I. *Gazebo, pergola:* A detached structure that is generally of open, screened, or lattice-work construction, and generally used for outdoor seating.

*Accessory use:* A use subordinate to the main use on a lot and used for purposes clearly incidental to those of the main use.

*Adult family day care home:* A private residence, in which six adults or less are given care and supervision for periods of time not to exceed sixteen hours in a twenty-four-hour period. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped and require supervision on an ongoing basis. An adult family day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities that do not meet the definition of adult day care center.

*Adult group day care home:* A private home in which more than six but not more than twelve adults eighteen years of age or older receive care or are given care and supervision for periods of time not to exceed sixteen hours in a twenty-four hour period. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped that require supervision on an ongoing basis. An adult group day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities that do not meet the definition of adult day care center.

*Adult day care center:* A center other than a private residence, in which more than six adults are supervised and receive group care for periods of time not to exceed sixteen hours in a twenty-four-hour period. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped and require supervision on an ongoing basis. An adult day care center does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day care center.

*Air conditioning unit:* The central air conditioning system located on the exterior of a building, including a compressor, fan, condenser coil, evaporator coil, and refrigerant.

*Alley or service drive:* Any dedicated public way affording a secondary means of vehicular access to abutting parcels, and not intended for general traffic circulation.

*Alterations:* Any change, addition, or modification in construction or type of occupancy; any change in the structural members of a building or structure, such as walls, partitions, columns, beams, girders, or any change which may be referred to herein as "altered" or "reconstructed."

*Animal boarding facility:* Facilities for the temporary boarding of animals during the day or overnight.

*Apartment, studio:* A dwelling unit, consisting of no more than one room in addition to the kitchen and necessary sanitary facilities.

*Applicant and Petitioner.* The parcels owner, or a person acting with the written and signed authorization of the parcels owner to make an application under this Section.

*Architectural features:* A prominent or significant part or element of a building, including cornices, eaves, gutters, belt courses, sills, bay windows, chimneys, and decorative trim and ornaments.

*Attached single-family residential development:* Three or more single-family dwelling units constructed in a series or group of attached units with parcels lines separating such units from other units and from common areas.

*Automobile fueling / multi-use service station:* A place where gasoline, or any other automobile engine fuel, kerosene or motor oil and lubricants, or grease (for the operation of motor vehicles) are retailed directly to the public in the premises; including the sale of minor accessories and services for motor vehicles (including minor repairs). Electric vehicle charging stations are not considered automobile fueling stations.

*Automobile repair:* General repair, engine rebuilding, rebuilding, or reconditioning of motor vehicles; collision service, such as body, frame, or fender straightening and repair; and painting; but not including undercoating of automobiles unless provided in a completely enclosed spray booth or building.

*Automotive wash:* A business that provides either automated, hand, or self-serve washing and waxing of motor vehicles.

*Bar / lounge:* A type of restaurant that is operated primarily for the dispensing of alcoholic beverages, with the ancillary sale of prepared food or snacks. If a bar or lounge is part of a larger dining facility, it is defined as that part of the structure so designated or operated.

*Bed and Breakfast.* A guest house or small lodging facility offering sleeping accommodations and a morning meal.

*Best Management Practices (BMP):* The best available methods, activities, maintenance procedures, technologies, operation methods, or management practices for preventing or reducing the number of regulated substances entering groundwater and surface water from a particular land use activity.

*Bicycle parking space:* An area and facility used for the securing of bicycles, including enclosed bicycle storage, covered bicycle racks, or fixed bicycle racks that meet the requirements of this Ordinance for bicycle parking.

*Block:* All land fronting on one side of a street between the nearest streets, alleys, rights-of-way, intersecting, meeting, or crossing such street and bounding such land.

*Body piercing studio:* Any establishment having as its principal activity the piercing or puncturing of body parts with the object of displaying jewelry. A jewelry store that pierces ear lobes as part of its business is not considered a body-piercing studio.

*Buffer:* A landscaped area composed of living material, wall, berm, or combination thereof, established and maintained to provide visual screening, noise reduction, and transition between a residential use and a nonresidential land uses.

*Building:* Any structure, either temporary or permanent, having a room, and used or built for the shelter or enclosure of persons, animals, or personal parcels of any kind. This includes tents, awnings or vehicles situated on private parcels and used for purposes of a building.

*Building code or construction code:* The Michigan State Building Code or Michigan State Residential Code.

*Building frontage:* The portion of a building that principally relates to the public right-of-way.

*Building height:* The vertical distance measured from the grade level to the highest point of the roof surface if a flat roof; to the deck of mansard roofs; and to the mean height level between eaves and ridges of gable, hip, and gambrel roofs.

*Building line, front:* A line formed by the face of the building, and, for the purposes of this chapter, a building line is the same as a front setback line. The face of a building is the frontage wall of the building according to the plat, extending to each lot line.

*Building line, rear:* A line formed by the face of the building, and, for the purposes of this chapter, a building line is the same as a rear setback line. The face of a building is the rear wall of the building according to the plat, extending to each lot line.

*Building, main or principal:* A building in which is conducted the principal use of the lot on which it is situated.

*Building Official:* The administrative official charged with the responsibility of enforcing the Building Code.

*Build-to-line:* The build-to-line is the maximum distance at which any building front may be located from a street right-of-way.

*Canopy:* Any overhead protective structure that is constructed in such a manner as to allow pedestrians or vehicles to pass under.

*Child day care center.* A facility, other than a private residence, where more than one child is received for care and supervision, unattended by a parent or legal guardian, except children related to an adult member of the family.

*Child family day care home.* A private residence where six or fewer children are received for care and supervision, unattended by a parent or legal guardian, except children related to an adult member of the family. A family day care home is considered a residential use of parcels. The total number of children receiving care may be modified when increased capacity, as defined herein, is granted by the State.

*Child group day care home:* A private residence where between seven and twelve children are received for care and supervision, unattended by a parent or legal guardian, except children related to an adult member. The total number of children receiving care may be modified when increased capacity, as defined here, is granted by the State.

*City:* The City of Berkley.

*Clinic, Medical:* An establishment where human patients who are not lodged overnight are admitted for examination and treatment by a group of physicians, dentists, or similar professionals.

*Club:* An organization of persons for special purposes or for the promulgation of agriculture, sports, arts, science, literature, politics, or the like.

*Commercial vehicle:* Any motor vehicle which is used for the transportation of passengers for hire, or which is constructed or used for the transportation of goods, materials, or merchandise, or which is designed and used for towing other trailers or vehicles.

*Community Development Director:* The director of the City of Berkley Community Development Department.

*Condominium:* A place or project consisting of not less than two condominium units established in conformance with the Condominium Act, Public Act No. 59 of 1978 (MCL 559.101 et seq.), as amended, and this Ordinance. The following additional definitions are provided:

- A. *Condominium documents:* The master deed recorded pursuant to the condominium act, and any other instrument referred to in the master deed or bylaws that affect the rights and obligations of a co-owner in the condominium.
- B. *Condominium unit:* The portion of a condominium project designed and intended for separate ownership and use, as described in the master deed.
- C. *General common elements:* The common elements other than the limited common elements.
- D. *Limited common elements:* A portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners.
- E. *Master deed:* The condominium document recording the condominium project to which are attached as exhibits and incorporated by reference in the bylaws for the project and the condominium subdivision plan for the project and all other information required by Section 8 of the Condominium Act, Public Act No. 59 of 1978 (MCL 559.108).

*Convalescent or nursing care facility:* A state-licensed medical facility providing twenty-four hour medical care for aged or infirmed persons.

*Correlated color temperature:* A specification of the color appearance of the light emitted by a lamp, relating its color to the color of light from a reference source when heated to a particular temperature, measured in Kelvin ("K").

*Court:* An area, either indoor or outdoor, marked out for sport games such as tennis or basketball.

*Courtyard:* An unroofed area that is completely or mostly enclosed by walls of a building or other structure.

*Diameter at breast height (DBH):* The diameter of the tree at four and a half feet above the ground.

*District:* A portion of the City within which certain regulations and requirements of various combinations thereof apply under the provisions of this chapter.

*DPW:* The City of Berkley Department of Public Works.

*Drive-in / drive-through establishment:* A business establishment (e.g., restaurants, cleaners, banks, theaters) so developed that its principal retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles to service patrons while in said vehicles.

*Duplex:* A building designed exclusively for occupancy by two families, living independently of each other.

*Dwelling, multiple family:* A building, or portion thereof, designed exclusively for occupancy by three or more families living independently of each other.

*Dwelling, single family:* A detached, independent building designed exclusively for occupancy by one family.

*Dwelling, single family, attached:* A building designed so that three or more dwelling units with their own front doors are attached by party walls, such as a townhouse.

*Dwelling, two family:* A building designed exclusively for occupancy by two families, living independently of each other such as a duplex dwelling unit.

*Dwelling unit:* A building, or portion thereof, designed for occupancy by one family for residential purposes and to have cooking facilities.

*Entertainment establishments:* Any indoor establishment where entertainment is provided as an experience of enjoyment for the patrons. Such uses may include, but are not limited to movies, arcades, art, photography, music, craft, ceramic, glass, or cooking studios for the purposes of hosting classes, providing live-action entertainment, or conducting group or independent activities. Such uses may be in conjunction with another use if deemed compatible by the Zoning Administrator.

*Erected:* Built, constructed, altered, reconstructed, moved upon, or any physical operations on the premises required for the building. Excavations, fill, drainage, and the like are considered a part of erection.

*Essential services:* The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions of underground, surface, or overhead gas, electrical, steam, fuel or water transmission or distribution systems, collection, communication, supply, or disposal systems, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith, but not including buildings, which are necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions for the general public health, safety, or welfare.

*Established grade:* The elevation of the sidewalk grade as fixed by the City.

*Excavating.* The removal or movement of soil, sand, stone, gravel, or fill dirt.

*Exterior appliance:* Mechanical equipment located on the exterior of a residential or commercial building. Such types of equipment include air conditioning condenser units, power generators, appliances associated with swimming pools, and any noise-producing mechanical system components located at the exterior of a building.

*Family:* An individual or multiple individuals and the children thereof with not more than two other persons related directly to the individual or married couple by blood, adoption, or marriage; or a group of not more than five unrelated persons, living together as a single housekeeping unit in a dwelling unit.

*Fence:* A structure erected to act as a boundary marker or erected for the purpose of restricting access to or from a lot or parcel of land, whether enclosing all or part of said lot or parcel. The following related definitions are also provided.

A. *Construction site barrier:* A temporary fence erected to protect a construction site from vandalism and unauthorized entry.

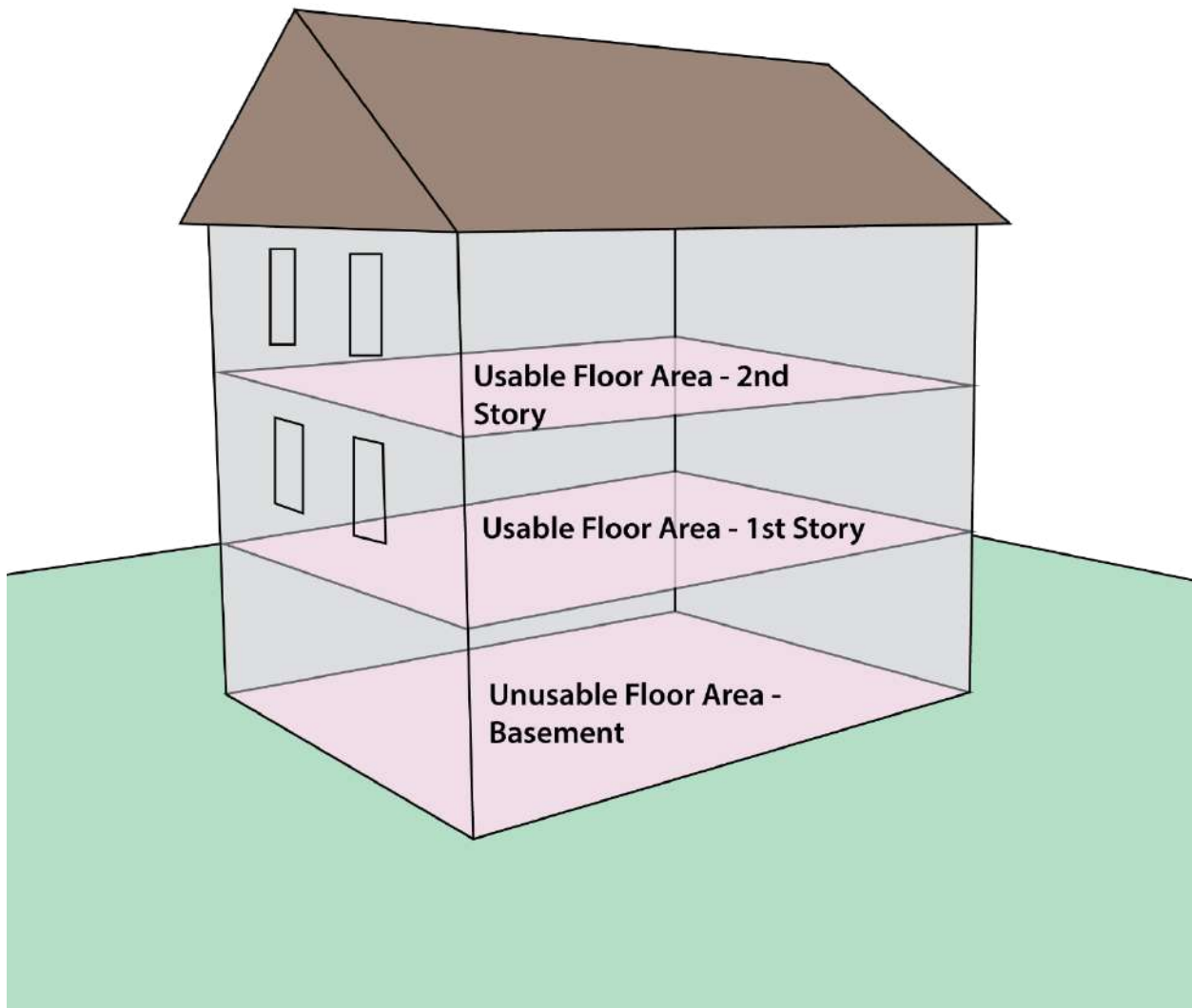
- B. *Fence owner:* A person or entity who owns the parcels upon which a fence is erected.
- C. *Landscape treatment:* A non-sight-obscuring decorative structure used to enhance, accent, or protect the landscaping of the site. Landscape treatments include, but are not limited to, timbers, boulders, planter boxes, posts, partial fences, etc. Decorative lamp posts are not considered landscape treatment.
- D. *Landscaping (vegetation):* Decorative plant materials (trees, shrubs, flowers, etc.) when used to enhance the yards or surfaces of a parcels or parcel.
- E. *Masonry walls:* A built-up construction or combination of building units or materials of clay, shale, concrete, stone, or other approved units guaranteed together with mortar or monolithic concrete. Reinforced concrete is not classified as masonry.
- F. *Privacy fence:* Fences of opaque material having such qualities as to constitute a visual barrier. A visual barrier is provided if the distance or open space between the boards, slats, rails, stanchions, or balusters is less than or equal to three inches when viewed and measured at ninety degrees to the fence line.
- G. *Privacy screen structure:* A sight obscuring structure, erected adjacent to or around, but not limited to, a patio, deck, courtyard area, swimming pool, or outdoor hot tub, designed to screen, but not enclose, the area behind it or within its confines.
- H. *Screen walls:* A masonry wall erected to screen a nonresidential lot or parcel from a residential district.

*First floor elevation:* The portion of an exterior wall computed from the ground level to a height of ten feet or to the ceiling height, whichever is less.

*Floor area, gross:* The total number of square feet measured between the exterior surfaces of the enclosing fixed walls of a building.

*Floor area, usable:* Measurement of the actual occupied area not including unoccupied accessory areas such as basements, cellars, unfinished attics, garages, breezeways, enclosed and unenclosed porches, space used for off-street parking, elevators, accessory structures, and utility rooms.





*Footcandle:* A unit of illumination produced on a surface, all points of which are one foot from a uniform point source of one candle.

*Garage:* An accessory building used for parking or storage of vehicles in connection with the permitted use of the principal building.

*Garage, commercial:* Any garage other than a private garage that is available to the public, operated for gain, and used for storage, repair, rental, greasing, washing, sales, servicing, adjusting, or equipping of automobiles or other motor vehicles.

*Glare:* Excessive brightness that may be caused by either direct or indirect viewing of a light source.

*Grade:* The average ground elevation established for the purpose of regulating the number of stories and the height of buildings.

*Greenbelt:* A landscaped area that is intended to provide a transition between a public street right-of-way and an existing or proposed land use.

*Gross vehicle weight:* The empty weight of a vehicle or combination of vehicles, fully equipped for service, plus the weight of the maximum load which the owner has elected to carry on such vehicle or combination of vehicles as required to be indicated on the vehicle's registration issued pursuant to the laws of the State.

*Ground cover:* A low-growing deciduous or evergreen species chosen for a very low, spreading green cover, usually dense and rapid-growing, reaching a height of three feet or less at maturity.

*Groundwater:* The water below the land surface in a zone of saturation, excluding those waters in underground piping for water, wastewater, or stormwater distribution/collection systems.

*Hazardous substances:* Includes hazardous chemicals as defined by the state Department of Community Health and the State Department of Labor and Economic Opportunity; flammable and combustible liquids as defined by the Department of State Police, Fire Marshal Division; hazardous materials as defined by the U.S. Department of Transportation; and critical materials, polluting materials, and hazardous waste as defined by the state department of environmental quality. Petroleum products and waste oil are subject to regulation under this Section.

*Hotel:* See *Lodging*.

*Illuminance:* The density of the luminous flux incident on a surface; it is the quotient of the luminous flux by the area of the surface when the latter is uniformly illuminated.

*Incombustible material:* Any material that will not ignite at or below a temperature of twelve hundred degrees Fahrenheit and will not continue to burn or glow at that temperature.

*Junk:* Any motor vehicles, machinery, appliances, product, or merchandise with parts missing or scrap metals, or other refuse, or parts of any of the above-named or enumerated items, such as fenders, motors, electric motors, and like materials.

*Junkyard:* A place, structure, or lot where junk, waste, discarded, salvaged, or similar materials such as old iron or other metal, wood, slush, lumber, glass, paper, rags, cloth, bagging, cordage, barrels, containers, etc., are bought, sold, exchanged, baled, packed, disassembled or handled, including auto wrecking yards, used lumber yards, house wrecking yards and places of yards for use of salvaged house wrecking and structural steel materials and equipment, and excluding pawn shops and establishments for the sale, purchase or storage of used cars, salvaged machinery, used furniture, radios, stoves, refrigerators or other similar household goods, and the processing of used, discarded or salvaged materials as part of manufacturing operations.

*Kennel, Commercial:* Any lot or premises of any nature whatsoever, on which dogs, four months or more old, are kept, whether for the purpose of breeding, or for any other purpose whatsoever, whether permanent or temporary.

*Laboratory:* A place devoted to experimental, routine study such as testing and analytical operations and in which manufacturing of products, except prototypes, is not performed.

*Lamp:* The component of a luminaire that produces the light.

*Landscaping:* Any combination of trees, shrubs, flowers, grass, or other horticultural elements, decorative stonework, paving, screening, or other architectural elements, all of which are designed to enhance the visual amenity of a parcels and to provide a screen to mitigate any objectionable aspects that may detrimentally affect adjacent land.

*Light fixture:* A complete lighting unit consisting of one or more lamps together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply. This may include ballasts, drivers, and photocells.

*Light pollution:* General sky glow caused by the scattering of artificial light in the atmosphere, much of which is caused by poorly designed luminaires.

*Light trespass:* Light emitted by a luminaire that shines beyond the boundaries of the parcels on which the luminaire is located.

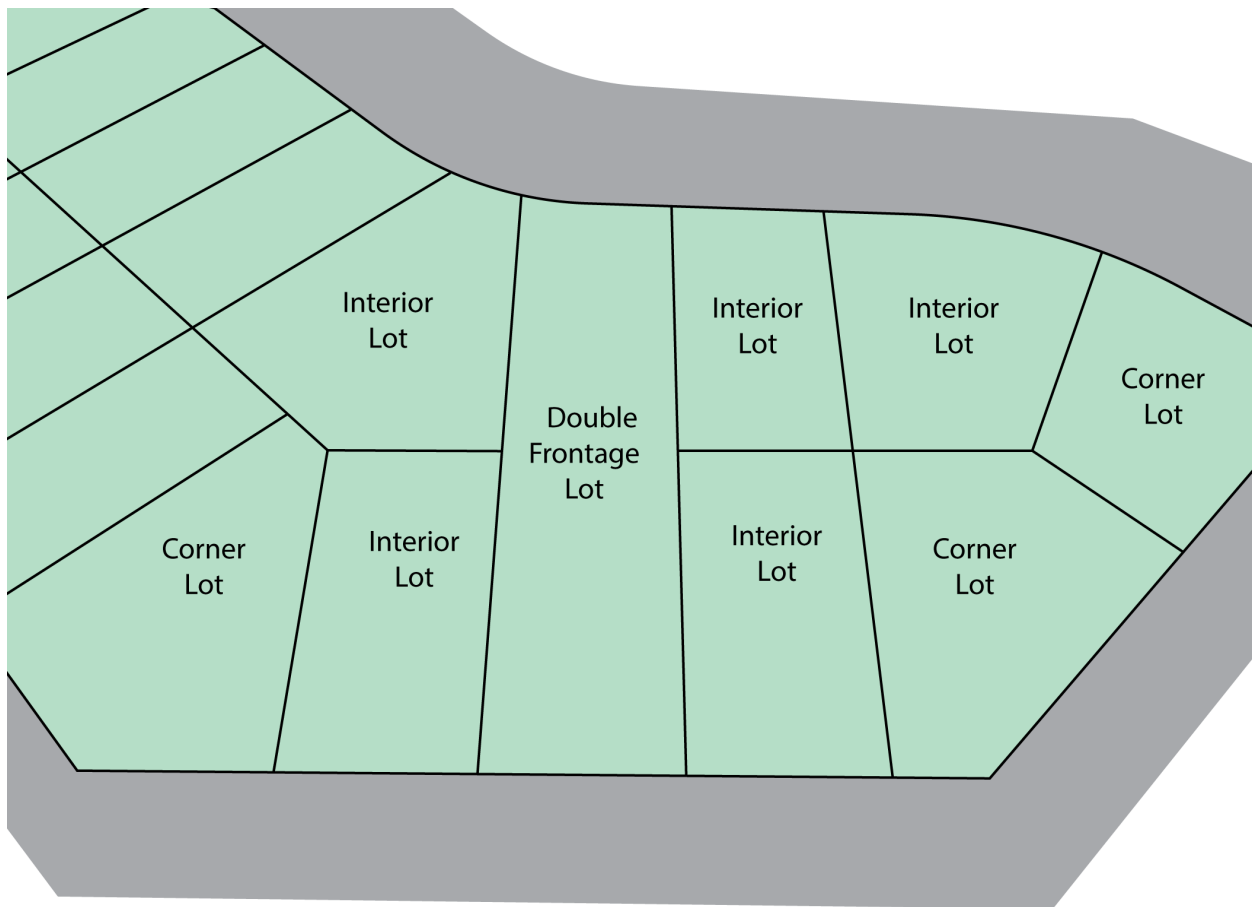
*Loading space:* An off-street space on the same lot with a building, or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

*Lodging:* A building occupied or used as a temporary dwelling for individuals or groups of individuals with or without meals, in which there are more than five sleeping rooms, and in which no provision is made for cooking in any individual room, such as a hotel.

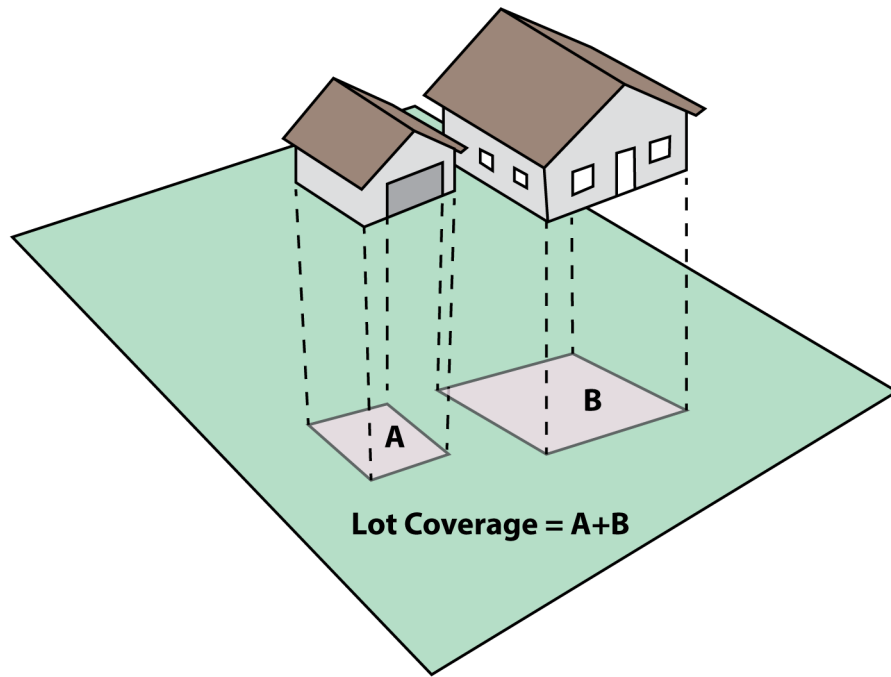
*Lot:* Any piece or parcel of land or a portion of a subdivision, the boundaries of which have been established by some legal instrument of record, that is recognized and intended as a unit for the purpose of transfer of ownership.

*Lot, area:* The total area within the lot lines of a lot.

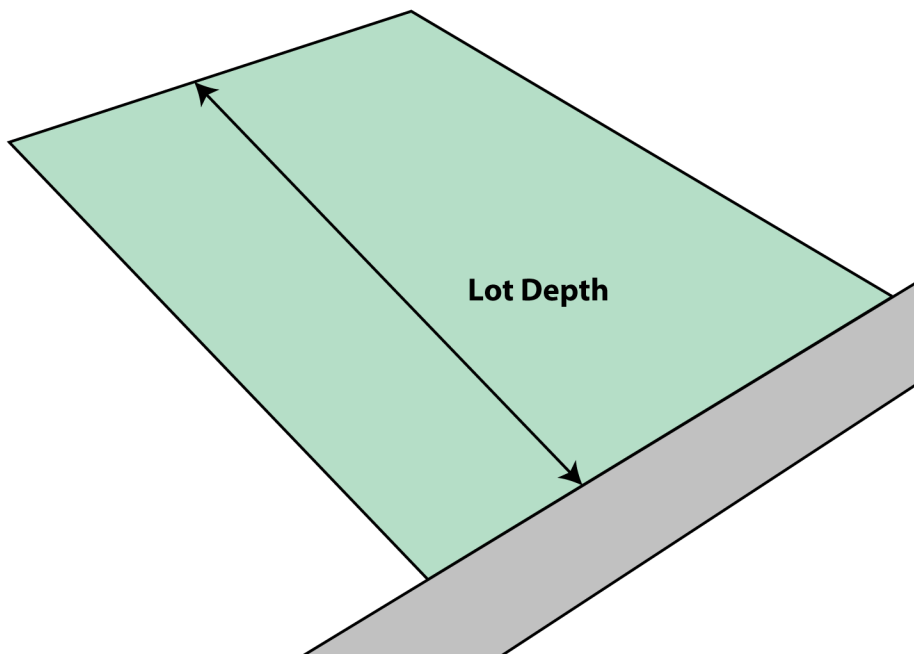
*Lot, corner:* A corner lot is a lot situated at the intersection of two streets, where the interior angle of the intersection does not exceed one hundred and thirty-five degrees.



*Lot coverage:* The part or percent of the lot occupied by buildings or structures, including accessory buildings or structures, exclusive of unenclosed accessory structures such as, but not limited to decks, patios, gazebos, etc.



*Lot depth:* The distance between the front and rear lot lines, measured along the median between the side lot lines.



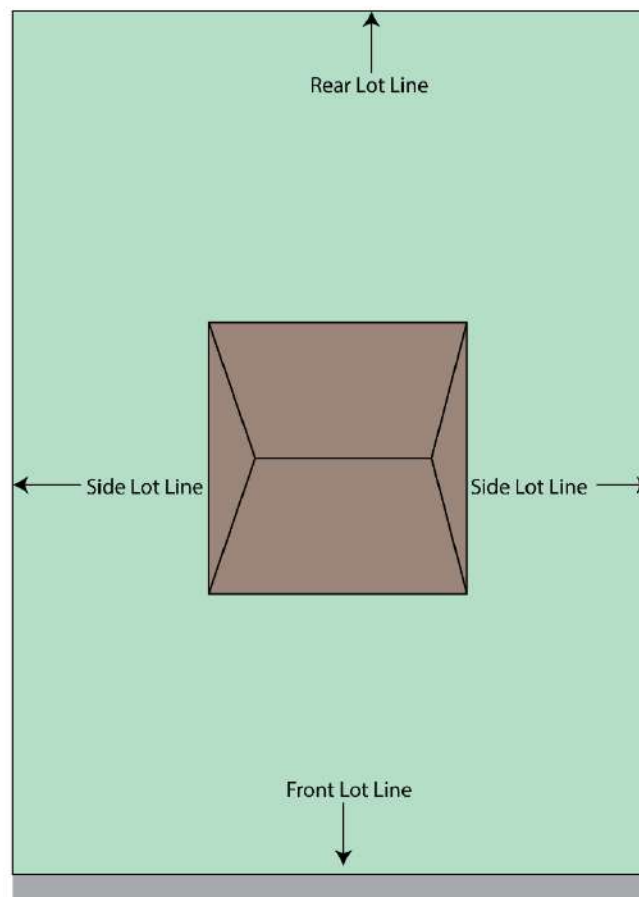
*Lot, double frontage:* Any interior lot having frontages on two or more or less parallel streets. In the case of a row of double frontage lots, one street will be designated as the front street in the plat and the request for zoning certificate.

*Lot, interior:* Any lot other than a corner lot.

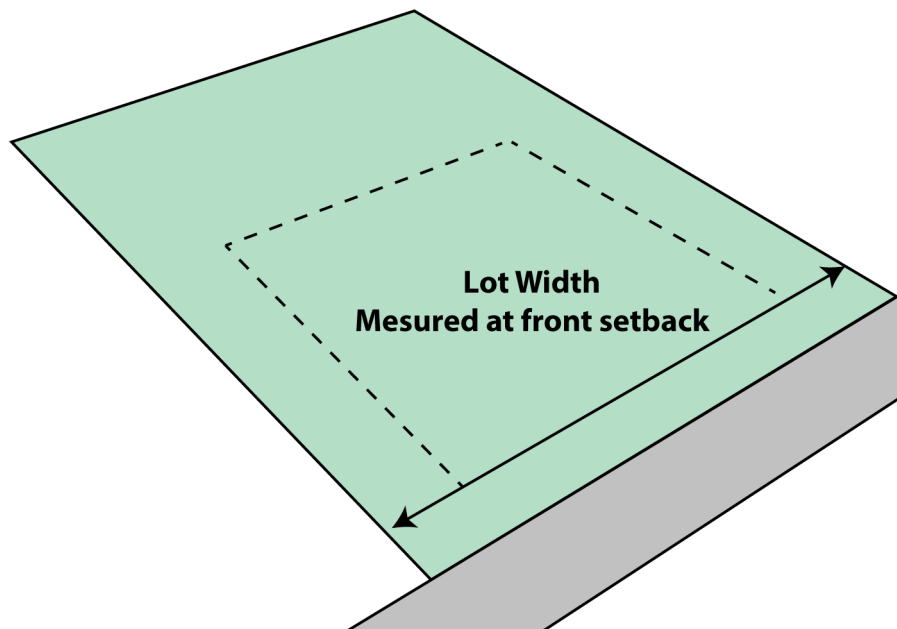
*Lot line, front:* In the case of an interior lot, the line separating such lot from the street. In the case of a corner lot or double frontage lot, the line separating such lot from that street which is designated as the front street in the plat and the request for zoning compliance permit.

*Lot line, rear:* The lot line opposite the front lot line. In the case of a lot that forms a point at the rear, the rear lot line is an imaginary line that is typically parallel to the front lot line, not less than ten feet long lying farthest from the front lot line and wholly within the lot.

*Lot line, side:* Any lot lines other than the front lot lines or rear lot lines.



*Lot width:* The distance between the side lot lines, measured at the two points where the building line, or front setback, intersects the side lot lines.



*Low-impact development:* Site design and stormwater management techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source.

*Luminaire:* The complete lighting system, including the lamp and the light fixture.

*Marihuana:* All parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including concentrate and infused products. Marihuana does not include (i) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination; (ii) industrial hemp; or (iii) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products. The following related definitions are also provided.

- A. *Marihuana accessories:* Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

- B. *Marihuana concentrate*: The resin extracted from any part of the plant of the genus cannabis.
- C. *Marihuana business*: A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana provisioning center, marihuana secure transporter, or any other type of marihuana establishment or facility licensed by LARA.
- D. *Marihuana grower*: A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- E. *Marihuana-infused product*: A topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product must not be considered a food for purpose of the Food Law, MCL 289.1101 to 289.8111.
- F. *Marihuana Tracking Act* or *MTA*: Public Act 282 of 2016, MCL 333.27901, et seq., as amended and all future amendments.
- G. *Marihuana microbusiness*: A person licensed to cultivate not more than one hundred fifty marihuana plants, process, and package marihuana, and sell or otherwise transfer marihuana to individuals who are twenty-one years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.
- H. *Marihuana processor*: A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
- I. *Marihuana provisioning center*: A licensee that is a commercial entity located in the city that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers.
- J. *Marihuana retailer*: A person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are twenty-one years of age or older.
- K. *Marihuana safety compliance facility*: A person licensed to test marihuana, including certification for potency and the presence of contaminants.
- L. *Marihuana secure transporter*: A person licensed to obtain marihuana from



- marihuana establishments in order to transport marihuana to marihuana establishments.
- M. *Michigan Medical Marihuana Act, or MMMA*: The initiated law of 2008, MCL 333.26421, et seq., as amended and all future amendments.
- N. *Michigan Medical Marihuana Facilities Licensing Act, or MMFLA*: Public Act 281 of 2016, MCL 333.26421, et seq., as amended and all future amendments.
- O. *Michigan Regulation and Taxation of Marihuana Act or MRTMA*: The initiated law of 2018, MCL 333.27951, et. seq., as amended and all future amendments.
- P. *Person*: An individual, partnership, corporation, limited liability company, trust, or other legal entity.
- Q. *Primary caregiver or registered primary caregiver*: A person who is at least twenty-one years old and who has agreed to assist with a registered qualifying patient's medical use of marihuana and who has not been convicted of any felony within the past ten years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in Section 9a of Chapter X of the Code of Criminal Procedure, 1927 PA 175, MCL 770.9a.
- R. *Process or processing*: To separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.
- S. *Qualifying patient or registered qualifying patient*: A person who has been diagnosed by a physician as having a debilitating medical condition and who has a valid registry identification card issued by LARA or an equivalent approval lawfully issued under the laws of another state or other entity of the United States which identifies the person as a registered qualifying patient.
- T. *Stakeholder*: with respect to a trust, the trustee, and beneficiaries; with respect to a limited liability company, all members, and managers; with respect to a corporation, whether profit or non-profit, all stockholders, directors, corporate officers, or persons with equivalent titles; and with respect to a partnership or limited liability partnership, all partners, and investors.
- U. *State license*: A license issued by LARA that allows a person to operate a

marihuana business.

*Mobile home park:* A parcel or tract of land under the control of a person upon which three or more mobile homes are located on a continual, non-recreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a mobile home.

*Motel:* See *lodging*.

*Motorized home or motor home:* A self-propelled motor vehicle that provides the amenities of day-to-day living while used as a means of transportation for recreational or travel purposes.

*Mural/work of art:* Any mural or work of art that does not include a commercial message, to be determined by the Zoning Board of Appeals.

*Nonconforming building or nonconforming structure:* A building or portion thereof lawfully existing at the effective date of the ordinance from which this chapter is derived, or amendments thereto, and that does not conform to the provisions of the chapter nor to the use regulations of the district in which it is located.

*Nonconforming use:* A use which lawfully occupied a building or land at the effective date of this ordinance from which this chapter is derived, or amendments thereto, and that does not conform to the use regulations of the district in which the building or land is located.

*Nuisance:* Any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition, or thing either:

- A. Injures or endangers the comfort, repose, health, or safety of others;
- B. Is offensive to the senses;
- C. Unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage any public or private street, sidewalk, ditch, or drainage
- D. In any way renders other persons insecure in life or the use of parcels;
- E. Essentially interferes with the comfortable enjoyment of life and parcels, or tends to depreciate the value of the parcels of others; or

- F. Tends to attract rodents or nuisance birds, such as pigeons, crows, seagulls, or starlings, or causes overcrowding of birds.

*Occupancy, change of:* A discontinuance of an existing use and the substitution therefor of a use of a different kind or class.

*Open air business uses:* Includes any of the following businesses when said business is the principal use and is not conducted from a wholly enclosed building:

- A. Retail sales of trees, shrubbery, plants, flowers, seeds, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment, and other home garden supplies and equipment.
- B. Retail sale of fruit and vegetables.
- C. Tennis courts, archery courts, shuffleboard, horseshoe courts, miniature golf, golf driving range, children's amusement park, and similar recreation uses.
- D. Bicycle, utility truck or trailer, motor vehicles, boats, or home equipment sale, rental, or repair services.
- E. Outdoor display and sale of garages, swimming pools, motor homes, modular buildings, snowmobiles, and similar products.
- F. Outdoor sale and storage of building materials, lumber, contractor's equipment, and similar materials.

*Open Front Store:* A store that does not require patrons to enter the structure.

*Open storage:* All outdoor storage of any kind whatsoever.

*Parking facility / lot, off-street:* A facility providing vehicular parking spaces, drives, and aisles, for maneuvering, entering, and exiting an area for the parking of more than two automobiles.

*Parking space:* An area providing parking for a motor vehicle, such space being exclusive of necessary drives, aisles, entrances, or exits.

*Performance standards:* Those best management practices and engineering and regulatory controls contained within the provisions of this Ordinance.

*Person:* Any individual, partnership, association, corporation, or other entity to which the law assigns rights, duties, and responsibilities.

*Pet Day Care:* See Animal Boarding Facility.

*Places of Assembly:* Structures such as theaters, convention centers, auditoriums, banquet halls, sports arenas, stadiums, places of worship, and other similar facilities where more than twenty people meet or are assembled.

*Planned shopping center:* Two or more commercial or service establishments within a structure or group of structures bound by a common architectural style and served by a common parking area.

*Planned Unit Development:* Both a form and process of development, the approval of which is based upon a specific site plan and other information meeting the standards set forth in this Ordinance. A Planned Unit Development project is characterized by a unified site design and singular ownership and control.

*Planning Commission:* The City of Berkley Planning Commission.

*Plant material:* A collection of living evergreen or deciduous, woody-stemmed trees, shrubs, vines, and ground cover.

*Porch, enclosed:* A covered projection on a building that is totally enclosed by walls, windows, or screens and has a separate roof or a roof that is integral to the principal building to which it is attached.

*Porch, open:* An unenclosed projection on a building, which is integral with the principal building or structure to which it is attached.

*Power generator:* A stationary device, such as a reciprocating internal combustion engine or turbine that serves solely as a secondary source of mechanical or electrical power whenever the primary energy supply is disrupted or discontinued during power outages or natural disasters. A power generator may operate during power interruptions or during regularly scheduled testing.

*Projections:* The part or feature of a building that extends outside of the enclosed walls.

*Public utility:* Any person, municipal department, board, or commission duly authorized to furnish under state or municipal regulations to the public gas, steam, electricity, sewerage, communication, telegraph, transportation, or water.

*Recreational vehicle.* A vehicle that moves one or more persons over the ground, water, ice, or snow, and which is either self-propelled or connects to a self-propelled vehicle. The term "recreational vehicle" includes, but is not limited to, snowmobiles,

camping vehicles, ATVs, motorcycles and related two-wheel, three-wheel, or four-wheel vehicles, mini-bikes, go-carts, boats, and iceboats; however, it does not include automobiles licensed by the state to travel upon the streets and highways.

*Resale shop:* A retail establishment that sells previously owned merchandise where more than twenty percent of the floor space is devoted to the sale of used clothing.

*Restaurant:* Any establishment whose principal business is the sale of food and beverages to the customer in a ready-to-consume state, and whose method of operation is characteristic of a fast food, fast casual, standard restaurant, bar, or lounge, or combination thereof. The following additional definitions are provided:

- A. *Restaurant, drive-in:* A restaurant whose method of operation involves delivery of prepared food so as to allow its consumption in a motor vehicle or elsewhere on the premises, but outside of an enclosed building.
- B. *Restaurant, drive-through:* A restaurant, the method of operation which includes the delivery of the prepared food to the customer in a motor vehicle, typically through a drive-through window, for consumption off of the premises.
- C. *Restaurant, fast food / fast casual:* A restaurant, the method of operation which involves minimum waiting for delivery of ready-to-consume food to the customer at a counter or cafeteria line for consumption at the counter where it is intended to be served, or at tables, booths, or stands inside or outside of the structure, or for consumption off the premises, but not intended to be consumed in a motor vehicle at the site.
- D. *Restaurant, standard:* A restaurant, the method of operation which involves either:
  - 1. The delivery of prepared food by servers to customers seated at tables within a completely enclosed building; or
  - 2. The preparation of food to be delivered to customers at a cafeteria line and subsequently consumed by the customers at tables within a completely enclosed building.

*Right-of-way:* A right of passage or convention imposed by law on behalf of the public.

*Screen wall:* A nontransparent decorative barrier intended to screen from view of adjoining neighbors or roadways or the contents of the site.

*Self-storage facility:* A building or group of buildings containing fully enclosed, compartmentalized stalls or lockers that are rented or leased as individual units for the storage of personal parcels customarily related to residential, office, and local commercial activities.

*Senior assisted living facility:* Living facility for persons fifty-five years or older where residents occupy a private or shared residence, and have meals, medical, laundry, and other services available or provided daily.

*Setback:* An open space on the same lot with a main building, unoccupied and unobstructed from the ground upward, except as otherwise provided in the chapter.

- A. *Front yard setback:* A yard extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest line of the main building.
- B. *Rear yard setback:* A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the nearest line of the main building.
- C. *Side yard setback:* A yard between a main building and the side lot line, extending from the front yard to the rear yard. The width of the required side yard is measured horizontally from the nearest point of the side lot line to the nearest point of the main building.

*Short-term rental:* Residential lodging rented for a period of less than one month.

*Sign:* A device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. The following definitions are also provided.

- A. *Awning Sign:* Any sign that is placed on a sheet of canvas or other material stretched on a frame and used to keep the sun or rain off a storefront, window, doorway, or deck.
- B. *Electronic Message Sign (EMS):* A sign or portion of a sign that displays an electronic image or video, which may or may not include text, including any sign or portion of a sign that uses changing lights or similar forms of electronic display such as LED to form a sign message with text or images wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. This definition

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- includes without limitation television screens, plasma screens, digital screens, flat screens, LED displays, video boards, and holographic displays.
- C. *Monument Sign*: A freestanding sign having the appearance of a solid base of landscape construction materials such as brick, stucco, stonework, textured wood, tile, or textured concrete materials compatible with the materials of the primary structure on the subject parcels.
- D. *Off-premises advertising Sign*: Any sign that contains a message unrelated to or not advertising a business transacted or goods sold or produced on the premises on which the sign is located; also called a remote sign or billboard.
- E. *Pole sign*: Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or any other structure.
- F. *Portable sign*: Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T- frames; menu and sandwich board signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.
- G. *Projecting sign*: Any sign affixed to a building or wall in such a manner that its leading edge extends more than twelve inches beyond the surface of such building or wall.
- H. *Pylon sign*: See *pole sign*.
- I. *Roof sign*: Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the peak of the roof or below the eaves and such that no part of the sign is separated from the rest of the roof by a space of more than twelve inches.
- J. *Temporary sign*: Any sign that is used only temporarily and is not permanently mounted.
- K. *Time / temperature sign*: Any sign on which the current time and temperature or stock market information are displayed.

- L. *Wall sign:* Any sign attached parallel to, but within twelve inches of a wall, painted on the surface of a wall or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.
- M. *Window sign:* Any sign, opaque film, picture, symbol, or combination thereof placed inside a window or upon the window panes or glass and is visible from the exterior of the window. Window signs may be permanent or temporary.

*Site condominium:* A condominium development containing uses permitted in the zoning district where located, in which each co-owner owns exclusive rights to a volume of space within which a structure or structures may be constructed, herein defined as a condominium unit, as described in the master deed. The following additional definitions are provided:

- A. *Building envelope:* The ground area occupied, or to be occupied by the principal structure which is placed, or is intended to be placed, on a building site, together with any attached accessory structures, e.g., house and attached garage.
- B. *Building site:* The condominium unit, including the building envelope and the contiguous limited common area or element under and surrounding the building envelope. The counterpart of "lot" as used in connection with a project developed under the Land Division Act, Public Act No. 288 of 1967 (MCL 560.101 et seq.).

*Site plan:* A plan showing all salient features of a proposed development, as required under Article 15, so that it may be evaluated to determine whether it meets the provisions of this Ordinance.

*Sketch plan:* A simplified, scaled, aerial view drawing of a site, including proposed and existing structures.

*Solar energy system:* A solar photovoltaic cell, panel, or array that converts solar energy to usable thermal, mechanical, chemical, or electrical energy. The following definitions are provided.

- A. *Ground-mounted solar energy system:* A freestanding solar energy system that is not attached to and is separate from any building on the same parcel on which the solar energy system is located.
- B. *Roof-mounted solar energy system:* A solar energy system that is attached to a building on a parcel as the principal method of physical support.

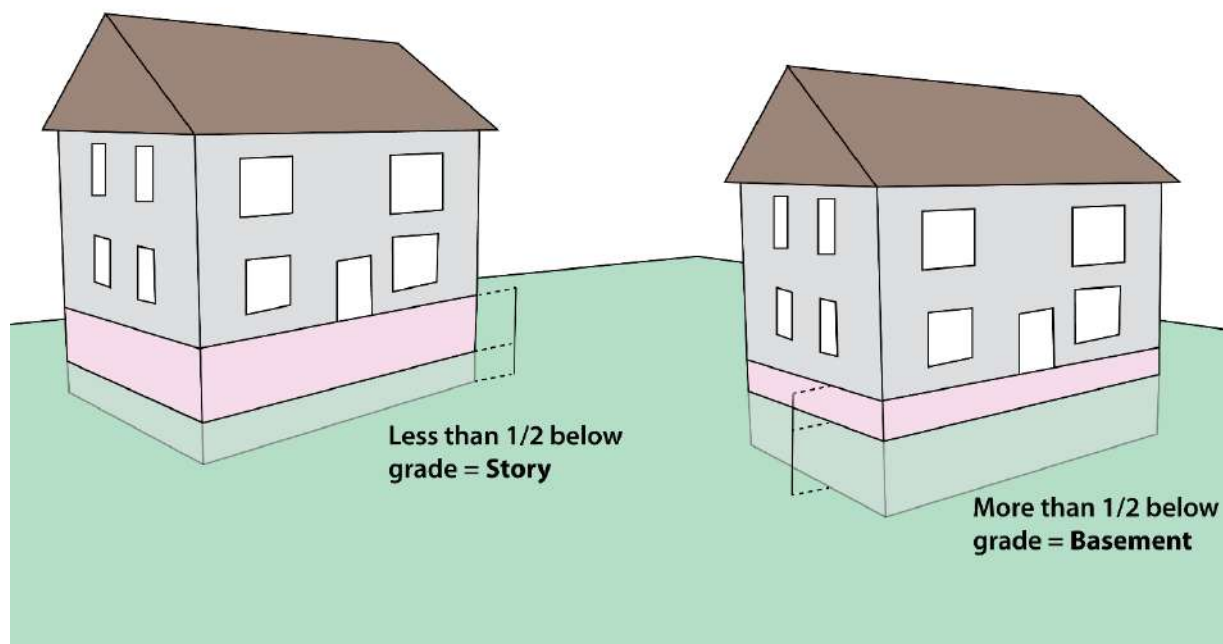


*State:* The State of Michigan.

*State equalized valuation:* The value shown on the City assessment roll, as equalized through the process of state and county equalization.

*Story:* That part of a building included between the surface of any floor and the surface of the next floor or of the roof next above. When the distance from the average established grade to the ceiling of a story partially below such grade exceeds five feet, then the basement or cellar constituting the story partially below grade is counted as a story. The following diagram and additional definitions are provided:

- A. *Basement:* That portion of a building that is partly or wholly below grade but located so that the vertical distance from grade to the floor is greater than the vertical distance from the grade to the ceiling. A basement will not be counted as a story. The following diagram is illustrative of this definition:



- B. *Story, half:* A story which is situated within a sloping roof, the area of which at a height of four feet above the floor does not exceed two-thirds of the floor area directly below it, wherein living quarters are used only as a part of a dwelling situated in the story below.

*Street:* A public thoroughfare that affords the principal means of access to abutting parcels.

*Street system:* The classification of streets and highways by their diverse functions and design. The following additional definitions are provided:

- A. *Arterial Street:* A street that provides through-traffic movement on a continuous route joining major traffic generators, other arterials, expressways, and freeways, including Eleven Mile Road, Twelve Mile Road, Coolidge Highway, Greenfield Road, and Woodward Avenue. The access to abutting properties may be controlled.
- B. *Collector Street:* A street that provides service for internal traffic movement within an area and connects local streets to arterial streets, and where direct access to adjoining properties is generally permitted, including Catalpa Drive and Webster Road.
- C. *Local Street:* A street that provides for traffic movement within an area, primarily for the provision of direct access to abutting properties; any street that is not an arterial or collector street.

*Structure:* Anything constructed or erected, the use of which requires location on the ground or attachment to something having a location on the ground.

*Subdivide or subdivision:* The partitioning or splitting of a parcel or tract of land by the proprietor thereof or by their heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of the sale, or lease of more than one year, or of building development that results in one or more parcels of less than forty acres or the equivalent, and that is not exempted from the platting requirements of the Land Division Act by Sections 108 and 109 (MCL 560.108, 560.109). The term "subdivide," or "subdivision" does not include a parcels transfer between two or more adjacent parcels, if the parcels taken from one parcel is added to an adjacent parcel; and any resulting parcel must not be considered a building site unless the parcel conforms to the requirements of the Land Division Act or the requirements of an applicable local ordinance.

*Swimming pool:* An artificially constructed portable or non-portable pool or container capable of being used for swimming, wading, bathing, or any combination thereof, wholly outside a permanently enclosed and roofed building.

*Tattoo studio:* Any establishment where the principal activity is the permanent application or placement, of designs upon or under the skin with ink or any other substance resulting in the coloration of the skin by the aid of needles, or any other instrument designed to touch or puncture the skin.

*Temporary building and use:* A structure or use permitted by the building official to exist during periods of construction of the main use or for special events.

- A. *Carnival or Circus:* Traveling or temporary shows that feature various attractions such as rides, games, food booths, and performances by acrobats, clowns, animals, or similar.
- B. *Promotional Events and Sidewalk Display:* Sales or promotional exhibitions that utilize public sidewalk space, including benches and other street furnishings, to display materials related to the sale or promotion.
- C. *Seasonal Sales:* The outdoor display and sale of merchandise for seasonal retail sales, such as for fruit, vegetables, lawn furniture, playground equipment, and hardware supplies.
- D. *Special Events:* A gathering, generally lasting from a few hours to a few days, designed to celebrate, honor, discuss, sell, teach about, encourage, observe, or influence human endeavors.

*Tents:* A shelter of canvas or the like supported by poles and fastened by cords or pegs driven into the ground and does not include those types of tents used solely for children's recreational purposes.

*Terrace:* An open, uncovered level space at ground level that is either natural or manmade. A terrace may be surfaced with paving material.

*Tobacco shop:* Any establishment having more than thirty percent of shelf space devoted to the selling of tobacco, cigarettes, cigars, or smoking paraphernalia.

*Townhouse:* A building designed so three or more dwelling units with their own front doors are attached by walls.

*Trailer:* Every vehicle with or without motive power designed for carrying parcels or persons and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

*Transparency:* The quality of allowing light to pass through.

*Use:* The purpose for which land or premises or a building thereon is designed, arranged, or intended, or for which it is occupied or maintained, let, or leased.

*Vape shop:* See *Tobacco shop*.

*Variance:* A modification of the literal provisions of this chapter, granted when strict enforcement of this chapter would cause undue hardship owing to circumstances unique to the individual parcels on which the variance is granted.

*Veterinary clinic or hospital:* A place for the care, diagnosis, and treatment of sick or injured animals, or those in need of medical or minor surgical attention.

*Violation:* Any act that is prohibited under this Ordinance, including affirmative acts or failure to act.

*Wind energy system:* An aggregation of parts including the base, tower, generator, turbine, rotor, blades, and ancillary equipment such as utility interconnections and battery banks, etc., in such configuration as necessary to convert the power of wind into mechanical or electrical energy, i.e., wind charger, windmill, or wind turbine. The following additional definitions are provided:

- A. *Anemometer tower* means an aggregation of parts including the base, tower, anemometer or wind speed recorder, wind direction vanes, data logger, and ancillary equipment such as any telemetry devices, etc., in such configuration as necessary to monitor or transmit wind speed and wind flow characteristics over time for either instantaneous wind information or to characterize the wind resource at a given location.
- B. *Maximum height* means the height above grade of the fixed portion of the tower plus the highest vertical extension of any blades and rotors.
- C. *Minimum height clearance* means the distance between the ground and an overhead obstacle.
- D. *Nacelle* means the component of a wind energy system that sits atop the tower and houses the turbine.
- E. *Rotor* means a multiple-bladed airfoil assembly of a wind energy system that extracts, through rotation, kinetic energy directly from the wind.
- F. *Tower* means the vertical component of a wind energy system that elevates the turbine, rotor, and blades above the ground.
- G. *Turbine* means the component of a wind energy system that converts kinetic energy directly from the wind into mechanical or electrical energy, often referred to as the generator.

*Window:* One or more panes of glass where both sides of the glass are readily made transparent. A door is not considered a window.

*Wireless communications facilities:* All structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals, including those of a public utility. This may include, but is not limited to, radio towers, television towers, telephone devices and exchanges, microwave relay facilities, telephone transmission equipment, building, and private and commercial mobile radio service facilities. Not included within this definition are citizen band radio facilities, short wave receiving facilities, radio, and television broadcast reception facilities, federally licensed amateur (ham) radio facilities, satellite dishes, and governmental facilities that are subject to state or federal law or regulations which preempt municipal regulatory authority. The following additional definitions are provided:

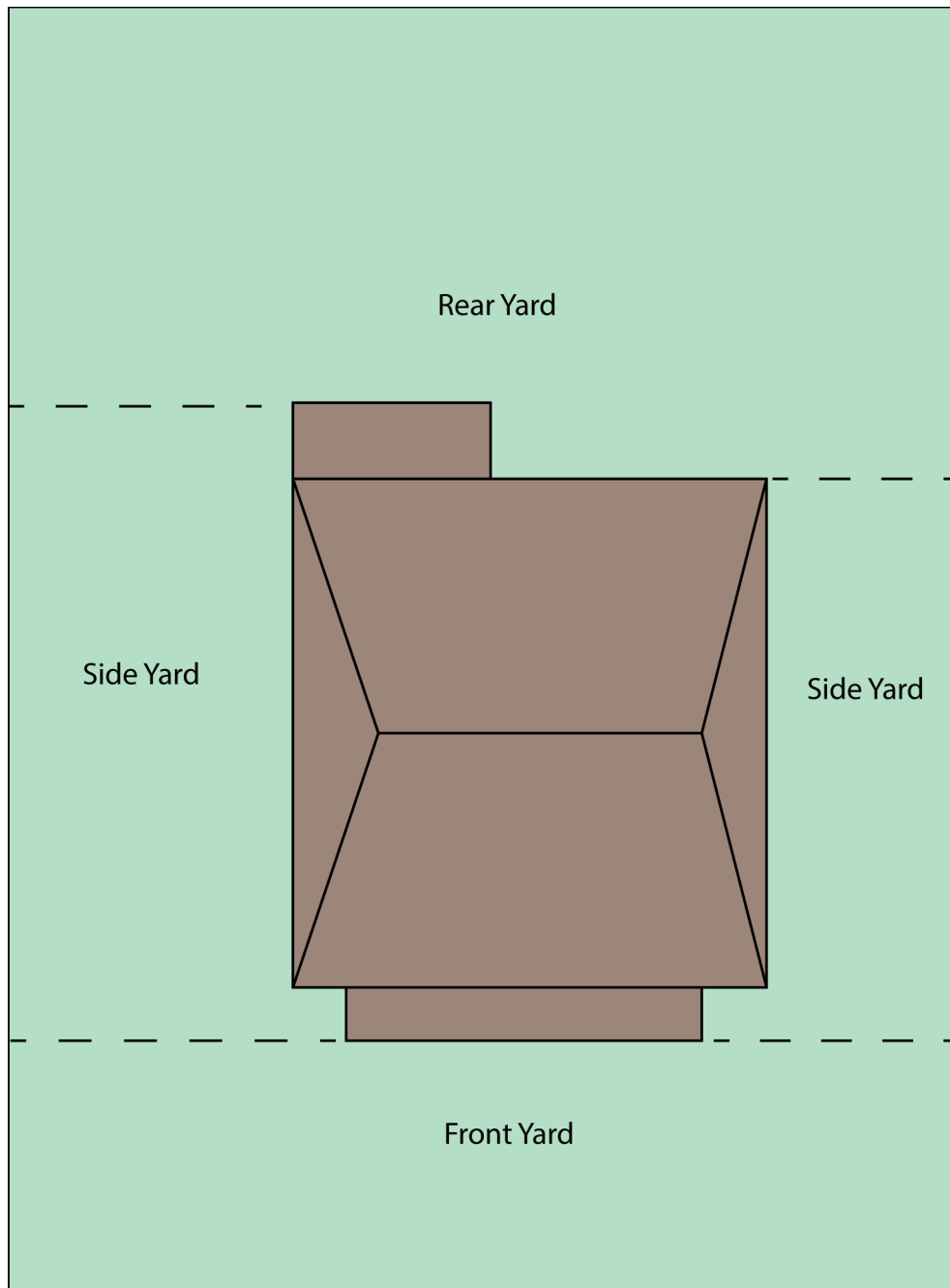
- A. *Attached wireless communications facilities:* Wireless communication facilities that are affixed to existing structures, such as existing buildings, towers, water tanks, utility poles, and the like. A wireless communication support structure proposed to be newly established is not included within this definition.
- B. *Collocation:* The location by two or more wireless communication providers of wireless communication facilities on a common structure, tower, or building, with the view toward reducing the overall number of structures required to support wireless communication antennas within the community.
- C. *Wireless communication support structures:* Structures erected or modified to support wireless communication antennas. Support structures within this definition include, but are not limited to, monopoles, lattice towers, light poles, wood poles, and guyed towers, or other structures that appear to be something other than a mere support structure.

*Yard:* An open unoccupied space on the same lot with a building extending along the entire length of the street, rear, or interior lot line.

*Yard, front:* A yard extending the full width of the lot, the depth of which is the minimum required horizontal distance between the front lot line and the nearest point of the main building.

*Yard, rear:* A yard extending across the full width of the lot, the depth of which is the minimum required horizontal distance between the rear lot line and the nearest point of the main building.

*Yard, side:* A yard extending from the front yard to the rear yard, the width of which is the minimum required horizontal distance between the side lot line and the nearest point of the main building.



*Zoning Administrator:* The administrative official appointed by the City Council charged with the responsibility of enforcing this Ordinance.

*Zoning Board of Appeals:* As used in the Ordinance meaning the City of Berkley Zoning Board of Appeals.

*Zoning district:* A portion of the City of Berkley within which, on a uniform basis, certain uses of land and buildings are permitted and within certain yards, open spaces, lot areas, and other requirements are established by this Ordinance.

*Zoning Map:* The map which sets the boundaries of the districts established pursuant to this Ordinance.

# ARTICLE 3

## ADMINISTRATION AND ENFORCEMENT

### SECTION 3.01 ZONING ADMINISTRATOR APPOINTMENT

The provisions of this Ordinance must be administered and enforced by the Zoning Administrator as designated by the City Manager. The Zoning Administrator may be provided with assistance to perform the duties described herein.

### SECTION 3.02 DUTIES

- A. The duties of the Zoning Administrator or their designee include the following:
1. Interpret the provisions of this Ordinance. The Zoning Administrator may also forward matters requiring interpretation to the Zoning Board of Appeals.
  2. Make inspections of buildings or premises necessary to carry out the enforcement of this Ordinance.
  3. Review and issue Zoning Certificates.
  4. The Zoning Administrator cannot enforce private agreements or covenants.
- B. The duties of the Community Development Director or their designee include the following:
1. Implement the decisions of the Planning Commission, Zoning Board of Appeals, and City Council.
  2. Oversee the Community Development Department, including the Zoning Administrator.
  3. Receive and review for completeness all applications for Site Plan Review, Special Land Uses, Planning Unit Developments, or other matters that the Planning Commission is required to decide under this Ordinance. Refer such applications to the Planning Commission, and



where applicable, the City Council for determination.

4. Receive and review for completeness all applications for appeals, variances, or other matters that the Zoning Board of Appeals is required to decide under this Ordinance. Refer such applications to the Zoning Board of Appeals for determination.
  5. Receive and review for completeness all applications for text or map (rezoning) amendments to this Ordinance. Refer such applications to the Planning Commission and City Council for determination.
  6. Administer the pursuit of community and economic development opportunities within the City.
  7. Staff the Planning Commission meetings, Zoning Board of Appeals meetings, and relevant City Council meetings.
  8. Prepare departmental reports.
- C. The duties of the Zoning Administrator or their designee include the following:
1. Investigate complaints, issue citations, and offer Zoning Ordinance guidance in legislative processes regarding violations of the Zoning Ordinance.

### SECTION 3.03 ZONING CERTIFICATION PROCESS

- A. *Zoning Certificate.* It is unlawful to use, occupy, reoccupy, or permit the use or occupancy of, any structure or premises, or parts thereof, hereafter created, erected, changed, converted, or wholly or partially altered or enlarged until a Zoning Certificate has been issued by the Zoning Administrator stating that the proposed use of the structure or lot conforms to the requirements of this Ordinance. The Zoning Certificate signifies that the intended use, building, or structure complies with all provisions of this Ordinance. When a building permit is not required, the application for a Zoning Certificate must be made prior to the date when construction, installation, or use of the parcels is intended to begin.
- B. *Submittal Requirements.* An application for a Zoning Certificate must be accompanied by a plot plan as required in this Section, unless a site plan is

required under Article 14, Site Plan Review, herein, in which case the provisions of this Section do not apply. When required, a plot plan must contain the following information:

1. Scale, date, and north point.
2. Location, shape, and dimensions of the lot.
3. Dimensioned location, outline, and dimensions of all existing and proposed structures.
4. A clear description of existing and intended uses of all structures.
5. Additional information as required by the Zoning Administrator for the purpose of determining compliance with the provisions of this Ordinance.

C. *Issuance of Zoning Certificate.* A Zoning Certificate will be issued by the Zoning Administrator upon the review of the application. In some cases, the Zoning Administrator may seek the recommendation of a review committee comprised of the Community Development Director, Building Official, Assessor, Department of Public Works Director, and Fire Inspector, or their designees, in accordance with the following:

1. An application, meeting the requirements of Section 3.03.B, must be submitted to the Zoning Administrator who will distribute the plans to the review committee.
2. After receiving the recommendations from members of the review committee, the Zoning Administrator will issue a Certificate of Zoning Compliance, a Certificate of Zoning Compliance with conditions, or a denial of the Certificate of Zoning Compliance based upon the recommendations of the review committee. Any recommendations for denial of a Certificate of Zoning Compliance must state the reasons for the recommended denial.
3. The Zoning Administrator will issue a Certificate of Zoning Compliance only if all members of the review committee recommend approval or approval with conditions. Any conditions of approval recommended by the Community Development Director, Building Official, Assessor, Department of Public Works Director, or Fire Inspector or their designee must be incorporated into the approval with conditions issued by the Zoning Administrator.

- D. *Validity and Expiration.* A Zoning Certificate is valid for the duration of the building permit providing no changes have been made which would invalidate the original approval. If a building permit is not required, the Zoning Certificate is valid for a period of two years but may be extended for a further period of not to exceed two years, if the Zoning Administrator finds good cause shown for failure to complete work for which said Zoning Certificate was issued.

Should the holder of a Zoning Certificate fail to complete the work for which the permit was issued within the time limit as set forth above, any unfinished structure is declared a nuisance, per se, and the same may be abated by appropriate action before the Circuit Court of the County. The Zoning Board of Appeals, the City Council, any person designated by the City Council, or any aggrieved person may institute an action to have the nuisance abated.

#### SECTION 3.04 RECORDS

Each action taken with reference to zoning compliance must be duly recorded and kept in the office of the Zoning Administrator and, if appropriate, recorded in the minutes of the Planning Commission meetings, the minutes of the Zoning Board of Appeals meetings, and the City Council's actions. The findings supporting the Planning Commission's and City Council's actions must be recorded in the minutes. After the minutes have been approved, copies of the final approved minutes must be made available to the public and to any zoning compliance applicant.

#### SECTION 3.05 FEES AND ESCROWS

The City Council must establish by resolution a schedule of fees for administering this Article. No certificate or permit may be issued unless required fees and escrows have been paid in full.

#### SECTION 3.06 COMPLIANCE WITH PLANS

Zoning Certificates issued for plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction which

deviates from the approved zoning compliance permits is a violation of this Ordinance and punishable as provided for Section 3.13 Violations and Penalties.

### SECTION 3.07 WITHHOLDING OF APPROVAL

The Planning Commission, City Council, or Zoning Board of Appeals may withhold or condition granting of approval of any use, site plan, Planned Unit Development, or other approval required by this Ordinance pending approvals required by state, county, or federal agencies or departments.

### SECTION 3.08 COMPLETION OF CONSTRUCTION

- A. Nothing in this Ordinance can require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption of this Ordinance or later amendment which may apply. Actual construction is defined to include the placing of construction materials in a permanent position and fastening them in a permanent manner. Excavation, demolition, or the removal of materials is defined as construction.
- B. Where a building permit has been issued, said building or structure may be completed in accordance with the approved plans for which the building permit was issued, and further, may upon completion be occupied by the use for which it was originally designed. Approved construction must be diligently pursued to completion within three hundred and sixty-five days of the permit's effective date unless a longer period has been permitted or extended by the Building Official.

### SECTION 3.9 PUBLIC HEARING NOTICE REQUIREMENTS

- A. *When Required.* Public hearings at a Planning Commission and/or City Council meeting are required in those instances specified by this Ordinance and Act 110 of the Public Acts of 2006, as amended. Public hearings apply to the following requests.
  - 1. Zoning text amendments;

2. Zoning Map amendments;
3. Appeals of the actions of the Zoning Administrator;
4. Variances;
5. Special land uses; and
6. Preliminary and Final Planned Unit Development (PUD).

B. Notice Requirements.

1. *Mailed notice.* Notice must be postmarked not less than fifteen days before each public hearing at which an application will be considered. Notice must be given by personal delivery or first class mailing, where required, to the following:
  - a. The applicant, and the owner(s) of the parcels, if the applicant is not the owner.
  - b. All persons to whom real parcels is assessed and the occupants of all structures within a three hundred feet boundary, measured from the parcels line, for the parcels for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and parcels are located within the City of Berkley, except as set forth below.
  - c. Notification need not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different persons, one occupant of each unit or spatial area must be given notice. If a single structure contains more than four dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who may be requested to post the notice at the primary entrance to the structure.
  - d. The notice under this Section is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States Postal Service or other public or private delivery service. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

2. *Newspaper publication.* Notice must be given not less than fifteen days before each public hearing at which an application will be considered. Notice must be given by publication in a newspaper that circulates in the City of Berkley.
  3. *City website notice.* Notice of the public hearing must be posted on the City's website not less than fifteen days prior to the date of the hearing.
  4. *Temporary sign on subject parcels.* A temporary sign providing notice of the public hearing must be conspicuously placed in the front yard of the subject parcels not less than seven days prior to the public hearing.
    - a. Public hearing signs will be provided by the City of Berkley and placed on the subject parcels.
    - b. If the parcels is located on a corner lot, a public hearing sign must be conspicuously placed in each yard abutting a street.
    - c. If the parcels is located in a district without an established front or sides yard, the sign may be conspicuously placed in the street-facing window of the principal structure on the subject parcels.
- C. *Actions Exempt from Notification.*
1. Requirements for individual notice to parcels owners do not apply to Ordinance text amendments.
  2. For any group of adjacent properties or parcels numbering eleven or more that is proposed for rezoning, the requirement for individual street addresses to be listed and noticed as set forth in Section 3.10 does not apply to that group of adjacent properties, per the Michigan Zoning Enabling Act.
- D. *Content of Notice.* The notice must include the following information:
1. The nature of the request and the purpose of the public hearing, including citation of the applicable Zoning Ordinance Section.
  2. The street address and parcel number of the parcels or properties for which the request has been made.

3. A listing of all existing street addresses and parcel numbers within the parcels or properties that are the subject of the request. Street addresses do not need to be created and listed if no such addresses exist. If there are no street addresses, another means of identification may be used.
4. The location where the application documents can be viewed and copied prior to the date the application will be considered.
5. The date, time, and location of when the hearing on the application will take place.
6. The address at which written comments should be directed prior to the consideration.

## SECTION 3.10 PERFORMANCE GUARANTEES

### A. *Purpose and intent.*

1. In the interest of ensuring compliance with the provisions of this chapter, protecting the natural resources and the health, safety, and welfare of the residents of the City and future users or inhabitants of an area for which a site plan for a proposed use has been submitted, the City may require the applicant to deposit a performance guarantee for any or all site improvements required by this Ordinance. The purpose of the performance guarantee is to ensure the completion of improvements connected with the proposed use as required by this chapter, including but not limited to roadways, lighting, utilities, sidewalks, drainage, fences, walls, screens, and landscaping.
2. The City may employ the City Engineer or other City staff or consultants to review cost estimates and conduct periodic inspections of the progress of improvements.

### B. *Procedure.*

1. When a performance guarantee is required, said performance guarantee must be deposited with the City prior to the issuance of a building permit for the development and use of the land. Upon the deposit of the performance guarantee, the City will issue the

appropriate building permit, and the City will thereafter deposit the performance guarantee, in the form of a cash deposit or certified check.

2. At the time the performance guarantee is deposited with the City and prior to the issuance of a building permit, the applicant must enter into an agreement with the City incorporating the performance guarantee provisions.
3. The agreement must also prescribe the period of time within which the improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the building or other permit.
4. In the event the performance guarantee deposited is a cash deposit or a certified check, the City will rebate to the applicant, upon request from the applicant, fifty percent of the deposited funds when the applicant has completed seventy-five percent of the required improvements as confirmed by the City. The remaining fifty percent of the deposited funds will be returned when the applicant has completed one hundred percent of the required improvements and there is compliance with the chapter as confirmed by the City.
5. In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the City, the City has the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject parcels to make the improvements.
6. If the performance guarantee is not sufficient to allow the City to complete the improvements for which such guarantee was posted, the applicant will be required to pay the City the amount the cost of completing the improvements exceeds the amount of the performance guarantee, or a portion thereof, to complete the required improvements. Any amounts remaining after said completion will be applied first to the City's administrative costs including, without limitation, attorney fees, planning consultant fees, and engineering consultant fees in completing the improvement with any balance remaining being refunded to the applicant.



- C. *Guarantee with other agencies.* If the applicant has been required to post a performance guarantee or guarantee with another governmental agency to ensure the completion of an improvement associated with the site, the applicant will not be required to deposit with the City a performance guarantee for that same improvement.
- D. *Site plan completion guarantee.*
1. Prior to the issuance of any building permit for any building, and prior to the signing of the final plat by the City Clerk in a platted subdivision, or prior to the issuance of any building permit for any building in a site condominium project, or prior to issuance of a certificate of occupancy for any other development which requires Site Plan Review under this chapter, the applicant must provide to the City a completion guarantee deposit to the City. Said deposit must guarantee the completion of all site improvements shown on the approved final site plan or final preliminary plat. For the purpose of this Section, completion means inspection by the appropriate City officials or other government agencies for compliance with the final site plan approved by the Planning Commission or final preliminary plat approved by the City Council, not less than six months after all site plan or plat improvements have been installed.
  2. "Site improvements" means, but is not limited to, drives and streets, curbs and gutters, sidewalks, water and sanitary sewer systems, drainage facilities and retention/detention basins, final grading, and swales, retaining walls, landscaping, and parking lots.
  3. In the event the applicant fails to correct any deficiencies within thirty days of written notice from the City, the City has the authority to use the guarantee to complete the site improvements, or repairs to said improvements, within a period of nine months following the issuance of the last certificate of occupancy unless good cause can be shown by the applicant for the delay in completion. The Community Development Director may, at their sole discretion, agree in writing to a specific extension of the nine month period. The City may use the completion guarantee to hire subcontractors to complete work, fund inspections, and for the administration of the required work including legal fees.

4. The guarantee, or portion thereof, must be promptly released upon the inspection and approval of all improvements in compliance with the approved final site plan or special use permit and all applicable City standards and specifications. Portions of the guarantee may be released, in not more than three installments, provided that the project or approved phase of a project has been completed for six months and the improvements for which the release is requested have been inspected and approved in accordance with the above standards, and the remaining balance is sufficient to cover the remaining improvements, including administrative and contingency expenses.
- E. *Types of completion guarantees.* The applicant may provide a guarantee in the form of a cash deposit or certified check.

### Section 3.11 DEVELOPMENT AGREEMENTS

- A. *Development agreement requirement.* Prior to final approval of a Planning Unit Development or conditional rezoning, an applicant must execute a development agreement, in a form approved by the City, specifying all the terms and understandings relative to the proposed development. All costs incurred by the City, including attorney fees, in drafting and approving the development agreement must be paid by the applicant.
- B. The Planning Commission may require as a condition of preliminary approval a development agreement that must be executed prior to the final approval of a site plan or special land use.
- C. *Minimum terms.* The content of the agreement must outline the specifics of the proposed development, but must at a minimum provide the following terms:
1. A survey of the acreage involved in the proposed development.
  2. A description of the ownership of the subject parcels.
  3. A land use description, including a specific description of the proposed uses, density, lot dimensions, setbacks, and other dimensional standards.

4. Proposed method of dedication or mechanism to protect areas designated as common areas or open spaces.
5. Description of required improvements to common areas, recreational facilities, sidewalks, and nonmotorized pathways.
6. General description of any improvements to streets or utilities.
7. Mechanisms to ensure the continued maintenance of common areas, including but not limited to roadways, sidewalks, lighting, landscaping, utilities, and other site improvements.
8. Provisions assuring that open space areas shown on the plan for use by the public or residents of the development will be irrevocably committed for that purpose. The City may require conveyances or other documents to be placed in escrow to accomplish this.
9. Provisions for the future financing of any improvement shown on the plan as site improvements, open space areas, and common areas, which are to be included within the development, and that maintenance of such improvements is assured by means satisfactory to the City.
10. Provisions to ensure adequate protection of natural features.
11. Financial assurances in accordance with this Section to guarantee the completion of all site improvements.
12. Requirements that the applicant maintain insurance coverage during development in amounts established by the City, naming the City as an additional insured, and further, required insurance provisions after the development is completed.
13. The site plan, special use, Planning Unit Development, or conditional rezoning must be incorporated by reference and attached as an exhibit.
14. Description of the timing to complete the development of the project. If the project is to be developed in phases, a timeline to complete the construction of each phase.
15. An acknowledgment by the applicant that the terms and conditions of the approval are fair, reasonable, and equitable, that the terms and

conditions do not violate any constitutional rights, and that the applicant freely agrees to be bound by each and every condition and provision of the development agreement.

## SECTION 3.12 VIOLATIONS AND PENALTIES

- A. *Violations.* If the Zoning Administrator finds that any of the provisions of this Ordinance are being violated, the person responsible must be notified in writing for such violations, indicating the nature of the violation, and ordering the action necessary to correct it. Discontinuance must be ordered of illegal use(s) of land, buildings, or structures; removal of illegal buildings or structures; discontinuance of any illegal work being done; or must take any other action authorized by this Ordinance to ensure compliance with, or to prevent violation of its provisions. Violations are to be issued by the Code Enforcement Officer. Violations of the provisions of this Ordinance, or failure to comply with any of its requirements and provisions of permits and certificates granted in accordance with this Ordinance constitute a municipal civil infraction for which the fine will be no less than one hundred dollars, nor more than five hundred dollars for the first offense. Subsequent offenses must be not less than five hundred dollars or more than one thousand dollars for each offense. Each day such violation continues is considered a separate offense. The owner of record or tenant of any building, structure, premise, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation, may each be found guilty of a separate offense and suffer the penalties provided by law. In addition to any remedies available at law, the city may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of this Code or any city ordinance.
- B. *Compliance Required.* The imposition of any fine, or jail sentence, or both does not exempt the violator from compliance with the provisions of this Ordinance.
- C. *Public Nuisance Per Se.* A use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of this Ordinance or a regulation adopted under the authority of the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, is a nuisance per se, and may be abated by order of any court of competent jurisdiction.

# ARTICLE 4 ESTABLISHMENT OF DISTRICTS

## SECTION 4.01 ESTABLISHMENT OF DISTRICTS

The City of Berkley is divided into the following zoning districts as shown on the Official Zoning Map, which together with all explanatory matter shown in this article is adopted by reference and declared to be part of this chapter.

R-1AB	Single Family Residential
R-1CD	Smaller Lot Single Family Residential
R-2	Two Family Residential
R-M	Low Density Multiple Family Residential
R-M-H	High Density Multiple Family Residential
CC	Community Centerpiece
P-1	Parking Overlay
RC	Residential Corridor
DT	Downtown Corridor
GC	Gateway Corridor
WW	Woodard Corridor
FX	Flex District
C-1	Cemetery District
PUD	Planned Unit Development

## SECTION 4.02 ZONING MAP

- A. *Official Zoning Map of the City of Berkley.* For the purpose of this chapter, the zoning districts as provided in Article 5 and Article 6 of the chapter are bounded and defined as shown on a map entitled "Official Zoning Map of the City of Berkley," a copy of which accompanies this chapter and which, with all explanatory matter thereon, is made a part of this chapter.

- B. *Signature and Seal.* The Official Zoning Map is identified by the signature of the Mayor, attested by the City Clerk, and bear the Seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in the Zoning Ordinance of the City of Berkley," together with the effective date of this chapter.
- C. *Amendment of Zoning Map.* In accordance with the Zoning Enabling Act, the City may amend the Official Zoning Map in connection with a rezoning of land within the City. Whenever land within the City is rezoned by ordinance, an updated version of the map must be attached to and incorporated into the Zoning Ordinance amendment affecting the rezoning, and the updated map will supersede the previous version of the map as the Official Zoning Map of the City. In the event that any neighboring City land is annexed or rezoned by a court order, the City Clerk must cause the Zoning Map to be updated to reflect the annexation or court order, without the need for the City Council to adopt an updated map. Changes to the Official Zoning Map through an amendment, annexation, or court order must be signed and dated by the City Clerk. The Zoning Administrator must maintain for public inspection the Official Zoning Map and a copy of the document or documents affecting the most recent annexation or rezoning. Copies of the amended map must be distributed to all City Council and Planning Commission members.
- D. *Location.* Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which will be located in the office of the Zoning Administrator and open to public inspection, will be the final authority as to the current zoning status of any land, parcel, lot, district, use, building, or structure in the City.
- E. *Damaged, destroyed, lost, or difficult to interpret.*
  - 1. In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes made thereto, the City Council may, by ordinance, adopt a new Official Zoning Map which will supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions on the prior Official Zoning Map, but no such corrections will have the effect of amending this chapter or the prior Official Zoning Map. The new Official Zoning Map will be identified by the signature of the Mayor, attested by the City Clerk, and bear the seal of the City under the following words: "This is to certify that this is

the Official Zoning Map referred to in the Zoning Ordinance the City of Berkley adopted on (date) which replaces and supersedes the Official Zoning Map which was adopted on (date)."

2. Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, must be preserved, together with all available records pertaining to its adoption or amendment.

### SECTION 4.03 INTERPRETATION OF DISTRICT BOUNDARY

Where uncertainty exists as to the boundaries of zoning districts as shown on the Official Zoning Map the following rules for interpretation apply:

- A. *Center line.* A boundary indicated as approximately following the center line of a highway, street, alley, or easement must be construed as following such center line.
- B. *Recorded lot line.* A boundary indicated as approximately following a recorded lot line or the line bounding a parcel must be construed as following such line.
- C. *Corporate boundary.* A boundary indicated as approximately following the corporate boundary line of a city, must be construed as following such line.
- D. *Parallel or extension.* A boundary indicated as a parallel to or an extension of a feature indicated in Subsections A through C above must be so construed.
- E. *Distance.* A distance not specifically indicated on the Official Zoning Map must be determined by the scale of the map.
- F. *Variance.* Where a physical or cultural feature existing on the ground is at variance with that shown on the Official Zoning Map, or in any other circumstances not covered by Subsections A through E above, the Board of Appeals must interpret the zoning district boundary.
- G. *Division through a lot.* Where a district boundary line divides a lot which is in single ownership at the time of adoption of this chapter, the Board of Appeals may permit as a conditional use, the extension of the regulations for either

portion of the lot to the nearest lot line, but not to exceed fifty feet beyond the district line into the remaining portion of the lot.

#### SECTION 4.04 SCOPE

- A. *Effective date.* Except as may otherwise be provided in Article 16 - Nonconformities of this chapter, every building and structure erected, every use of any lot, building, or structure established, every structural alteration or relocation of an existing building or structure occurring, and every enlargement of or addition to an existing use, building, and structure occurring after the effective date of this chapter will be subject to all regulations of this chapter that are applicable in the zoning district in which such use, building, or structure is located. However, where a building permit for a building or structure, use of building or structure, or use of lot or parcel has been issued in accordance with the law prior to the effective date of this chapter, and provided that construction is begun within three hundred and sixty-five days of such effective date and diligently pursued to completion, said building or structure, use of building or structure, or use of lot or parcel, may be completed in accordance with the approved plans on the basis of which the building permit has been used, and further, may upon completion be occupied by the use for which originally designated, subject thereafter to the provisions of Article 16 - Nonconformities of this chapter.
- B. *Sharing.* No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this chapter, may be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.
- C. *Minimum requirements.* No yard or lot existing at the time of the adoption of this chapter may be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter must meet at least the minimum requirements established by this chapter.



# ARTICLE 5

## USE-BASED DISTRICTS

### SECTION 5.01 R-1AB SINGLE FAMILY RESIDENTIAL DISTRICT

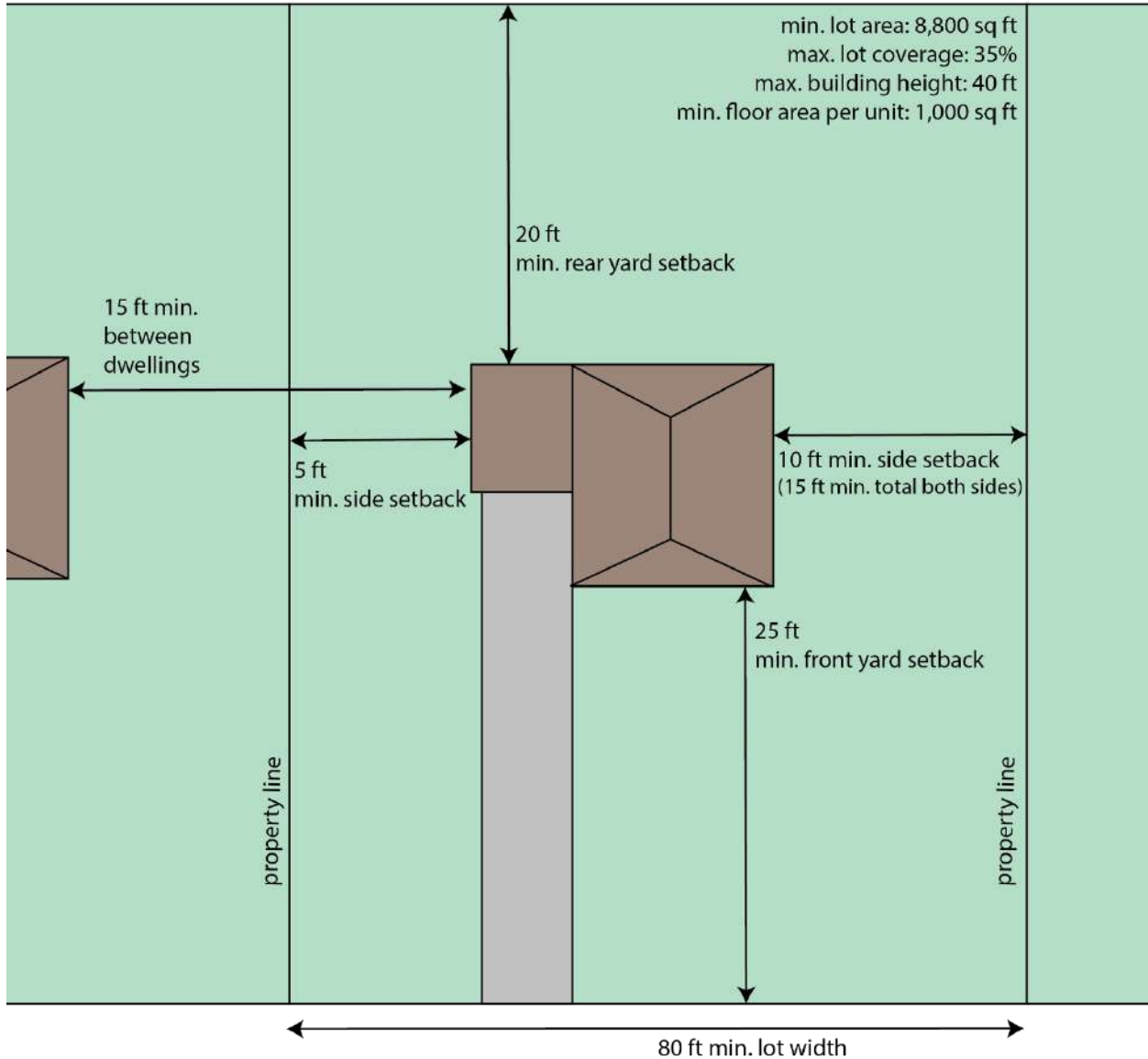
- A. Intent. This district is intended to preserve the quality of existing residential neighborhoods while recognizing the need for other uses to support the quality of life within them.
- B. Principal Uses
1. Single family detached dwellings.
  2. Publicly owned and operated libraries, parks, parkways, and recreational facilities.
  3. Municipal buildings and uses.
  4. Accessory buildings and uses, including home-based businesses and accessory dwelling units.
  5. State-licensed residential facilities, up to twelve children.
  6. Temporary buildings and uses for construction purposes as permitted by the Building Official for a period not to exceed one year.
- C. Special Uses
1. Places of assembly.
  2. Public, parochial and private elementary, intermediate, and high schools offering courses in general education, not operated for profit.
  3. Nursery schools, and child care centers.
  4. Public utility buildings.
- D. Dimensional Requirements. The following dimensional requirements apply to all primary structures and attached accessory structures in the R-1AB district.

Table 5.01			
Regulation	Single Family Dwelling Requirements	Non-Residential Building Requirements	
Minimum lot area	8,800 square feet	1 acre	
Minimum lot width	80 feet	200 feet	
Maximum lot coverage	35% <sup>2</sup>	50%	
Minimum front yard setback	25 feet <sup>1</sup>	See requirements for Community Centerpiece	
Minimum rear yard setback	20 feet		
Minimum side yard setback, per side	5 feet <sup>2</sup>		
Minimum side yard setback, total	15 feet		
Minimum distance between dwelling units	15 feet		
Maximum building height	40 feet		
Minimum floor area for principal dwelling unit	1,000 square feet		Not applicable

<sup>1</sup> The front yard setback must be twenty-five feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater, see 5.09B.

<sup>2</sup> For corner lots, see Section 5.08, 5.09E, and 5.09F - Supplemental Dimensional Regulations Applicable To All Use Based Districts.

The following graphic illustrates the dimensional standards for single family dwellings in the R-1AB district.



\* reference 5.09 B for front and 5.09 E & F for corner lots

## SECTION 5.02 R-1CD SINGLE FAMILY RESIDENTIAL SMALL LOT DISTRICT

- A. Intent. This district is intended to preserve the quality of existing residential neighborhoods while recognizing the need for other uses to support the quality of life within them.

B. Principal Uses

1. Single family detached dwellings.
2. Publicly owned and operated libraries, parks, parkways, and recreational facilities.
3. Municipal buildings and uses.
4. Accessory buildings and uses, including home-based businesses and accessory dwelling units.
5. State-licensed residential facilities, up to twelve children.

C. Special Uses

1. Places of worship.
2. Public, parochial and private elementary, intermediate, and/or high schools offering courses in general education, not operated for profit.
3. Nursery schools, and child care centers.
4. Public utility buildings.

D. Dimensional Requirements. The following dimensional requirements apply to all primary structures and attached accessory structures in the R-1CD district.

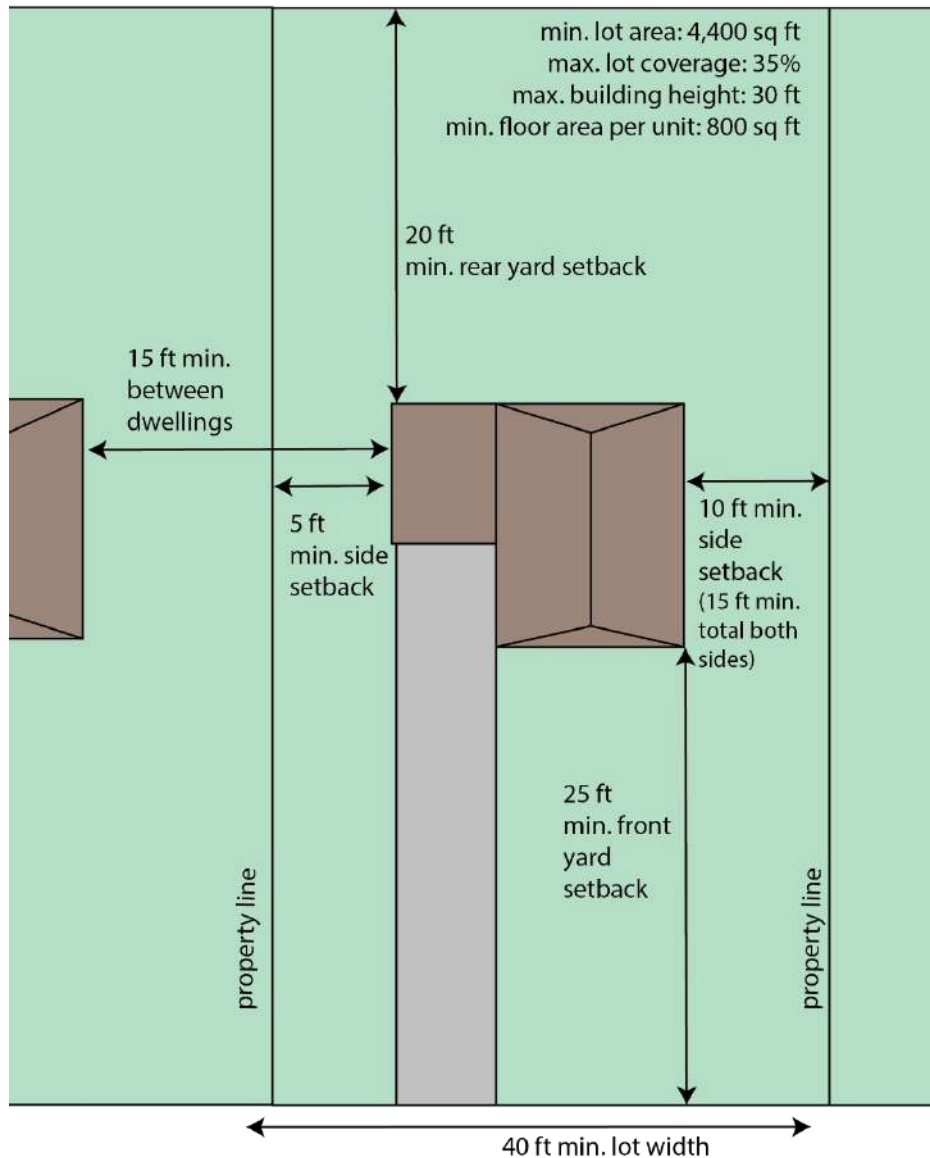
Table 5.02		
Regulation	Single Family Dwelling Requirements	Non-Residential Building Requirements
Minimum lot area	4,400 square feet	1 acre
Minimum lot width	40 feet	200 feet
Maximum lot coverage	35% <sup>2</sup>	50%
Minimum front yard setback	25 feet <sup>1</sup>	See requirements for Community Centerpiece
Minimum rear yard setback	20 feet	
Minimum side yard setback, per side	5 feet <sup>2</sup>	
Minimum side yard setback, total	15 feet	
Minimum distance between dwelling units	15 feet	

Table 5.02		
Regulation	Single Family Dwelling Requirements	Non-Residential Building Requirements
Maximum building height	30 feet	

<sup>1</sup> The front yard setback must be twenty-five feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater, see 5.09B.

<sup>2</sup> For corner lots, see Section 5.08, 5.09E, and 5.09F - Supplemental Dimensional Regulations Applicable To All Use Based Districts.

The following graphic illustrates the dimensional standards for single family dwellings in the R-1CD district.



\* reference 5.09 B for front and 5.09 E & F for corner lots

### SECTION 5.03 R-2 TWO FAMILY RESIDENTIAL DISTRICT

- A. Intent. This district is intended to provide duplexes and to preserve the quality of existing residential neighborhoods while recognizing the need for other uses to support the quality of life within them.

B. Principal Uses

1. Single family detached dwellings.
2. Two family attached dwellings.
3. Publicly owned and operated libraries, parks, parkways, and recreational facilities.
4. Municipal buildings and uses.
5. Accessory buildings and uses, including home-based businesses and accessory dwelling units to single family detached dwellings.
6. State-licensed residential facilities, up to twelve children.

C. Special Uses

1. Places of assembly.
2. Public, parochial and private elementary, intermediate, and / or high schools offering courses in general education, not operated for profit.
3. Nursery schools, and child care centers.
4. Public utility buildings.

D. Dimensional Requirements. The following dimensional requirements apply to all primary structures and attached accessory structures in the R-2 district.

Table 5.03			
Regulation	Single family dwelling requirements	Two family dwelling requirements	Non-Residential Building Requirements
Minimum lot area	4,400 square feet	5,000 square feet	1 acre
Minimum lot width	40 feet	65 feet	200 feet
Maximum lot coverage	35% <sup>2</sup>	35%	50%
Minimum front yard setback	25 feet <sup>1</sup>	25 feet <sup>1</sup>	See requirements for Community Centerpiece
Minimum rear yard setback	20 feet	20 feet	
Minimum side yard setback, per side	5 feet <sup>2</sup>	5 feet <sup>2</sup>	

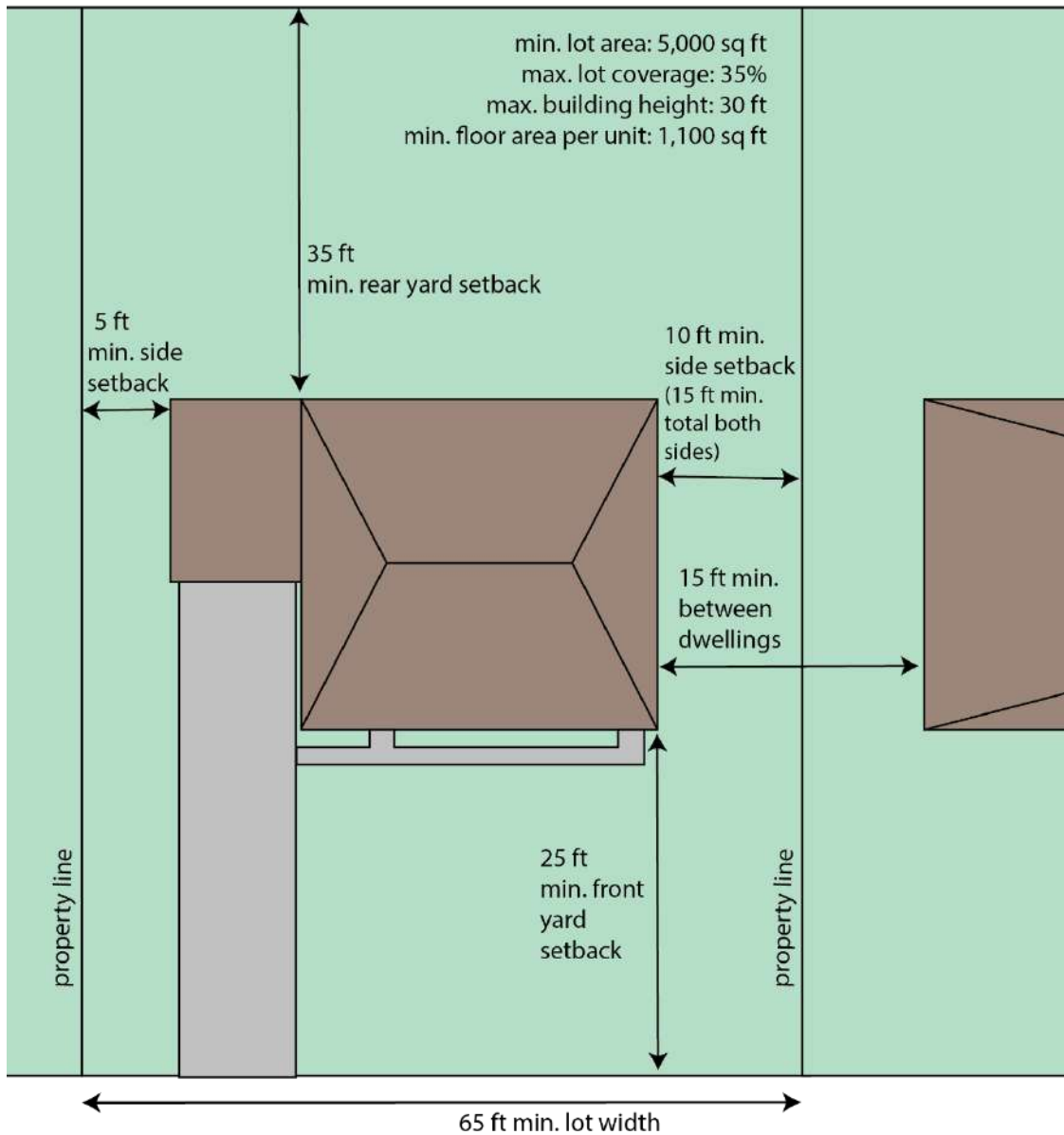
Regulation	Single family dwelling requirements	Two family dwelling requirements	Non-Residential Building Requirements
Minimum side yard setback, total	15 feet	15 feet	
Minimum distance between dwelling units	15 feet	15 feet	
Maximum building height	30 feet	30 feet	
Minimum floor area for principal dwelling unit	800 square feet	1,100 square feet	See requirements for Community Centerpiece

<sup>1</sup> The front yard setback must be twenty-five feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater, see Section 5.09B.

<sup>2</sup> For corner lots, see Section 5.08, 5.09E, and 5.09F - Supplemental Dimensional Regulations Applicable To All Use Based Districts.

The following graphic illustrates the dimensional standards for two family dwellings in the R-2 district. Refer to Section 5.02 for an illustration of the dimensional standards for single family dwellings in the R-2 district.





\* reference 5.09 B for front and 5.09 E & F for corner lots

- E. Design Requirements. The following design requirements apply to all primary structures and attached accessory structures in the R-2 district.
1. Only one of the two dwelling unit entrances may be visible from the right-of-way along the front parcels line. Any secondary entrance must be along a side or rear parcels line.

2. Any pedestrian pathways that connect from the right-of-way to the primary structure, separate from a driveway, must be limited to no more than one per front yard. For corner lots, there may be two pedestrian pathways: one in the front yard and one in the exterior side yard.
3. To mitigate the impact of visible large, flat surfaces, designs of the front and side elevations must articulate large planes of flat unbroken surfaces; the minimum size of a flat unbroken surface is ten feet in width. Articulations may include more than one material or color, varying surface depths, windows, doors, bays, or other projections.
4. Standards for additions.
  - a. Additions that are taller than the original building must be located toward the rear of the building so that the new addition does not visually overpower the original structure.
  - b. Large additions must be broken down into smaller, varied components that relate to the scale and massing of the original structure.
  - c. Additions must respect the massing, scale, and height of the primary structure.

## SECTION 5.04 R-M LOW-DENSITY MULTIPLE FAMILY RESIDENTIAL DISTRICT

- A. Intent. This district is intended to provide a range of detached and attached housing that complements the existing, adjacent neighborhoods.
- B. Principal Uses
  1. Single family detached dwellings.
  2. Two family attached dwellings.
  3. Multiple family dwellings.
  4. Publicly owned and operated libraries, parks, parkways, and recreational facilities.
- C. Special Uses
  1. Places of assembly.
  2. Public, parochial, and private elementary, intermediate, and / or high schools offering courses in general education, not operated for profit.
  3. Nursery schools, and child care

- 5. Municipal buildings and uses. centers.
- 6. Accessory buildings and uses, including home-based businesses and accessory dwelling units to single family detached dwellings.
- 7. State-licensed residential facilities, up to twelve children.
- 4. Public utility buildings.

D. Dimensional Requirements. The following dimensional requirements apply to all primary structures and attached accessory structures in the R-M district.

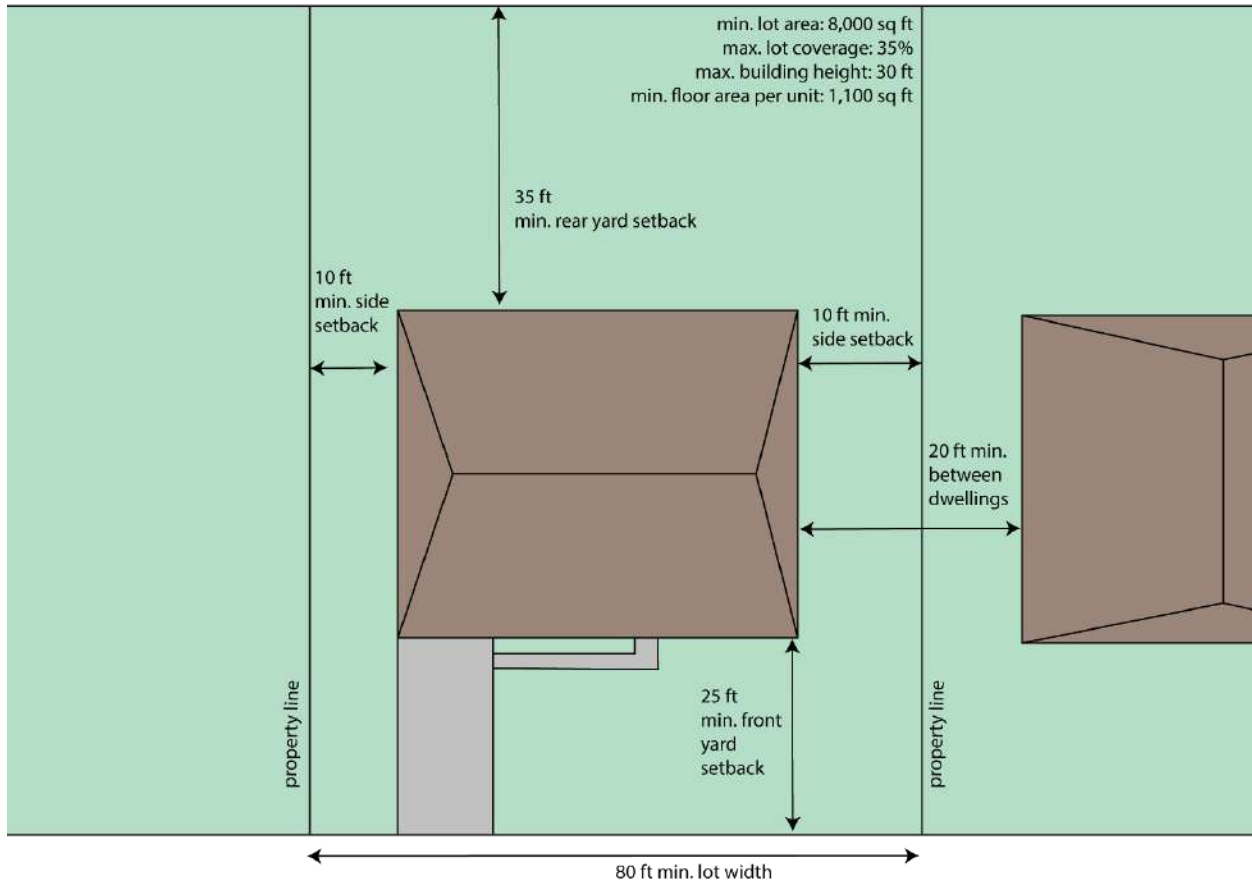
Table 5.04				
Dimensional standard	Single family dwelling requirements	Two family dwelling requirements	Multiple family dwelling requirements	Non-Residential Building Requirements
Minimum lot area	4,400 square feet	5,000 square feet	10,000 square feet	1 acre
Minimum lot width	40 feet	65 feet	80 feet (per building)	200 feet
Maximum lot coverage	35% <sup>2</sup>	35% <sup>2</sup>	35%	50%
Minimum front yard setback	25 feet <sup>1</sup>	25 feet <sup>1</sup>	25 feet <sup>1</sup>	See requirements for Community Centerpiece
Minimum rear yard setback	20 feet	20 feet <sup>2</sup>	20 feet	
Minimum side yard setback, per side	5 feet <sup>2</sup>	5 feet <sup>2</sup>	10 feet	
Minimum side yard setback, total	15 feet	15 feet	20 feet	

Dimensional standard	Single family dwelling requirements	Two family dwelling requirements	Multiple family dwelling requirements	Non-Residential Building Requirements
Minimum distance between dwelling units	15 feet	15 feet	20 feet	
Maximum building height	30 feet	30 feet	30 feet	

<sup>1</sup> The front yard setback must be twenty-five feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater, see Section 5.09B.

<sup>2</sup> For corner lots, see Section 5.08, 5.09E, and 5.09F - Supplemental Dimensional Regulations Applicable To All Use Based Districts.

The following graphic illustrates the dimensional standards for multiple family dwellings in the R-M district. Refer to Sections 5.02 and 5.03 for illustrations of the dimensional standards for single family and two family dwellings in the R-M district.



\* reference 5.09 B for front and 5.09 E & F for corner lots

## SECTION 5.05 R-M-H HIGH-DENSITY MULTIPLE FAMILY RESIDENTIAL DISTRICT

A. Intent. The intention of this district is to preserve existing multiple family dwellings that serve the residential needs of individuals or households wanting or needing an apartment with central services. The number of existing units within this geographic area is intended to be maintained in the future.

### B. Principal Uses

1. Multiple family dwellings.
2. Publicly owned and operated libraries, parks, parkways, and recreational facilities.

### C. Special Uses

1. Places of assembly.
2. Public, parochial, and private elementary, intermediate, and/or high schools offering

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>3. Municipal buildings and uses.</li> <li>4. Accessory buildings and uses, including home-based businesses.</li> <li>5. State-licensed residential facilities, up to twelve children.</li> </ul> | <ul style="list-style-type: none"> <li>courses in general education, not operated for profit.</li> <li>3. Nursery schools, and child care centers.</li> <li>4. Public utility buildings.</li> </ul> |
|---|---|

D. Dimensional Requirements. The following dimensional requirements apply to all primary structures and attached accessory structures in the R-M-H district.

Dimensional standard	Multiple family dwelling requirements	Non-residential building requirements
Minimum lot area	3.5 acres	1 acre
Minimum lot width	80 feet (per unit)	200 feet
Maximum lot coverage	65%	50%
Minimum front yard setback	15 feet	See requirements for Community Centerpiece
Minimum rear yard setback	50 feet	
Minimum side yard setback, per side	5 feet per every 20 feet in building height	
Minimum side yard setback, total	30 feet	
Minimum distance between dwelling units	15 feet	
Maximum building height	120 feet, no more than 10 stories	

<sup>1</sup> The front yard setback must be twenty-five feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater, see Section 5.09B.

<sup>2</sup> For corner lots, see Section 5.08, 5.09E, and 5.09F - Supplemental Dimensional Regulations Applicable To All Use Based Districts.

**SECTION 5.06 CC - COMMUNITY CENTERPIECE**

A. Intent. The intention of this district is to accommodate a use that possesses unique characteristics making it impractical to include in any other use district classification. The unique characteristics are that the large land areas devoted to this use affect the continuity of local streets.

**B. Principal Uses**

1. Publicly owned and operated libraries, parks, parkways, cemeteries, and recreational facilities.
2. Private clubs, lodges, fraternities, and similar uses when such uses are not operated for profit.
3. Places of assembly.
4. Public, parochial, and private elementary, intermediate, and / or high schools offering courses in general education.
5. Nursery schools and child care centers.

**C. Special Uses**

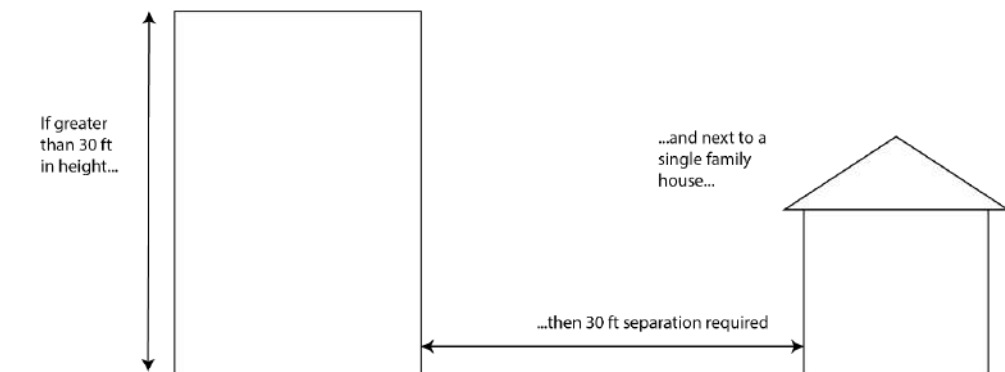
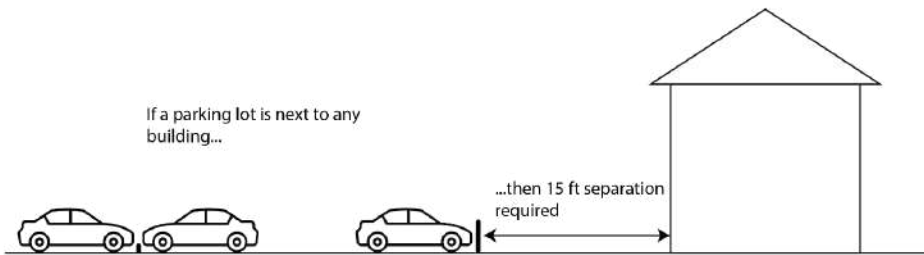
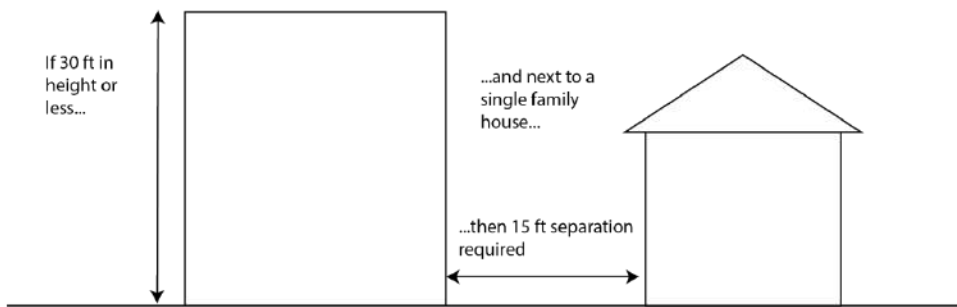
1. Accessory buildings and uses.

D. Dimensional Requirements. The following dimensional requirements apply to all lots, primary structures, and attached accessory structures in the CC district.

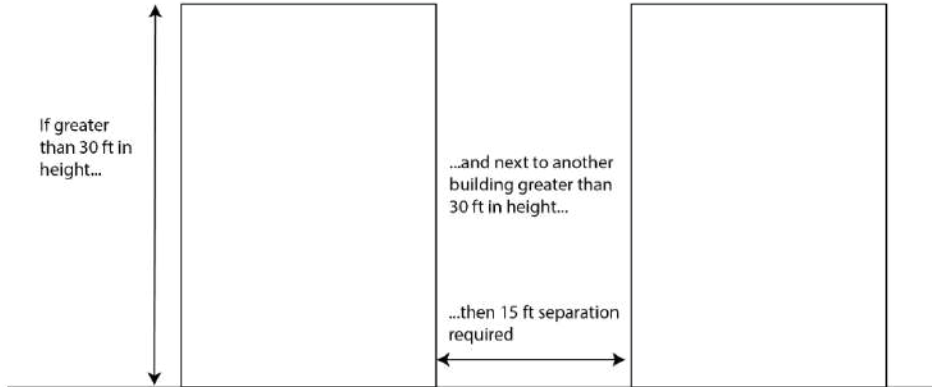
Table 5.06		
Minimum lot size	32,000 square feet	
Minimum lot width	250 ft	
Maximum height	3 stories and 40 feet	
Maximum lot coverage	35%	
If new development is:	And it is next to:	Then required separation is:
A building 30 feet or less in height	A single family house	15 feet
A parking lot	Any type of building	15 feet

A building between 31 feet and 40 feet in height	A single family house	30 feet
A building between 31 feet and 40 feet in height	A building between 31 feet and 40 feet in height	15 feet

The following graphics illustrate the dimensional standards for buildings in the CC district.







## SECTION 5.07 P-1 PARKING OVERLAY DISTRICT

- A. As an overlay district, the parking district is intended to provide potential corridor expansion or a transitional buffer between commercial corridors and residential neighborhoods.
- |   |  |
|---|--|
| <p>B. Principal Uses</p> <ol style="list-style-type: none"> <li>1. All principal uses in the underlying zoning district.</li> </ol> | <p>C. Special Uses</p> <ol style="list-style-type: none"> <li>1. Off-street vehicular parking lots as the primary use.</li> <li>2. Vehicular parking structures as the primary use.</li> <li>3. All special uses in the underlying zoning district.</li> </ol> |
|---|--|

## SECTION 5.08 C-1 CEMETERY DISTRICT

- A. *Intent.* The Cemetery district is designed to accommodate a use that possesses unique characteristics making it impractical to include in any other use district classification. The unique characteristics are that the large land areas devoted to this use affect the continuity of local streets and that this use does not require normal services. Premises in such C-1 districts may be used only for burial grounds and the drives and buildings normally incidental thereto and must be developed and maintained subject to such regulations as are provided in this division.

B. Principal Uses

1. Cemetery

C. Special Uses

1. None

D. Required Conditions.

1. All access in the C-1 district must be provided from an arterial street or collector street.
2. All sides of the cemetery within the city in the C-1 district must be screened with a continuous and obscuring wall not less than six feet in height or a galvanized chain link type steel fence six feet in height measured from the surface of the ground. The land falling between the wall or fence and a public street must be planted with trees, flowers, and grass and landscaped and maintained by the cemetery owner in a healthy growing condition.
3. Before a cemetery is permitted there must be a satisfactory drainage plan approved by the city engineer.

## SECTION 5.09 SUPPLEMENTAL DIMENSIONAL REGULATIONS APPLICABLE TO ALL USE BASED DISTRICTS

- A. In calculating the area of a lot that adjoins an alley, one-half the width of such alley abutting the lot is considered to be part of such lot.
- B. The front yard setback must be twenty-five feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater.
- C. A porch or paved terrace may project into a front yard setback up to eight feet, but in no case may a front porch be closer to the front parcels line than fifteen feet. Porches may be covered by an awning, roof, or canopy but must not be otherwise enclosed, except that the space below the surface of the porch or paved terrace will be concealed from view in accordance with prescribed standards.
- D. Projections may extend into a required side yard setback of not more than two inches for each one foot of width of such setback and may extend or project into a required front or rear yard setback not more than three feet.

The total of all projections into a required setback yard must not exceed thirty percent of that wall's surface area.

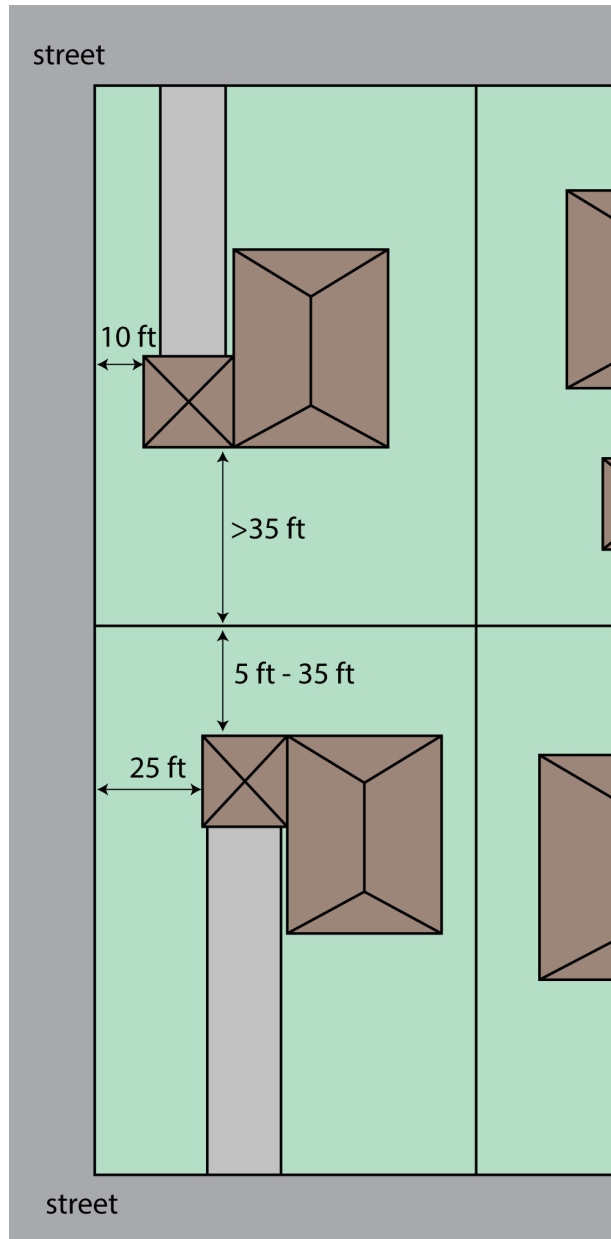
Projections may have a foundation, such as brick or masonry fireplaces, or may be without a foundation, such as box fireplaces, bay windows, and other types of cantilevers, including second-story cantilevers.

Projections without a foundation must be above grade at least twelve inches.

In nonresidential districts, where no front yard setback is required, the Planning Commission may permit a projection to extend into the right of way three feet provided that it is at least eleven feet above the sidewalk if the Planning Commission determines the public health, safety, and welfare will not be adversely affected. The total of all projections into a given right of way must not exceed thirty percent that wall's surface area.

- E. Exterior side yards on corner lots:
  1. When a rear yard abuts a rear yard, the exterior side yard setback must not be less than ten feet.
  2. When a rear yard abuts a side yard, the exterior side yard setback is as follows:

Table 5.09	
Distance from Rear Lot Line to Structure	Setback Required
5-35 feet	25 feet
Greater than 35 feet	10 feet



- F. Maximum lot coverage for corner lots must not exceed forty-five percent.
- G. Parking for uses other than single-family residential must be located in a side or rear yard and comply with screening standards in Article 12 – Landscaping and Screening.

# ARTICLE 6

## SITE DESIGN - BASED DISTRICTS

### SECTION 6.01 PURPOSE AND INTENT

The Master Plan identified areas within the City that place greater emphasis on regulating site design and character of development as well as use and intensity of use. Within these areas, the City encourages development with a mix of uses, including public open space, in order to provide walkable development in a sustainable manner. The Site Design-Based Districts are intended to implement the vision, goals, and objectives of the Master Plan and any other applicable plans.

A. *Purpose:* The general purposes of these regulations are to:

1. Ensure that development is of human scale, primarily pedestrian-oriented, and designed to create attractive streetscapes and nonmotorized spaces.
2. Promote infill development and redevelopment.
3. Promote a compact growth pattern to efficiently use the remaining developable land, and to enable the cost-effective extension of utilities, services, streets, and transit services.
4. Promote mixed-use development in both a horizontal and vertical form.
5. Ensure reasonable transition between higher-intensity development and adjacent neighborhoods.
6. Improve mobility options and reduce the need for on-site parking by encouraging alternative means of transportation.

B. *Factors for regulation:* Considering site context provides a customized approach to the inherent conditions of the areas where these regulations are applied. These regulations are based on two significant factors: site context and site layout.

1. *Site context.* Site context is derived from existing and desired characteristics, which include street types and site types.

- a. Streets can be divided into various types, based on purpose and unique attributes.
  - b. Sites are divided into types based on characteristics including shape, size, and orientation. Site types are distinguished from one another by their site context, which includes size and configuration of the site, traffic patterns, location, existing land uses, and intensity of use.
2. *Site layout.* Site layout addresses the manner in which buildings and structures are situated on their lots, relate to surrounding buildings, and relate to street frontage. The shape of the building, the land area to volume ratio, and the orientation of the building have significant impacts on the general feel and character of an area. Site layout standards control height, placement, building configuration, parking location, and ground story activation applicable to the site context.
  3. Regulations are tailored to meet a more specific intent of each district. These districts and intents are set forth elsewhere in this Article.
- C. *Steps:* The steps to determine the regulations that apply to a specific parcels within a site design-based district are as follows:
1. Identify the street type or types adjacent to the site in question. Streets will be classified as Residential, Corridor, Downtown, and Walkable Area.
  2. Identify the site type for the site in question. Sites will be classified as Site Type Small, Medium, or Large for each Site-Design Based Zoning District.
  3. Consult the Use Groups and Site Design Permitted Tables for the district in which the site is located. The tables will identify if a use group or site layout is permitted, permitted with special approval, or not permitted for the site type and street type combination of the site in question.
  4. Follow the regulations for the chosen site layout when designing the development application.
  5. Follow the design standards as listed in this Article.

6. Obtain site plan approval or special use approval for the chosen site layout and use, as appropriate.

## SECTION 6.02 APPLICABILITY AND ORGANIZATION

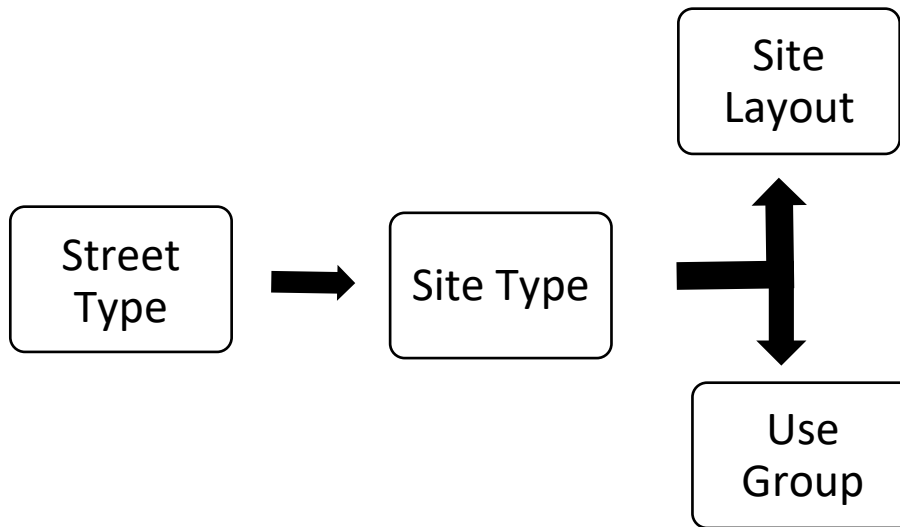
- A. *Applicability:* Any new use or expansion of existing use that requires Site Plan Review must comply with the requirements of this Article and other applicable requirements of this chapter.
- B. The requirements of this article do not apply to:
  1. Continuation of a permitted use within an existing structure.
  2. Changes of use within existing structures that do not require increased parking.
  3. Normal repair and maintenance of existing structures that do not increase building size or parking demand.
  4. Continuation of a legal nonconforming use, building, or structure, in accordance with Article 16.
  5. The expansion of a legal nonconforming use, building, or structure, in a manner that does not increase its level of nonconformity, in accordance with Article 16, Nonconformities.
- C. *Regulating plans:* Each site design-based district of the City to which these standards apply must be governed by a regulating plan that is specific to each zoning district. The regulating plan, based on the context of street type and site type, determines site layout and allowable uses for each parcels within a site design-based district.
- D. *Street types:* Street types, as set forth in this Article recognize that street patterns within the City of Berkley are established. Streets range from Corridors, which carry a large volume of traffic, to Residential streets, which carry lower volumes of neighborhood traffic.
- E. *Site types:* Site types are determined by lot size, lot configuration, location, and relationship to neighboring adjacent sites.

- F. *Site layout standards:* Site layout standards establish the parameters for site layout, height, and placement, and are specifically applied to each district based upon the regulating plan.
- G. *Authorized use groups:* Authorized land uses are organized by use groups. Authorized use groups are specifically applied to each district based upon the regulating plan.
- H. *Design standards:* General design standards are established for each district and are supplementary to other requirements of the chapter. Generally, the design standards regulate parking, public spaces, landscaping, and other site design requirements.
- I. *Modification of district boundaries:* Any modification to the boundaries of any site design-based district requires rezoning, in accordance with the provisions of Article 18, Rezoning and Zoning Ordinance Text Amendments.

### SECTION 6.03 STANDARDS APPLICABLE TO ALL DISTRICTS

- A. *Intent:* The following standards are applicable to all uses and define the elements of the site design-based regulations. Each parcel has a street type and site type, and it is assigned a use group(s) and site layout(s).

Determining site specific standards for each parcel within a mixed-use district is based on the following hierarchy:



- B. *Street Types.*



1. *Residential:* These streets primarily serve established neighborhoods, and the land use on the opposite side of the street is residential. The streets are two lanes, with the exception of Eleven Mile. Unless serviced by an alley, each parcel has an individual curb cut. Residential streets are Ellwood in its entirety, Eleven Mile between Mortensen and Woodward, and the side streets connecting neighborhoods to Corridor streets.
  2. *Corridor:* These streets are mixed-use corridors in the City that move traffic from the City to the larger regional street network or are part of that network. These streets range from four-lane streets to eight-lane divided boulevards. Unless serviced by an alley or a service drive, each parcel has an individual curb cut. Corridor streets are Woodward from Eleven Mile to Twelve Mile; Twelve Mile from Coolidge to Woodward; and Greenfield from Webster to Eleven Mile.
  3. *Downtown:* Downtown streets are the section of Twelve Mile, from Gardner to Wakefield, is the traditional mixed-use center of Berkley. Sidewalks are wider here than elsewhere in the City, with opportunities for outdoor seating, dining, and sales. All parcels are served by alleys or municipal parking lots. No new curb cuts are allowed.
  4. *Walkable Area.* These streets are in mixed-use areas intended to be walkable. The area between the back of the curb to the front building facade is wider than along the corridors to allow for street trees, street furniture, outdoor dining or sales, and yards, when appropriate. These streets are adjacent to the downtown or across the street from existing or planned walkable areas in bordering municipalities. Typically, these streets are four lanes, with a left-hand turn lane at intersections. Curb cuts are limited to create a walkable environment. Walkable Area streets are Coolidge from Eleven Mile to Twelve Mile; Eleven Mile from Greenfield to Mortensen; Twelve Mile from Greenfield to Gardner; and Twelve Mile from Wakefield to Coolidge
- C. *Authorized use groups.* Uses in the Site Design-Based Corridor Districts are regulated in use groups, per the table below. The regulations in Article 8, Specific Use Provisions apply to the uses listed below in addition to any additional regulations in this Article.

Table 6.03.C.	
<i>Use Group</i>	<i>Land Uses</i>
Group 1: Residential	Single family dwellings Accessory dwelling units Home-based businesses State licensed child family day care home (1-6 children) Bed & breakfast Short-term rental
Group 2: Attached Residential/ Lodging Uses	Two family dwelling Single family attached dwellings Child day care homes (7-12 children) Senior assisted/independent living (2 stories height maximum)
Group 3: Institution/Private Assembly/Lodging	Adult foster care congregate facility Senior assisted/independent living (over 2 stories) Child day care centers Primary/secondary schools (private) Post-secondary schools Places of assembly less than 20,000 square feet in gross floor area Private clubs Government offices
Group 4: Mixed Use Low Impact	Buildings less than 20,000 square feet in gross floor area Restaurants (no drive-through) Financial institutions (no drive-through) Retail (no drive-through) Fitness, gymnastics, and exercise centers Personal service

Table 6.03.C.	
<i>Use Group</i>	<i>Land Uses</i>
	<p>Medical spa</p> <p>Business service</p> <p>Upper story office</p> <p>Upper story medical office</p> <p>Upper story residential</p> <p>Live/Work units</p> <p>Public parks/plazas</p>
<p>Group 5: Mixed Use High Impact</p>	<p>Buildings 20,000 square feet in gross floor area or larger</p> <p>Craft manufacturing with front-facing retail component</p> <p>Professional office</p> <p>Medical office clinic</p> <p>Lodging</p> <p>Retail, large-format</p> <p>Planned shopping centers</p> <p>Fitness, gymnastics, and exercise centers,</p> <p>Places of assembly</p> <p>Indoor commercial recreation establishment</p> <p>Multiple family dwellings</p> <p>Drive through/drive in</p>
<p>Group 6: Auto / Transportation</p>	<p>Automotive sales</p> <p>Automotive fueling / multi-use service station</p> <p>Automotive repair station</p> <p>Automotive body repair</p> <p>Automotive wash</p> <p>Truck / trailer / equipment rental</p>

Table 6.03.C.	
<i>Use Group</i>	<i>Land Uses</i>
Group 7: Miscellaneous Commercial	Building & lumber supply Garden centers, nurseries Outdoor commercial recreation Commercial kennels / pet day care Pet sales Veterinary clinics Recreational / medical marijuana Tobacco and vape shops Adult regulated uses
Group 8: Industrial	Self-Storage Contractor's equipment storage Craft manufacturing Food products Commercial outdoor storage  Laboratory Manufacturing, processing, etc. Metal plating Printing (Lithographs & Book Printing) Tool & die, gauge & machine shops Warehousing / wholesale Experimental research & testing lab Composting / recycling

## SECTION 6.04 RC - RESIDENTIAL CORRIDOR

- A. *Intent:* This district is intended to provide a mix of residential options, including single family, townhomes, and low-rise multiple family dwellings

but also allow for office and other institutional or civic uses or spaces. More intensive uses, such as multiple family dwellings, must be limited to Corridor Streets. All development must be compatible with the vision and in accordance with the goals and objectives set forth in the Master Plan and any other applicable Plan

B. *Site Types:* Site types are as follows:

1. *Small.* Small site type parcels are single lots from the underlying plat, ranging in width from forty to fifty feet and ranging in area from forty-four hundred square feet to sixty-six hundred and fifty square feet. Unless a parcel is a corner lot, these parcels have frontage on a single street.
2. *Medium.* Medium site type parcels contain two or more lots from the underlying plat, with primary frontage on a single street. Lot widths range from fifty-one to one hundred and twenty-five feet. Lot areas range from six thousand six hundred and fifty-one square feet to eighteen thousand square feet. Corner lots may be medium site type parcels, but double-frontage lots may not.
3. *Large.* Large site type parcels contain four or more lots from the underlying plat and are double-frontage lots, with frontage on both a residential street and a corridor street. Lot widths are over one hundred and twenty-five feet, and lot areas are over eighteen thousand square feet. Corner lots with double frontage qualify as large site type parcels in the RC district.

Table 6.04B		
Site type	Lot Width	Lot Area
Small	40 – 50 feet	4,400 – 6,650 square feet
Medium	51 – 125 feet	6,651 – 18,000 square feet
Large	>125 feet	>18,000 square feet

C. *Site Layouts:* The following site layouts are allowed in the RC district:

1. Single Family Dwelling (SF). The SF site layout dimensional requirements for all primary structures and attached accessory structures are as follows:

Table 6.04.C.1	
Regulation	SF Site Layout Requirements
Minimum lot area	4,400 square feet
Minimum lot width	40 feet
Maximum lot coverage	35%, 45% for corner lots
Minimum front yard setback	25 feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater
Minimum exterior side yard for a corner lot	See Table 5.09
Minimum rear yard setback	20 feet
Minimum side yard setback, per side	5 feet
Minimum side yard setback, total	15 feet
Minimum distance between dwelling units on adjacent lots	15 feet
Maximum building height	30 feet
Minimum floor area for principal dwelling unit	800 square feet
Parking	Driveway only in rear or side yard
Driveway Access	Any street
Screening/Landscaping	None
Minimum transparency front facade	None

2. *Two Family Dwelling (2F)*. The 2F site layout dimensional requirements for primary and attached accessory structures are as follows.

Table 6.04.C.2	
Regulation	Two family dwelling requirements
Minimum lot area	6,500 square feet
Minimum lot width	65 feet

Table 6.04.C.2	
Regulation	Two family dwelling requirements
Maximum lot coverage	35%, 45% for corner lots
Minimum front yard setback	25 feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater
Minimum exterior side yard for a corner lot	See Table 5.09
Minimum rear yard setback	35 feet
Minimum side yard setback, per side	5 feet
Minimum side yard setback, total	15 feet
Minimum distance between dwelling units on adjacent lots	15 feet
Maximum building height	30 feet
Minimum floor area per dwelling unit	800 square feet
Parking	Driveway only in rear or side yard
Driveway Access	Any street
Screening / Landscaping	None
Minimum transparency front facade	None

3. *Attached Single Family (ASF).* The ASF site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.04.C.3	
Regulation	Attached single family requirements
Minimum lot area	10,000 square feet
Minimum lot width	100 feet
Maximum lot coverage	60%
Minimum front yard setback	15 feet

Table 6.04.C.3	
Regulation	Attached single family requirements
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	15 feet
Minimum rear yard setback	30 feet
Minimum side yard setback, per side	15 feet
Minimum side yard setback, total	30 feet
Minimum distance between dwelling units on adjacent lots	15 feet
Maximum building height	45 feet
Minimum floor area for principal dwelling unit	800 square feet
Parking	Side or rear yard
Driveway Access	Corridor  For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street perpendicular to the corridor street.
Screening/Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	30%

4. *Non-Residential Building (NR)*. The NR site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.04.C.4	
Regulation	Non-residential building requirements
Minimum lot area	10,000 square feet



Table 6.04.C.4	
Regulation	Non-residential building requirements
Minimum lot width	100 feet
Maximum lot coverage	60%
Minimum front yard setback	15 feet
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	15 feet
Minimum rear yard setback	15 feet when building height is 30 feet or less 30 feet when building height more than 30 feet
Minimum side yard setback, per side	15 feet
Minimum side yard setback, total	30 feet
Maximum building height	45 feet
Parking	Side or rear yard
Driveway Access	Corridor  For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening/Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	30%

5. *Institutional (IN)*. The IN site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.04.C.5		
Regulation	Institutional Building requirements	
	<i>Corridor Street</i>	<i>Residential Street</i>
Minimum lot area	10,000 square feet	
Minimum lot width	100 feet	
Maximum lot coverage	65%	
Minimum primary front yard setback	25 feet	25 feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater
Minimum exterior side yard for a corner lot	25 feet	25 feet
Minimum rear yard setback	No rear yard present	
Minimum side yard setback	30 feet	20 feet
Maximum building height	45 feet	30 feet
Parking location	Side yard or interior	Side or rear yard
Minimum parking area setback	10 feet from all lot lines	
Driveway Access	Corridor street	Secondary frontage of residential street
Screening/Landscaping	Based on site type per Section 12.05	
Minimum transparency front facade	30%	

6. *Multiple Family Development (MF)*. The multiple family development site layout allows multiple principal buildings on site. The MF site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.04.C.6		
Regulation	Multiple Family Development requirements	
	<i>Corridor Street</i>	<i>Residential Street</i>
Minimum lot area	10,000 square feet	
Minimum lot width	100 feet	
Maximum lot coverage	65%	
Minimum primary front yard setback	25 feet	25 feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater
Minimum exterior side yard for a corner lot	15 feet	15 feet
Minimum rear yard setback	No rear yard present	
Minimum side yard setback	30 feet	20 feet
Minimum distance between buildings	15 feet	
Maximum building height	45 feet	30 feet
Parking	Side yard or interior	Interior
Driveway Access	Corridor street	Secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05	
Minimum transparency front facade	30%	

D. *Authorized site layouts and use groups:* The tables in this Section determine the site layouts and use groups allowed in the RC zoning district based on street type and site type.

1. *Authorized site layouts:* Site layouts, determined by the street type and site type in the RC Regulating Plan, are allowed by the approval process in Table 6.04.D.1 below.

Table 6.04.D.1			
Street Type	Site Type	Site Layout	Approval
<b>Residential</b>	Small	SF	Principal
	Medium	SF	Principal
<b>Corridor</b>	Small	SF, 2F	Principal
		2F, ASF	Principal
	Medium	NR	Special
<b>Residential &amp; Corridor</b>	Large	MF	Special
		IN	Special

2. *Authorized use groups.* Authorized use groups, determined by the street type and site type in the RC Regulating Plan, are allowed by the approval process in Table 6.04.D.2 below.

Table 6.04.D.2			
Street Type	Site Type	Use Group	Approval
<b>Residential</b>	Small	Group 1: Residential	Principal
	Medium	Group 1: Residential	Principal
<b>Corridor</b>	Small	Group 1: Residential	Principal
		Group 2: Attached Residential / Lodging	Special
	Medium	Group 2: Attached Residential / Lodging	Principal
		Group 3: Institution / Private Assembly / Lodging Group 4: Mixed Use Low Impact Other: Medical Office	Special
<b>Residential &amp; Corridor</b>	Large	Group 2: Attached Residential / Lodging	Special

		Group 3: Institution / Private Assembly / Lodging	
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E. *Design standards.* In addition to the standards set forth in this Ordinance, all proposed developments and structures in RC Zoning must comply with the requirements below:

1. Building facades facing either a corridor or residential street must have an entrance that accesses the first floor of the building. Buildings with primary frontage on a residential street must have an appearance and scale compatible with the surrounding neighborhood.
2. The first floor elevation of non-residential buildings must face and access a corridor street only.
3. Pedestrian walkways are required to provide access to common spaces, front entrances, and surrounding sidewalks.
4. Multiple Family Site layout must meet the following design standards based on street type:

Table 6.04.E	
<i>Corridor Street</i>	<i>Residential Street</i>
Buildings must be oriented towards the corridor frontage or an interior courtyard.	Front doors of units must face the residential street.
Buildings must be grouped into clusters to provide common green open spaces.	Buildings must be grouped into clusters so that the yards between buildings mimic the yards of the single family dwellings in the surrounding neighborhood.
	No more than three units within a building fronting a residential street.

## SECTION 6.05 DT - DOWNTOWN

- A. *Intent:* This district is intended to create a vibrant city center with offices, entertainment, retail, businesses, and restaurants serving Berkley residents, daytime businesses, and nighttime entertainment populations. All development must be compatible with the vision and in accordance with the goals and objectives set forth in the Master Plan and any other applicable Plan.
- B. *Site types:* Site types are as follows.
1. *Small.* Small site type parcels are single lots from the underlying plat. They typically range twenty feet to thirty-five feet in width. The typical lot depth is less than one hundred and ten feet. The maximum lot area is three thousand square feet. Corner lots may be small site type parcels, but double-frontage lots may not.
  2. *Medium.* Medium site type parcels contain two or more lots from the underlying plat and can account for half of an existing block. For the longer blocks on the west side of Coolidge between Twelve Mile and Catalpa, medium site type parcels may encompass up to a quarter of a block. Typically, lot widths range from thirty-five and a half feet to one hundred and ten feet. Typically, lot depths range from one hundred to two hundred and thirty feet. Lot areas range from three thousand square feet to ten and a half thousand square feet. Corner lots may be medium site type parcels, but double-frontage lots may not.
  3. *Large.* Large site type parcels contain six or more lots from the underlying plat and may encompass all or half of a block. For the longer blocks on the west side of Coolidge between Twelve Mile and Catalpa, large site type parcels may encompass a quarter to half of a block. Double-frontage lots are large site type parcels. Typically, lot widths range from one hundred and ten feet to two hundred and twenty feet, lot depths from two hundred and twenty feet to three hundred and forty feet, and minimum lot areas are ten and a half thousand square feet.

Table 6.05.B – DT site type dimensions
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Site type	Typical Lot Width	Typical Lot Depth	Lot Area
Small	20 – 35 feet	< 110 feet	< 3,000 square feet
Medium	35.5 – 125 feet	100 – 230 feet	3,000 – 10,500 square feet
Large	>110	230 – 340 feet	>10,500 square feet

C. *Site Layouts*: the following site layouts are allowed in the DT district:

1. *Mixed Use or Non-Residential Building (MU / NR)*. The MU / NR site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.05.C.1

Regulation	Non-residential building requirements
Minimum lot area	None
Minimum lot width	None
Maximum lot coverage	100% when on-site parking not required 85% when on-site parking required
Minimum front yard setback	0 feet
Maximum front yard setback	10 feet 20 feet with Planning Commission waiver when public space provided
Minimum exterior side yard for a corner lot	0 feet
Minimum rear yard setback	10 ft 15 feet when building height more than 30 feet – see Section 6.09 for exceptions
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	2 stories / 24 feet



Regulation	Non-residential building requirements
	4 stories / 48 feet with Planning Commission special approval when public space, green roof, or both are provided (see Section 6.09)
Parking	Side or rear yard
Driveway Access	Walkable Area For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening/Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	70% The Planning Commission may lower the transparency requirement to 40% when a green screen, planter wall or permanent public art is provided (see Section 6.09).

2. *Institutional (IN)*. The IN site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.05.C.2

Regulation	Institutional building requirements
Minimum lot area	10,000 square feet
Minimum lot width	100 feet
Maximum lot coverage	100%
Minimum front yard setback	0 feet
Maximum front yard setback	10 feet
Minimum exterior side yard for a corner lot	10 feet
Minimum rear yard setback	0 ft 15 feet when building height more than 30 feet

Regulation	Institutional building requirements
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	45 feet
Parking	Side or rear yard
Driveway Access	Downtown For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Design Requirements	Principal building located within 50 feet of the frontage of corridor street
Minimum transparency front facade	30%

3. *Authorized site layouts.* Site layouts, determined by the street type and site type in the DT Regulating Plan, are allowed by the approval process in Table 6.05.C.3 below.

Table 6.05.C.3

Street Type	Site Type	Site Layout	Approval
<i>Downtown</i>	Small	MU / NR	Principal
	Medium	MU / NR	Principal
	Large	MU / NR, IN	Special
<i>Walkable Area</i>	Small	MU / NR	Principal
	Medium	MU / NR, IN	Principal
	Large	MU / NR, IN	Principal

4. *Authorized use groups:* Authorized use groups, determined by the street type and site type in the DT regulating plan, are allowed by the approval process in Table 6.05.C.4. below.

Table 6.05.C.4

Street Type	Site Type	Use Group	Approval
<i>Downtown A</i>	Small	Group 4: Mixed Use Low Impact	Principal
		Group 3: Institution / Private Assembly	Special
	Medium	Group 4: Mixed Use Low Impact	Principal
		Group 3: Institution / Private Assembly	Special
	Large	Group 4: Mixed Use Low Impact	Principal
		Group 3: Institution / Private Assembly	Special
<i>Walkable Area</i>	Small	Group 4: Mixed Use Low Impact	Principal
	Medium	Group 4: Mixed Use Low Impact	Principal
		Group 3: Institution / Private Assembly / Lodging	Special
	Large	Group 4: Mixed Use Low Impact	Principal
		Group 3: Institution / Private Assembly / Lodging	Special

5. Design standards: In addition to the standards set forth in this Ordinance, all proposed development in the DT Zoning District must comply with the requirements below:
  - a. Buildings must have balanced compositions and forms.
  - b. Roofs must be compatible with the architectural style of the building and the context of the surrounding area.
  - c. Building Entrances must be designed with one or more of the following:
    - i. Canopy, overhang, or arch above the entrance (pillars & columns).
    - ii. Recesses or projections in the building façade surrounding the entrance.
    - iii. Peaked roof or raised parapet structures over the door.

- iv. Windows surrounding the entrance.
- d. Building articulation for building walls facing public streets are required to ensure that the building is not monotonous in appearance by meeting the following standards:
  - i. Building facades must be subdivided, through the location of architectural treatments and the arrangement of openings (doors and windows) that are compatible in size and scale to the surrounding buildings.
  - ii. The maximum linear length of an uninterrupted building façade facing public streets or parks is thirty feet. Building articulation may be accomplished through a combination of the following techniques:
    - a) Accent lines including, but not limited to, vertical and horizontal moldings, columns, sills, cornices, and canopies.
    - b) Color change
    - c) Material change
    - d) Minor wall offset by notching a building wall for its full height
    - e) Height variation
    - f) Increased wall setback
- e. High quality, durable materials must be used, such as but not limited to stone, brick, metal, and glass. E.I.F.S., or material equivalent may be used as an accent material.
- f. For buildings over two stories, a five-foot minimum step back from the lower building façade must be implemented for third and higher stories. When directly adjacent with no parking lot in between the proposed building and parcels zoned or used for single family detached or attached uses, the step down portion of the building must be toward the residential area.
- g. Additions and modifications must fit the traditional context by meeting the following standards:

- i. Any addition must be compatible in scale, materials, and character of the main building.
  - ii. New exterior additions are constructed to minimize the loss of historical materials so that character-defining features, like cornices and brackets, are not obscured, damaged, destroyed, or covered.
  - iii. For rooftop additions adding a third floor or more, the addition must be stepped back a minimum of five feet from the lower building façade. When abutting parcels zoned or used for single family detached or attached dwellings, the step down portion of the building must be toward the residential area.
6. Design guidelines: Proposed development in the DT Zoning District should comply with the guidelines below to the greatest extent possible:
  - a. New buildings should utilize a variety of building and parapet heights to reduce boxy building masses. A variety of roof forms may also be utilized. If two stories or higher, height variations should be utilized.
  - b. New development or site redevelopment should incorporate community amenities that add value to the development such as patio or seating areas, water features, artwork or sculpture, clock towers, pedestrian plazas with park benches or other features located in areas accessible to the public. Such improvements must be proportionate to the proposed scope of site work.
  - c. Sustainable site, building, and landscaping elements are encouraged.

## SECTION 6.06 GC - GATEWAY CORRIDOR

- A. *Intent:* This district is intended to improve the function, investment value, and aesthetics of these corridors as mixed-use, walkable places through site-based design standards. All development must be compatible with the vision

and in accordance with the goals and objectives set forth in the Master Plan and any other applicable Plan.

B. *Site types:* Site types are as follows.

1. *Small.* Small site type parcels are single lots from the underlying plat. They typically range twenty feet to forty-six feet in width, and seventy-five feet to one hundred and thirty-five feet in depth. The maximum lot area is six thousand square feet. Corner lots may be small site type parcels, but double-frontage lots may not.
2. *Medium.* Medium site type parcels contain two or more lots from the underlying plat and can account for half of an existing block. For the longer blocks on the west side of Coolidge between Twelve Mile and Catalpa, medium site type parcels may encompass up to a quarter of a block. Typically, lot widths range from forty-six and a half feet to one hundred and ten feet, lot depths from one hundred feet to two hundred and thirty feet, and lot areas range from six thousand to thirty-four and a half square feet. Corner lots may be medium site type parcels, but double-frontage lots may not.
3. *Large.* Large site type parcels contain six or more lots from the underlying plat and may encompass all or half of a block. For the longer blocks on the west side of Coolidge between Twelve Mile and Catalpa, large site type parcels may encompass a quarter to half of a block. Double-frontage lots are large site type parcels. Typically, lot widths range from one hundred and ten feet to two hundred and twenty feet, lot depths from two hundred and thirty feet to three hundred and forty feet, and minimum lot areas are thirty-four thousand and five hundred square feet.

Table 6.06.B – GC site type dimensions			
Site type	Typical Lot Width	Typical Lot Depth	Lot Area
Small	20 – 46 feet	75 – 135 feet	< 6,000 square feet
Medium	46.5 – 110 feet	100 – 230 feet	6,000 – 34,500 square feet
Large	110 - 220	230 – 340 feet	>34,500 square feet

C. *Site Layouts*: the following site layouts are allowed in the GC district:

1. *Mixed Use/Non-Residential Building (NR)*. The MU / NR site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.06.C.1.

Regulation	Mixed Use / Non-residential building requirements
Minimum lot area	None
Minimum lot width	None
Maximum lot coverage	85%
Minimum front yard setback	5 feet
Maximum front yard setback	15 feet 20 feet with Planning Commission special approval when public space provided (see Section 6.09)
Minimum exterior side yard for a corner lot	5 feet
Minimum rear yard setback	10 ft 15 feet when building height more than 30 feet
Minimum side yard setback, per side	0 feet

Regulation	Mixed Use / Non-residential building requirements
Minimum side yard setback, total	0 feet
Maximum building height	2 stories / 24 feet 4 stories / 48 feet with Planning Commission special approval when public space, green roof, or both are provided (see Section 6.09)
Parking	Side or rear yard
Driveway Access	Walkable Area Corridor For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	50% The Planning Commission may lower the transparency requirement to 30% when a green screen, planter wall or permanent public art is provided (see Section 6.09).

2. *Institutional (IN)*. The IN site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.06.C.2.

Regulation	Institutional building requirements
Minimum lot area	10,00 square feet
Minimum lot width	100 feet
Maximum lot coverage	85%
Minimum front yard setback	5 feet



Regulation	Institutional building requirements
Maximum front yard setback	15 feet
Minimum exterior side yard for a corner lot	10 feet
Minimum rear yard setback	10 ft 15 feet when building height more than 30 feet
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	40 feet 48 feet with Planning Commission special approval when public space, green roof, or both are provided (see Section 6.09)
Parking	Side or rear yard
Driveway Access	Walkable Area Corridor  For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	30%

3. *Auto/Transportation (AT)*. The AT site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.06.C.3.

Regulation	Auto / transportation building requirements
Minimum lot area	10,000 square feet
Minimum lot width	100 feet
Maximum lot coverage	85%
Minimum front yard setback	5 feet
Maximum front yard setback	15 feet
Minimum exterior side yard for a corner lot	10 feet
Minimum rear yard setback	10 ft 15 feet when building height more than 30 feet
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	1 story 30 feet
Parking	Side or rear yard
Driveway Access	Walkable Area Corridor For corner lots, with primary frontage on a Walkable Area or Corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Other Requirements	AT site types must meet the setbacks and standards in Section 8.06 - Automotive Uses
Minimum transparency front facade	40%

4. *Multiple Family Development (MF)*. The multiple family development site layout allows multiple principal buildings on site. The MF site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.06.C.4.

Regulation	Multiple Family Development requirements
Minimum lot area	None
Minimum lot width	None
Maximum lot coverage	85%
Minimum front yard setback	5 feet
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	10 feet
Minimum rear yard setback	10 ft
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	2 stories / 24 feet  3 stories / 36 feet with Planning Commission special approval when public space and/or green roof provided (see Section 6.09)
Parking	Rear yard
Driveway Access	Corridor  For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.

Regulation	Multiple Family Development requirements
Screening / Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	50%  The Planning Commission may lower the transparency requirement to 30% when a green screen, planter wall or permanent public art is provided (see Section 6.09).

D. *Authorized site layouts and use groups.* The tables in this Section determine the site layouts and use groups allowed in the GC zoning district based on street type and site type.

1. Authorized site layouts: Site layouts, determined by the street type and site type in the GC Regulating Plan, are allowed by the approval process in Table 6.06.D.1. below.

Table 6.06.D.1.

Street Type	Site Type	Site Layout	Approval
<b><i>Walkable Area</i></b>	Small	MU / NR	Principal
	Medium	MU / NR, IN, MF	Principal
		AT	Special
	Large	MU / NR, IN, MF	Principal
		AT	Special
	<b><i>Corridor</i></b>	Small	MU / NR
Medium		MU / NR, IN, MF	Principal
		AT	Special
Large		MU / NR, IN, MF	Principal
		AT	Special

2. Authorized use groups: Authorized use groups, determined by the street type and site type in the GC regulating plan, are allowed by the approval process in Table 6.06.D.2. below.

Table 6.06.D.2			
Street Type	Site Type	Use Group	Approval
<i>Walkable Area</i>	Small	Group 4: Mixed Use Low Impact	Principal
	Medium	Group 3: Institution / Private Assembly / Lodging	Principal
		Group 4: Mixed Use Low Impact	
		Group 5: Mixed Use High Impact	
	Large	Group 6: Auto / Transportation	Special
		Group 7: Miscellaneous Commercial Uses	
<i>Corridor</i>	Small	Group 4: Mixed Use Low Impact	Principal
	Medium	Group 3: Institution / Private Assembly / Lodging	Principal
		Group 4: Mixed Use Low Impact	
		Group 5: Mixed Use High Impact	
	Large	Group 6: Auto / Transportation	Special
		Group 7: Miscellaneous Commercial Uses	
	Group 3: Institution / Private Assembly / Lodging	Principal	
	Group 4: Mixed Use Low Impact		

		Group 5: Mixed Use High Impact	
		Group 6: Auto / Transportation Group 7: Miscellaneous Commercial Uses	Special

D. *Design Standards.* The following design standards apply to all new developments and structures in the GC Zoning District.

1. Buildings must have balanced compositions and forms.
2. Roofs must be compatible with the architectural style of the building and the context of the surrounding area.
3. First floor elevations facing corridor street must have a minimum of thirty percent transparency.
4. Building articulation for building walls facing public streets are required to ensure that the building is not monotonous in appearance by meeting the following standards:
  - a. Building facades must be subdivided, through the location of architectural treatments and the arrangement of openings (doors and windows) that are compatible in size and scale to the surrounding buildings.
  - b. The maximum linear length of an uninterrupted building façade facing public streets or parks is thirty feet. Building articulation may be accomplished through a combination of the following techniques:
    - i. Accent lines including, but not limited to, vertical and horizontal moldings, columns, sills, cornices, and canopies.
    - ii. Color change
    - iii. Material change
    - iv. Minor wall offset by notching a building wall for its full height
    - v. Height variation

- vi. Increased wall setback
5. High quality, durable materials must be used, such as but not limited to stone, brick, and glass. Metal, E.I.F.S., or material equivalent may only be used as an accent material.
  6. Landscaped yards, outdoor dining, or display areas are required in any provided front yard setback.
  7. Pedestrian walkways are required to provide access to common spaces, front entrances, and surrounding sidewalks.
  8. Building Entrances must be designed with one or more of the following:
    - a. Canopy, overhang, or arch above the entrance (pillars & columns).
    - b. Recesses or projections in the building façade surrounding the entrance.
    - c. Peaked roof or raised parapet structures over the door.
  9. The elevation of the first-floor and floor-to-floor heights must be in line with the average of the front façades of buildings on the same block.
  10. For buildings over two stories, a step back from the lower building façade must be implemented for third and higher stories. When abutting parcels zoned or used for single family detached or attached dwellings, the step down portion of the building must be toward the residential area.
  11. Additions and modifications should fit the traditional context by meeting the following standards:
    - a. Any addition must be compatible in scale, materials, and character of the main building.
    - b. New exterior additions are constructed to minimize the loss of historical materials so that character-defining features, like cornices and brackets, are not obscured, damaged, destroyed, or covered.

- c. For rooftop additions adding a third floor or more, the addition must be stepped back from the lower building façade. When abutting parcels zoned or used for single family detached or attached dwellings, the step down portion of the building must be toward the residential area.
- E. Design Guidelines: Proposed development in the GC Zoning District should comply with the guidelines below to the greatest extent possible:
  1. New buildings should utilize a variety of building and parapet heights to reduce boxy building masses. A variety of roof forms may also be utilized. If two stories or higher, height variations must be utilized to the greatest possible extent.
  2. Sustainable site, building, and landscaping elements are encouraged.

## SECTION 6.07 WOODWARD CORRIDOR

- A. *Intent:* This district is intended to provide a mix of office and retail uses oriented to the higher volume of traffic along the Woodward corridor. Mixed use and multiple-family uses can be incorporated into this multi-modal corridor with transit oriented design. All development must be compatible with the vision and in accordance with the goals and objectives set forth in the Master Plan and any other applicable Plan.
- B. *Site types:* Site types are as follows.
  1. *Small.* Small site type parcels are single lots from the underlying plat to parcels that encompass up to half of a block. They typically range from twenty feet to one hundred and twenty feet in width and have the lot depth of the original plat: fifty feet to eighty-five feet. The maximum lot area is ten thousand square feet. Corner lots may be small site type parcels, but double-frontage lots may not.
  2. *Medium.* Medium site type parcels can encompass half or up to an entire existing block. These site types differ from small site types in terms of lot depth, by including formerly residential lots to the rear, or in lot width, by encompassing the entire block face. Corner lots may be medium site type parcels, but double-frontage lots may not.



3. *Large.* Large site type parcels encompass an entire block and have a lot depth at the deepest point of at least two hundred feet.

C. *Site Layouts:* the following site layouts are allowed in the WC district:

1. Mixed Use / Non-Residential Building (MU / NR). The MU / NR site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.07.C.1.

Regulation	Mixed Use / Non-residential building requirements
Minimum lot area	None
Minimum lot width	None
Maximum lot coverage	85%
Minimum front yard setback	0 feet
Maximum front yard setback	15 feet Half of the depth of the lot with Planning Commission special approval when public space, outdoor dining, or outdoor sales provided (see Section 6.09)
Minimum exterior side yard for a corner lot	0 feet
Minimum rear yard setback	10 ft 15 feet when building height more than 30 feet or when abutting a residential district
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	2 stories / 24 feet 5 stories / 50 feet with Planning Commission special approval when public

Regulation	Mixed Use / Non-residential building requirements
	space, green roof, or both provided (see Section 6.09)
Parking	Side or rear yard  Front yard parking may be allowed by the Planning Commission on large sites with public or semi-public areas (see Section 6.09)
Driveway Access	Corridor  For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	50%  The Planning Commission may lower the transparency requirement to 30% when a green screen, planter wall or permanent public art is provided.

2. *Auto/Transportation (AT)*. The AT site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.07.C.2.

Regulation	Auto / transportation building requirements
Minimum lot area	10,000 square feet
Minimum lot width	100 feet
Maximum lot coverage	85%
Minimum front yard setback	5 feet
Maximum front yard setback	15 feet

Regulation	Auto / transportation building requirements
Minimum exterior side yard for a corner lot	5 feet
Minimum rear yard setback	10 ft 15 feet when building height more than 30 feet
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	1 story 30 feet
Parking	Side or rear yard
Driveway Access	Corridor For corner lots, with primary frontage on a Walkable Area or Corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Other Requirements	AT site types must meet the setbacks and standards in Section 8.06 - Automotive Uses
Minimum transparency front facade	40%

3. *Multiple Family Development (MF)*. The multiple family development site layout allows multiple principal buildings on site. The MF site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.07.C.3	
Regulation	Multiple Family Development requirements
Minimum lot area	None
Minimum lot width	None

Table 6.07.C.3	
Regulation	Multiple Family Development requirements
Maximum lot coverage	85%
Minimum front yard setback	5 feet
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	5 feet
Minimum rear yard setback	10 ft
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	2 stories / 24 feet 5 stories / 50 feet with Planning Commission special approval when public space and / or green roof provided (see Section )
Parking	Side or rear yard
Driveway Access	Corridor For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	50% The Planning Commission may lower the transparency requirement to 30% when a green screen, planter wall or permanent public art is provided.

- D. *Authorized site layouts and use groups.* The tables in this Section determine the site layouts and use groups allowed in the WC zoning district based on street type and site type.

1. *Authorized site layouts.* Site layouts, determined by the street type and site type in the WC Regulating Plan, are allowed by the approval process in Table 6.07.D.1. below.

Table 6.07.D.1			
Street Type	Site Type	Site Layout	Approval
<i>Corridor</i>	Small	MU / NR	Principal
	Medium	MU / NR, IN, MF	Principal
		AT	Special
	Large	MU / NR, IN, MF	Principal
		AT	Special

2. *Authorized use groups:* Authorized use groups, determined by the street type and site type in the WC regulating plan, are allowed by the approval process in Table 6.07.D.2. below.

Table 6.07.D.2			
Street Type	Site Type	Use Group	Approval
<i>Corridor</i>	Small	Group 4: Mixed Use Low Impact	Principal
	Medium	Group 3: Institution / Private Assembly / Lodging Group 4: Mixed Use Low Impact Group 5: Mixed Use High Impact	Principal
		Group 6: Auto / Transportation Group 7: Miscellaneous Commercial Uses Adult Regulated Uses, per Section 8.03	Special
		Group 3: Institution / Private Assembly / Lodging Group 4: Mixed Use Low Impact Group 5: Mixed Use High Impact	Principal

Table 6.07.D.2			
Street Type	Site Type	Use Group	Approval
		Group 6: Auto/Transportation Group 7: Miscellaneous Commercial Uses Adult Regulated Uses, per Section 8.03	Special

E. *Design Standards.* The following design standards apply to all new developments and structures in the WC Zoning District.

1. Landscaped yards, outdoor dining, pedestrian streetscape furnishings, or display areas are required in any provided front yard setback.
2. Pedestrian walkways are required to provide access to common spaces, front entrances, and surrounding sidewalks.
3. Building Entrances must be designed with one or more of the following:
  - a. Canopy, overhang, or arch above the entrance (pillars & columns).
  - b. Recesses or projections in the building façade surrounding the entrance.
  - c. Peaked roof or raised parapet structures over the door.
4. The elevation of the first-floor and floor-to-floor heights must be in line with those of the front facades of buildings on the same block.
5. For buildings over two stories, a step back from the lower building façade must be implemented for third and higher stories. When abutting parcels zoned or used for single family detached or attached dwellings, the step down portion of the building must be toward the residential area.
6. Additions and modifications should fit the context of the Woodward Zoning District by meeting the following standards:

- a. Any addition must be compatible in scale, materials, and character of the main building.
  - b. For rooftop additions adding a third floor or more, the addition must be stepped back from the lower building façade. When abutting parcels zoned or used for single family detached or attached dwellings, the step down portion of the building must be toward the residential area.
- F. Design Guidelines: Proposed development in the WC Zoning District should comply with the guidelines below to the greatest extent possible:
1. New buildings should utilize a variety of building and parapet heights to reduce boxy building masses. A variety of roof forms may also be utilized. If two stories or higher, height variations must be utilized.
  2. Sustainable site, building, and landscaping elements are encouraged.

## SECTION 6.08 FLEX

- A. *Intent:* This district is intended to improve the function, investment value and aesthetics of this Section of Eleven Mile, while allowing a range of land uses. All development must be compatible with the vision and in accordance with the goals and objectives set forth in the Master Plan and any other applicable Plan.
- B. *Site types* Site types are as follows.
1. *Small.* Small site type parcels are up to two lots from the underlying plat. They typically range twenty feet to forty feet in width, and one hundred feet to one hundred and fifty-seven feet in depth. The maximum lot area is sixty-five hundred square feet.
  2. *Medium.* Medium site type parcels contain three or more lots from the underlying plat and can account for half of an existing block. Typically, lot widths range from forty feet to one hundred and twenty feet, lot depths from one hundred feet to one hundred and seventy-five feet, and lot areas range from sixty-five hundred square feet to twenty-one thousand square feet.

3. *Large.* Large site type parcels encompass all or half of a block and are deeper than the original plat facing Eleven Mile. Typically, lot widths range from one hundred and twenty feet to two hundred and sixty feet, and lot depths are over one hundred and sixty feet. Lot areas are over twenty-one thousand square feet.

Table 6.08.B – Flex site type dimensions			
Site type	Typical Lot Width	Typical Lot Depth	Lot Area
Small	20 – 40 feet	100 – 157 feet	< 6,500 square feet
Medium	40 – 120 feet	100 – 175 feet	6,500 – 21,000 square feet
Large	120 - 260	160+ feet	>21,000 square feet

C. *Site Layouts:* the following site layouts are allowed in the Flex district:

1. Non-Residential Building / Live Work (NR / LW). The NR / LW site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.08.C.1	
Regulation	Non-residential building requirements
Minimum lot area	None
Minimum lot width	None
Maximum lot coverage	85%
Minimum front yard setback	5 feet  For corner lots, with primary frontage on a corridor street, the front setback of the secondary front yard facing a residential street is 10 feet
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	10 feet
Minimum rear yard setback	10 feet



Table 6.08.C.1	
Regulation	Non-residential building requirements
	15 feet when building height more than 30 feet or when abutting a residential district
Minimum side yard setback, per side	None 10 feet when abutting a residential district
Minimum side yard setback, total	
Maximum building height	2 stories / 24 feet 4 stories / 40 feet with Planning Commission special approval when public space, green roof, or both area provided (see Section 6.09)
Parking	Side or rear yard Front yard parking may be permitted by the Planning Commission when the front yard parking is adjacent to the principal building.
Driveway Access	Corridor For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	30%

2. *Institutional (IN)*. The IN site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.08.C.2

Regulation	Institutional building requirements
Minimum lot area	10,000 square feet
Minimum lot width	100 feet
Maximum lot coverage	85%
Minimum front yard setback	5 feet  For corner lots, with primary frontage on a corridor street, the front setback of the secondary front yard facing a residential street is 10 feet
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	10 feet
Minimum rear yard setback	10 ft  15 feet when building height more than 30 feet or when abutting a residential district
Minimum side yard setback, per side	5 feet
Minimum side yard setback, total	15 feet
Maximum building height	40 feet
Parking	Side or rear yard
Driveway Access	Corridor  For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Minimum transparency front facade	30%

3. *Industrial (I)*. The I site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.08.C.3

Regulation	Industrial building requirements
Minimum lot area	6,000 square feet
Minimum lot width	60 feet
Maximum lot coverage	65%
Minimum front yard setback	5 feet
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	10 feet
Minimum rear yard setback	25 feet
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	45 feet
Parking	Side or rear yard
Driveway Access	Corridor For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Design standards	Garage openings must face corridor street Loading areas must be in front or side yard
Minimum transparency front facade	20% The Planning Commission may waive the transparency requirement when a green screen, planter wall or permanent public art is provided.

4. *Auto/Transportation (AT)*. The AT site layout dimensional requirements for primary and attached accessory structures are as follows:

Table 6.08.C.4

Regulation	Auto / Transportation building requirements
Minimum lot area	6,000 square feet
Minimum lot width	60 feet
Maximum lot coverage	65%
Minimum front yard setback	5 feet
Maximum front yard setback	25 feet
Minimum exterior side yard for a corner lot	5 feet
Minimum rear yard setback	25 feet
Minimum side yard setback, per side	0 feet
Minimum side yard setback, total	0 feet
Maximum building height	45 feet
Parking	Side or rear yard
Driveway Access	For corner lots, with primary frontage on a corridor street, a driveway may be located on the secondary frontage of residential street.
Screening / Landscaping	Based on site type per Section 12.05
Design Standards	Garage openings must face corridor street
Minimum transparency front facade	40%

- D. *Authorized site layouts and use groups*. The tables in this Section determine the site layouts and use groups allowed in the Flex zoning district based on street type and site type.

1. *Authorized site layouts.* Site layouts, determined by the street type and site type in the Flex Regulating Plan, are allowed by the approval process in Table 6.08.D.1. below.

Table 6.08.D.1

Street Type	Site Type	Site Layout	Approval
<i>Corridor</i>	Small	NR / LW	Principal
	Medium	NR / LW, IN	Principal
		I, AT	Special
	Large	NR / LW, IN	Principal
		I, AT	Special

2. *Authorized use groups.* Authorized use groups, determined by the street type and site type in the Flex district regulating plan, are allowed by the approval process in Table 6.08.D.2. below.

Table 6.08.D.2

Street Type	Site Type	Use Group	Approval
<i>Corridor</i>	Small	Group 4: Mixed Use Low Impact	Principal
	Medium	Group 3: Institution / Private Assembly / Lodging	Principal
		Group 4: Mixed Use Low Impact	
		Group 5: Mixed Use High Impact	
		Group 6: Auto/Transportation Group 8: Industrial Uses	Special
	Large	Group 4: Mixed Use Low Impact	Principal
		Group 5: Mixed Use High Impact	
		Group 3: Institution / Private Assembly / Lodging	Special
Group 6: Auto / Transportation Group 8: Industrial Uses			

- E. *Design Standards.* The following design standards apply to all new developments and structures in the Flex Zoning District.
1. All buildings and other structures must be constructed of durable materials, such as face brick, treated concrete, steel, aluminum or other architectural exterior surfaces or equal material.
  2. Main building entrances must be prominent and visible from the street.
  3. The area between the public sidewalk and the building (i.e., the build-to line area) must be improved with streetscape, landscaping, public art, pedestrian amenities, or transit facilities.
  4. Sidewalks must meet ADA accessibility standards.
  5. Pedestrian walkways must provide access from the front door to the sidewalk and parking areas, as well as common open spaces.
- F. *Design Guidelines.* Sustainable site, building, and landscaping elements are encouraged in the Flex Zoning District.
- G. *Performance Standards.*
1. *Standards general.* Any use otherwise allowed must not be permitted within any district which does not conform to the following standards of use, occupancy and operation, which standards are hereby established as the minimum requirements to be maintained within such area.
  2. *Smoke.* It is unlawful for any person to permit the emission of any smoke from any source to a density greater than that density described as No. 1 on the [Ringelmann Chart](#); provided, however, that the following exceptions are permitted: Smoke, the shade or appearance of which is equal to but not darker than No. 2 of the Ringelmann Chart for a period or periods aggregating four minutes in any thirty minutes. Method of measurement: For the purpose of grading the density of smoke, the Ringelmann Chart, as now published and used by the United States Bureau of Mines, which is made a part of this chapter, is the standard. However, the umbrascope readings of

smoke densities may be used when correlated with Ringelmann's Chart.

3. *Dust, dirt, and fly ash.* A person must not operate or cause to be operated, maintain or cause to be maintained, any process for any purpose, or furnace or combustion device for the burning of coal or other natural or synthetic fuels, without maintaining and operating, while using such process or furnace or combustion device, recognized and approved equipment, means, method, device or contrivance to reduce the quantity of gas-borne or air-borne solids or fumes emitted into the open air, which is operated in conjunction with such process, furnace or combustion device so that the quantity of gas-borne or air-borne solid must not exceed 0.20 grains per cubic foot of the carrying medium at a temperature of five hundred degrees Fahrenheit. Method of measurement: For the purpose of determining the adequacy of such devices these conditions are to be conformed to when the percentage of excess air in the stack does not exceed fifty percent at full load. This is measured by the A.S.M.E. test code for dust-separating apparatus. All other forms of dust and dirt must be completely eliminated, to prevent the escape or emission into the open air. The building inspector may require additional data as is deemed necessary to show that adequate and approved provisions for the prevention and elimination of dust and dirt have been made.
4. *Open storage.* The open storage for junk, scrap, salvage, waste products, or construction materials, where the operations are for the conversion to salable materials, must be screened from public view, from a public street, and from adjoining properties not of a similar nature, by an enclosure consisting of an obscuring masonry wall at least eight feet in height.
5. *Glare and radioactive materials.* Glare from any process (such as or similar to arc welding or acetylene torch cutting) which emits harmful ultraviolet rays must be performed in such a manner that cannot be seen from any point beyond the parcels line and does not create a public nuisance or hazard along the lot line. Radioactive materials and wastes must not be emitted to exceed quantities established as safe by the U.S. Bureau of Standards, when measured at the parcels line.
6. *Fire and explosive hazards.* The storage, utilization, or manufacture of materials or products ranging from incombustible to moderate

burning, as determined by the fire marshal, is permitted, subject to compliance with all other performance standards mentioned in this Section.

The storage, utilization or manufacturing of materials, goods or products ranging from free or active burning to intense burning, as determined by the fire marshal, is permitted subject to compliance with all other yard requirements and performance standards previously mentioned and providing that the following conditions are met:

- a. Said materials or products must be stored, utilized, or produced within completely enclosed buildings or structures having incombustible exterior walls, which meet the requirements of the building code of the city (Chapter 26 of this Code).
  - b. All such buildings or structures must either be set back at least forty feet from lot lines, or else, all such buildings or structures must be protected throughout by an automatic sprinkler system complying with installation standards prescribed by the National Fire Protection Association.
  - c. The storage and handling of flammable liquids, liquified petroleum gases, and explosives must comply with the State Rules and Regulations as Established by Public Act No. 207 of 1941 (MCL 29.1 et seq.).
9. Principal uses permitted in industrial buildings are as follows:
- a. Any of the following principal uses are permitted in industrial buildings, provided that they are conducted wholly within a completely enclosed building or within a designated area enclosed on all sides with a six foot obscuring masonry wall not less than eight inches thick:
    - a. Warehousing and wholesale establishments, and storage (other than accessory to a permitted retail use).
    - b. The compounding, processing, packaging, or treatment of such products as bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food products, hardware, and cutlery; tool, die, gauge, and machine shops.



- c. The manufacture, compounding, assembling, or treatment of articles or merchandise from previously prepared materials such as canvas, cellophane, cloth, cork, feathers, felt, fiber, fur, glass, hair, leather, paper, plastics, precious or semiprecious metals or stones, shell, textiles, tobacco, wax, wire, wood, and yarns.
- d. The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay, and kilns fired only by electricity or gas.
- e. Manufacture of musical instruments, toys, novelties metal or rubber stamps, or other small, molded rubber products.
- f. Manufacture or assembly of electrical appliances, electronic instruments and devices, radios, and phonographs (excluding stampings).
- g. Laboratories, film processing, or product testing.
- h. Manufacture and repair of electric or neon signs or light sheet metal products, including heating and ventilating equipment, cornices, eaves, and the like.
- i. Building material sales.
- j. Warehouse, storage and transfer and electric and gas service buildings and yards, heating and electric power generating plants and all necessary uses, coal, coke, and fuel yards, water supply and sewage disposal plants, water and gas tanks and holders.
- k. Automobile service, automobile repair, or automobile wash establishments.
- l. Permitted accessory uses.
- m. Other uses that are no more objectionable character.
- n. Marihuana retailers and medical marihuana provisioning centers.

## SECTION 6.09 EXCEPTIONS AND WAIVERS

- A. *Projections:* The projections allowed by Section 5.09.D apply in the Site Design Based Zoning Districts.
- B. *Porches, Paved Terraces, and Balconies:* For detached single family and two family dwelling, attached single family and multiple family buildings in the Site Design Based Zoning Districts, the projections for porches and paved terraces in Section 5.09.C apply. For balconies, the projections allowed by Section 5.09.D apply.
- C. *Maximum Front Yard Setbacks:* The Planning Commission may allow a waiver from maximum front yard setbacks in the following instances:
  - 1. Downtown and Gateway Corridor Zoning Districts: The Planning Commission may adjust the maximum front yard setback up to twenty feet.
  - 2. Large Site Types in the Woodward Zoning District: The Planning Commission may adjust the maximum front yard setback up to fifty percent of the depth of the lot to allow a permanent public area or a semi-public area, such as outdoor sales, seating, or dining. In this scenario, the Planning Commission may allow parking in the front yard when pedestrian facilities connect the sidewalk to the outdoor areas, located between the parking lot and the principal building.
- D. *Building Height:* The Planning Commission, by special land use approval per Article 10, may allow maximum building height deviations as specified in the site layouts in this Article.
- E. *Transparency:* The Planning Commission may adjust the required transparency as specified in the site layouts in this Article when the following are substituted for transparent windows, doors, or glazing:
  - 1. Architectural details or screens.
  - 2. Green screen or planter walls.
  - 3. Murals, friezes, or sculptures.
- F. *Deviations From Design Standards:* The Planning Commission may grant design standards deviations if all of the following are found:

1. The deviation will not adversely impact public health, safety, and welfare.
2. The deviation maintains compatibility with adjacent uses.
3. The deviation is compatible with the Master Plan and in accordance with the goals and objectives of the Master Plan and any associated subarea and corridor plans.
4. The deviation will not adversely impact essential public facilities and services, such as: streets, pedestrian or bicycle facilities, police and fire protection, drainage systems, refuse disposal, water and sewage facilities, and schools.
5. The deviation will be in compliance with all other zoning chapter standards.

# ARTICLE 7

## PLANNED UNIT DEVELOPMENT

### SECTION 7.01 INTENT

- A. The intent of the Planned Unit Development (PUD) option is to permit flexibility in the design and use of residential and non-residential land which, through the implementation of an overall development plan, when applicable to the site, will:
1. Encourage developments that are expected to result in a long-term contribution to social, environmental, and economic sustainability in the City of Berkley.
  2. Permit development patterns that respond to changing public and private needs.
  3. Encourage flexibility in design and use that will result in a higher quality of development and a better overall project than would be accomplished under conventional zoning, and which can be accommodated without sacrificing established community values.
  4. Provide for the long-term protection and preservation of natural resources, natural features, and historic and cultural resources of a subject parcels and surrounding properties.
  5. Promote the efficient use and conservation of energy.
  6. Encourage the use, redevelopment, and improvement of existing sites where current ordinances do not provide adequate protection and safeguards for the site or its surrounding areas, or where current ordinances do not provide the flexibility to consider redevelopment, replacement, or adaptive re-use of existing structures and sites.
  7. Provide enhanced housing, employment, recreation, or shopping opportunities for the citizens of Berkley.
  8. Ensure the compatibility of design and use between various components within the PUD project area and with neighboring properties and uses.

9. Ensure development that is consistent with the intent of the Master Plan.
- B. A Planned Unit Development project is viewed as an integrated development concept. To that end, the provisions of this Article are not intended to be used as a device for avoiding the zoning requirements that would otherwise apply, but rather to allow flexibility and mixture of uses, and to improve the design, character, and quality of new development. The use of a Planned Unit Development option to permit variations from other requirements of this Ordinance must only be approved when such approval results in improvements to the public health, safety, and welfare in the area affected, and in accordance with the intent of this Article.

## SECTION 7.02 USES PERMITTED

The uses permitted within a Planned Unit Development project area must be consistent with the intent of the Master Plan or the intent of any applicable corridor or sub-area plans, including the Downtown Master Plan. If conditions have changed since the Plan or any applicable corridor or sub-area plans were adopted, the uses must be consistent with recent development trends in the area. Other land uses may be authorized when such uses are determined to be consistent with the intent of this Article. Physical standards relating to matters such as building height, bulk, density, parking, and setbacks will be determined based on the specific Planned Unit Development plan presented and its design quality and compatibility with adjacent uses, rather than being based upon the specific standards contained in the underlying zoning districts or in those districts within which the proposed uses otherwise occur. A Planned Unit Development project, approved in accordance with the provisions of this Article, replaces the underlying zoning districts as the basis upon which the subject parcels is developed and its uses are controlled.

## SECTION 7.03 STANDARDS FOR APPROVAL

A Planned Unit Development project may be applied for in any zoning district. The Planning Commission must determine and must provide evidence of its determinations in its report to the City Council, that the application meets the following standards, as reasonably applicable to the site. The Planning Commission and City Council must make a finding on each standard as to whether the standard

is met, not met, or not reasonably applicable to the site. Failure to meet all of the relevant standards is grounds for a recommendation of denial.

- A. The proposed development must be applied for by a person or entity who has the legal right to execute a binding agreement covering all parcels in the Planned Unit Development area.
- B. The applicant must demonstrate that through the use of the PUD option, the development will accomplish the following objectives, to a degree proportional to the site area, as are reasonably applicable to the site:
  - 1. Land uses in harmony with adjacent uses and in keeping with the future land uses for the site in question in the City Master Plan that would otherwise not be permitted without the use of the PUD option, provided that other objectives of this Article are also met.
  - 2. Recognizable and material benefits to the community and the ultimate users of the project and, where such benefits would otherwise be infeasible or unlikely to be achieved absent these regulations. Recognizable and material benefits include the following:
    - a. A public improvement or public facility (e.g., recreational, transportation, safety, and security) that will enhance, add to, or replace those provided by public entities, thereby furthering the public health, safety, and welfare.
    - b. Reuse or repurpose an unutilized, underutilized, or blighted parcels.
    - c. Long-term protection and preservation of natural resources, natural features, and historic and cultural resources, of a significant quantity or quality in need of protection or preservation, and which would otherwise be unfeasible or unlikely to be achieved absent these regulations.
    - d. Design features and techniques, such as green building, best management practices, and low-impact design, will promote and encourage energy conservation and sustainable development.
    - e. For an appropriate assembly, use, redevelopment, replacement, or improvement of existing sites that are occupied by obsolete uses or structures.

- f. A reduction of the impact of a non-conformity or removal of an obsolete building or structure.
3. A compatible mixture of open space, landscaped areas, or pedestrian amenities, beyond the site plan requirements of this Zoning Ordinance.
4. Appropriate land use transitions between the proposed PUD and surrounding properties.
5. Innovative and creative site and building designs, solutions, and materials.
6. The desirable qualities of a dynamic urban environment that is compact, designed to human scale, and exhibits contextual integration of buildings and city spaces.
7. A development consistent with and meeting the intent of this Article, which will promote the intent of the Master Plan and the intent of any applicable corridor or sub-area plans. If conditions have changed since the Plan, or any applicable corridor or sub-area plans were adopted, the uses must be consistent with recent development trends in the area.
8. Parking must be provided to properly serve the total range of uses within the PUD project area. The sharing of parking among the various uses within a PUD project area may be permitted. The applicant must provide justification to the satisfaction of the City that the shared parking proposed is sufficient for the development and will not impair the functioning of the development and will not have a negative effect on traffic flow within the development or on properties adjacent to the development.
9. Innovative methods of stormwater management that enhance water quality must be considered in the design of the stormwater system.
10. The proposed PUD project must be in compliance with all applicable Federal, State, and local laws and ordinances, and must coordinate with existing public facilities.

## SECTION 7.04 CONSISTENCY WITH MASTER PLAN

In the event that an applicant proposes a Planned Unit Development project where the predominant use or uses would not be consistent with the intent of the Master Plan, applicable corridor or sub-area plans, recent development trends in the area, or this Article, the City may consider initiating an amendment to the Master Plan or applicable corridor or sub-area plans. If an applicant proposes any such uses, the applicant must provide supporting documentation in advance of or simultaneously with the request for Preliminary Development Plan Approval.

## SECTION 7.05 SUMMARY OF THE APPROVAL PROCESS

- A. *Step One: Preliminary Development Plan Approval.* The first step of the PUD process is the application for and approval of a Preliminary Development Plan, which requires a legislative enactment amending the Official Zoning Map to reclassify the parcels as a Planned Unit Development.
1. The Zoning Administrator will transmit the application and preliminary site plan to the relevant parties for review. Any application that fails to provide the information and materials regulated by this Article must be held in abeyance until the petitioner rectifies all deficiencies.
  2. A proposed Development Agreement must be included and incorporated with the Preliminary Development Plan, to be agreed upon and approved at the same time as the Preliminary Development Plan.
  3. The Preliminary Development Plan and Development Agreement are subject to approval by the City Council following the recommendation of the Planning Commission. Such action, if and when approved, confers upon the applicant approval of the Preliminary Development Plan, and rezones the parcels to a PUD district in accordance with the terms and conditions of the Preliminary Development Plan approval.
- B. *Step Two: Final Development Plan Approval.* The second step of the review and approval process is the application for and approval of a Final Development Plan (final site plan) for the entire project. If the project includes multiple construction phases, all of the phases must be included in the Final Development Plan. City Council has the final authority to approve



and grant Final Development Plan approvals, following a recommendation by the Planning Commission.

## SECTION 7.06 STEP ONE: PRELIMINARY DEVELOPMENT PLAN APPROVAL

A. *Pre-application Meeting.* Prior to the submission of an application for approval of a Planned Unit Development district, the applicant must meet informally with the Community Development Director or their designee, together with other staff and outside consultants as deemed appropriate by the City. The applicant must present at this meeting, or a series of meetings, a sketch plan of the proposed Planned Unit Development project, as well as the following information:

1. A legal description of the parcels and the total number of acres in the project;
2. A topographical map of the site;
3. A statement as to all proposed uses;
4. Hours of operation for all non-residential uses;
5. The known deviations sought from the ordinance regulations otherwise applicable;
6. The community benefits offered, as described in Section 7.03;
7. The number of acres to be preserved as open or recreational space and the intended uses of such space;
8. All known natural resources, natural features, historic resources, and historic features; which of these are to be preserved;
9. A listing and specification of all site development constraints;
10. The project's consistency with Master Plan or applicable corridor or sub-area plan goals.

The intent of the pre-application meeting is to discuss the appropriateness of the PUD concept, solicit feedback, and receive requests for additional materials supporting the proposal. Statements made during the pre-application meeting are not legally binding commitments.

- B. *Applicant Meeting with Adjoining Neighborhoods and Properties.* Following the pre-application meeting, the applicant has the option to arrange for one or more informal meetings with representatives of the adjoining properties, soliciting their comments and providing them to the Planning Commission. The City must be advised in advance as to the scheduling and location of all such meetings.
- C. *Conceptual Plan with the Planning Commission.* Following the pre-application meeting, the applicant has the option to present a conceptual plan to the Planning Commission. The conceptual plan must have the information required for the pre-application meeting. No formal action may be taken by the Planning Commission during a conceptual review. Statements made during the conceptual review are not legally binding commitments.
- D. *Preliminary Development Plan.* Following any applicant's meeting(s) with adjoining neighborhoods and properties, a Preliminary Development Plan conforming to the application provisions set forth in sub-section D below must be submitted to the Zoning Administrator. A proposed Development Agreement must be incorporated with the Preliminary Development Plan submittal and must be reviewed and approved concurrently with the Plan. The Preliminary Development Plan review and approval process is as follows:
1. *Review for Completeness.* The Zoning Administrator will distribute the Preliminary Development Plan to applicable reviewing parties. Once reports from reviewing parties have been received, the Zoning Administrator must determine if the application is complete. If the application is complete, the Zoning Administrator must schedule a public hearing in accordance with the procedures in Section 3.10 for consideration at a regular or special Planning Commission meeting.
  2. *Planning Commission Public Hearing.* The Preliminary Development Plan constitutes an application to amend the zoning district map. Before making a recommendation to the City Council, the Planning Commission must hold a Public Hearing on the proposal.
  3. *Planning Commission Recommendations.* After the public hearing, the Planning Commission must make a recommendation to the City Council with regard to the Preliminary Development Plan. The application may be postponed if it is determined to be incomplete, if the applicant has not fully responded to the deficiencies identified in

the review, or if the Planning Commission determines more time is needed to fully evaluate the PUD project. The application will be tentatively rescheduled for a future meeting date.

The Planning Commission must either recommend approval of the Preliminary Development Plan, with or without conditions, or recommend denial. If the Planning Commission recommends denial, the minutes of the meeting must include the reasons for recommending denial. If approval is recommended with conditions, the minutes must include a statement of the conditions.

4. *City Council Public Hearing.* After a recommendation by the Planning Commission, a Public Hearing must be scheduled before the City Council, at which time the City Council will consider the proposal along with the recommendations of the Planning Commission, the City staff, and comments of all interested parties. The City Council must then take action to approve, approve with conditions, or disapprove the Preliminary Development Plan. The City Council must set forth in their resolution the reasons for such action, including any reasons for the denial. The City Council may postpone action if the applicant has not fully responded to any applicable conditions imposed by the Planning Commission, or if the City Council determines more time is needed to fully evaluate the PUD project. The application will be tentatively rescheduled for a future meeting date.
- E. *Application.* The application for approval of a Preliminary Development Plan must include the information and materials set forth below, which must be in a plan format together with a narrative explanation. The Zoning Administrator has the authority to waive certain information and materials if it is determined that such information and materials do not affect compliance with this Ordinance.
1. *Documentation of Applicant Meeting with Adjoining Neighborhoods and Properties.* A written summary of the optional meeting with adjoining neighborhoods or properties must, if applicable, accompany the application.
  2. *Development Concept, including Sketch Plan.* A summary explanation of the development concept must describe the project and explain how the project will meet the intent of the PUD option as set forth in

Section 7.01 and the criteria for consideration as a PUD as set forth in Section 7.03 hereof, as those Sections reasonably apply to the site.

3. *Density.* The maximum density of the overall project and the maximum density for each proposed use and phase.
4. *Road System.* A general description of the street system and circulation pattern; the location of streets, entrances, exits, and pedestrian walkways; a statement of whether streets are intended to be public or private. Efforts must be made to ensure that multiple transportation modes are safely and effectively accommodated in an effort to provide alternate modes of access and alleviate vehicle traffic congestion particularly as it pertains to the improvements along major streets.
5. *Utilities.* A general description and location of both on-site and off-site utilities including proposed water, sanitary sewer, storm sewer systems, and utility lines; a general indication of the size and location of stormwater detention and retention ponds, and a map and text showing off-site utilities, existing and proposed, which will provide services to the project.
6. *Open Space and Common Areas.* A general description of proposed open space and common areas; the total area of open space; the total area of open space in each proposed phase; and the proposed uses of open space and common areas.
7. *Uses.* A list of all proposed uses; the location, type, and land area to be devoted to each use, both overall and in each phase; and a demonstration that all of the proposed uses are permitted under this Article.
8. *Development Concept.* A plan of the site organization, including typical setback and lot dimensions; the minimum lot sizes for each use; typical minimum and maximum building height and size; massing models; conceptual building design; and the general character and arrangement of parking; fencing; lighting; berms; and building materials.
9. *Parking and Traffic.* A study of the parking requirements and needs; and a traffic impact study and analysis, if applicable as identified by the Community Development Director or the Planning Commission.

10. *Landscaping.* A general landscaping plan; a landscape plan for entrances; a landscape plan for overall parcels perimeters; any theme or streetscape design; and any proposed irrigation.
11. *Natural Resources and Features.* Floodway and floodplain locations and elevations; wetlands and watercourses; woodlands; and location and description of other natural resources and natural features.
12. *Phasing Information.* The approximate location, area, and boundaries of each phase; the proposed sequence of development, including phasing areas and improvements; and the projected timing for commencement and completion of each phase.
13. *Public Services and Facilities.* A description of the anticipated demand to be generated by the development for public sewer, water, off-site streets, schools, solid waste disposal, off-site drainage, police, and fire; a description of the sufficiency of each service and facility to accommodate such demands; and the anticipated means by which any insufficient services and facilities will be addressed and provided.
14. *Historical Resources and Structures.* Their location, description, and proposed preservation plan.
15. *Site Topography.* Topography on the site and within one hundred feet of the site at two-foot contour intervals, referenced to a USGS benchmark.
16. *Amenities.* Location and description of any amenities proposed. Amenities can include but are not limited to parks, plazas, landscaping beyond that required by the Zoning Ordinance, streetscape enhancements, public parking, green infrastructure, public improvements, or public facilities.
17. *Zoning Classification.* Existing zoning classifications on and surrounding the site.
18. *Specification Of Deviations.* A specification of all deviations proposed from the regulations that would otherwise be applicable to the underlying zoning and to the proposed uses, which are proposed and sought for any phase or component of the Planned Unit Development project; the safeguards, features, or planning mechanisms proposed

to achieve the objectives intended to be accomplished by any regulation from which a deviation is being sought.

- F. *Standards for Approval.* In making a determination as to whether to approve a proposed Planned Unit Development project, the Planning Commission and the City Council must be guided by the intent and criteria as set forth in Sections 7.01 through 7.04, as reasonably applicable to the site. When reviewing the standards for approval in Section 7.03, the Planning Commission and City Council must make a finding on each standard as to whether the standard is met, not met, or not reasonably applicable to the site.
- G. *Planned Unit Development Agreement.* In conjunction with a request for Preliminary Development Plan approval, the applicant must submit one or more proposed documents which, when agreed upon by all parties, will serve as the PUD Agreement. As a part of the Preliminary Development Plan approval process, the applicant and the City Council must each authorize the execution of a PUD Development Agreement. The PUD Development Agreement must include, but is not be limited to, the following items:
1. A summary description of the nature and character of the proposed development, including uses, densities, and site improvements as approved in the Preliminary Development Plan.
  2. A statement of the conditions upon which Preliminary Development Plan Approval by the City Council is based, with particular attention given to those conditions which are unique to the particular PUD Plan. These conditions may include matters such as, but not limited to, architectural standards, building elevations and materials, site lighting, pedestrian facilities, and landscaping.
  3. A summary of the public improvements (streets, utilities, etc.) and any other material benefits offered by the applicant, which are to be carried out in conjunction with the proposed PUD development, along with a summary of the financial guarantees which will be required and provided in order to ensure completion of those improvements, as well as the form of such guarantees which will be acceptable to the City.
  4. A document specifying and ensuring the maintenance of any open space, or common areas contained within the PUD development (e.g.,

through a parcels owners association, or through conveyance to the City with maintenance deposit, etc.)

5. A statement that if there is a conflict between the Zoning Ordinance, the Preliminary Development Plan, and the Planned Unit Development Agreement, the Planned Unit Development Agreement must control.
  6. Upon the granting of Preliminary Development Plan approval, the Planned Unit Development Agreement must be recorded in the office of the Oakland County Register of Deeds by the City of Berkley, referencing the legal description of the subject parcels.
- H. *Effect of Preliminary Development Plan Approval.* If the City Council approves the Preliminary Development Plan and the Development Agreement, the Zoning Map must be amended to designate the parcels as a Planned Unit Development. Such action, if and when approved, confers Preliminary Development Plan approval for two years (herein to be referred to as PDP Period). The two-year PDP Period commences upon the effective date of adoption of the ordinance that rezones the parcel to PUD by the City Council.
- I. *Plan approval in the manner hereinafter provided.* Upon the submittal of the Final Development Plan for one or more phases of the PUD project, the two-year expiration period no longer applies to the Preliminary Development Plan, and the Preliminary Development Plan must remain in full force and effect for the development of the entire PUD project, including without limitation, the development of all future phases of the entire PUD Parcels. Any submittals of Final Development Plans must comply with all the requirements of Article 15, Site Plan Review, for Final Site Plan submittals and any additional requirements of the Zoning Administrator reasonably needed to demonstrate consistency with the Preliminary Development Plan and Section 7.03, Standards for Approval. Any Final Development Plans that do not comply with these requirements must not be considered submittals for the purposes of this Paragraph. After the submittal of the first Final Development Plan, the timing for the issuance of permits and construction of the PUD project and all future phases, must be determined.

Upon the request of the applicant, prior to the expiration of the Preliminary Development Plan, the City Council may extend the expiration date of the Preliminary Development Plan. In determining whether to extend the expiration date of the Preliminary Development Plan, approval of an

extension may be granted if the ordinances and laws applicable to the project have not changed in a manner that would substantially affect the project as previously approved.

In the event of the expiration of the Preliminary Development Plan, the applicant may either make an application for a new Preliminary Development Plan or make an application for some other zoning classification. If no action is taken by the applicant following the expiration of the Preliminary Development Plan, the parcels will be rezoned to the previous zoning district, following the procedures set forth in Article 18, Rezoning. Following Final Development Plan Approval for one or more phases or the entire PUD development, no use or development of the subject parcels may occur which is inconsistent with the approved Final Development Plan and Development Agreement. There must be no use or development of the subject parcels until a new Preliminary Development Plan or rezoning is approved.

## SECTION 7.07 STEP TWO: FINAL DEVELOPMENT PLAN APPROVAL

- A. Development of parcels classified as a PUD requires Final Development Plan approval, which may be granted by the City Council following a recommendation by the Planning Commission. Application(s) must be submitted to the Planning Commission and City Council for review and approval consistent with the approved Preliminary Development Plan.
- B. Final Development Plan approval may be applied for and granted with respect to the entire PUD development or for one or more phases. However, if the project is developed in phases, the design must be such that upon completion, each phase or the cumulative result of approved phases is capable of standing on its own in terms of the presence of services, facilities, and open space, and must contain the necessary components to ensure the protection of natural resources and the health, safety, and welfare of the users of the Planned Unit Development and properties in the surrounding area.

The Final Development Plan must specify the public improvements required to be constructed in addition to and outside of the proposed phase or phases for which approval is sought, which are determined to be necessary in order to support and service such phase or phases.



Further, the Final Development Plan may require the recordation of permanent or temporary easements, open space agreements, and other instruments in order to ensure the use and development of the public improvements on the parcels as proposed and to promote and protect the public health, safety, and welfare in a manner consistent with the intent and spirit of this Article.

C. Except as otherwise modified in this Section, Final Development Plan approval must be based upon the requirements, standards, and procedures set forth in Article 15, Site Plan Review. In addition to the information required in Article 15, the applicant must also submit the following:

1. A demonstration, including map and text, that the requirements of Section 7.03 hereof have been met.
2. In addition to the information required in Article 15, Site Plan Review, the following information, and documentation must be submitted:
  - a. Sufficient information to demonstrate compliance with any applicable project design standards as approved during the Preliminary Development Plan review.
  - b. A site plan showing the type, location, and density of all structures and uses.
  - c. A plan showing all open spaces, including preserves, recreational areas, and historic resources, including but not limited to all similar uses and spaces, and the purpose proposed for each area.
  - d. A specification of all deviations proposed from the regulations, which would otherwise be applicable to the underlying zoning and to the proposed uses.

This specification must state the reasons and mechanisms to be utilized for the protection of public health, safety, and welfare in lieu of the regulations, which would otherwise apply to a traditional development.

- e. Additional landscaping details as required by the Planning Commission or the City Council in order to achieve a specific purpose consistent with the spirit of this Article.

- f. The general improvements which will constitute a part of each phase, or phases proposed, including, without limitation, lighting, signage, visual and noise screening mechanisms, utilities, and further including the aesthetic qualities of the general improvements.
- D. Upon receipt of a complete application as determined by the Zoning Administrator, the Planning Commission will review the Final Development Plan for either the entire PUD development or for any one or more phases in the manner specified below and in accordance with the provisions of Article 15, Site Plan Review. The Planning Commission must make determinations on the following items:
  - 1. The Final Development Plan continues to meet and conform to the criteria for, the intent of and the objectives contained in the approved Preliminary Development Plan. In the event that the Planning Commission determines that the Final Development Plan does not continue to meet or conform to the criteria for, the intent of, or the objectives contained in the approved Preliminary Development Plan, the Planning Commission must make this determination a part of their recommendation.
  - 2. The Final Development Plan meets the requirements, standards, and procedures set forth in Article 15, Site Plan Review, and any other applicable requirements as set forth in this Article.
- E. At the conclusion of the Planning Commission's review, the Planning Commission must either recommend approval of the Final Development Plan, with or without conditions, or recommend denial. The application may be postponed if it is determined to be incomplete, if the applicant has not fully responded to the deficiencies identified in the review, or if the Planning Commission determines more time is needed to fully evaluate the PUD project. The application will be tentatively rescheduled for a future meeting date. If the Planning Commission recommends denial, the minutes of the meeting must include the reasons for recommending denial. If approval is recommended with conditions, the minutes must include a statement of the conditions.

Following receipt of the Planning Commission's recommendation of a Final Development Plan, the City Council must either approve the Final Development Plan, with or without conditions, or deny the Preliminary

Development Plan. The application may be postponed if it is determined to be incomplete, if the applicant has not fully responded to the deficiencies identified in the review, or if the Planning Commission determines more time is needed to fully evaluate the PUD project. The application will be tentatively rescheduled for a future meeting date. If City Council determines the Final Development Plan does not conform to the Preliminary Development Plan, the applicant must either revise the Final Development Plan to so conform or, must seek an amendment to the Preliminary Development Plan in accordance with Section 7.08.

- F. City Council's approval of the Final Development Plan is effective for a period of three years, during which period of time the applicant is authorized to submit engineering and construction plans for site improvements, together with all other documents necessary for Construction Plan approval and the issuance of Building Permits. The applicant may apply to the City for an extension of the three year period for approval of the Final Development Plan if progress is being diligently pursued and reasonably expected to finish within the extension period.

## SECTION 7.08 AMENDMENT

Any proposed major amendment of the Planned Unit Development as defined in the Development Agreement that seeks to alter the intent, the conditions, or terms of the Preliminary Development Plan as approved, or the terms or conditions of Final Development Plan approval, must be presented to and considered by the Planning Commission and the City Council at Public Hearings, following the procedures set forth for Preliminary Development Plan approval.

## SECTION 7.09 PUBLIC NOTICE FOR PLANNED UNIT DEVELOPMENT PUBLIC HEARINGS

- A. All applications for a Planned Unit Development require public notice and a public hearing. Section 3.10, Public Notice Requirements, sets forth notification requirements for all public hearings.
- B. A sign must be placed on the subject parcels to inform the public that an application for a Planned Unit Development has been filed, and to indicate

the location of information regarding the request, as set forth in Section 3.10-B(4).

## SECTION 7.10 ABANDONMENT

- A. *Abandonment of Preliminary Development Plan.* Following any action evidencing abandonment of the Preliminary Development Plan, whether through failure to proceed during the Preliminary Development Plan period as required under this Article, or through notice of abandonment given by the parcels owners, applicants, or their successors, the City Council is entitled to take any necessary and appropriate action to rescind the Preliminary Development Plan approvals, invalidate any related Development Agreements, and rezone the subject parcels from PUD to an appropriate classification. Abandonment rescinds any and all rights and approvals granted under and as part of the Preliminary Development Plan, and the same are deemed null and void. Evidence of such actions must be recorded in the office of the Oakland County Register of Deeds and referenced to the subject parcels.
- B. *Abandonment of Final Development Plan.* Approved Final Development Plans, upon which construction does not commence within a three year period from the date of a Final Development Plan approval, must be considered abandoned for the purposes of this Article. The applicant may request a twelve-month extension of Final Development Plan approval, which will be considered and acted upon by the City Council following a Public Hearing. A written request for an extension must be received by the City before the expiration of the three year Final Plan Approval period.

## SECTION 7.11 APPEALS

The Zoning Board of Appeals has no authority in matters covered by this Article. Modifications to plans or proposals submitted under this Article must be processed in accordance with the amendment procedures covered under Section 7.08, Amendment.

## SECTION 7.12 VIOLATIONS

Any violation of the approved PUD Final Development Plan or the PUD Agreement is considered a violation of the Zoning Ordinance, which is subject to the enforcement actions and penalties described in Section 3.13, Violations and Penalties.

# Article 8

## SPECIFIC USE PROVISIONS

### SECTION 8.01 HOME-BASED BUSINESSES

All home-based businesses are subject to the following requirements.

- A. A home-based business must be clearly incidental and secondary to the primary residential use and conducted by a resident of the parcel.
- B. A home-based business must not change the character or appearance of the structure or the premises or have any other visible evidence of the conduct of a home-based business. There must be no external or internal alterations that are not customary in residential areas or structures.
- C. A home-based business must not create a nuisance or endanger the health, safety, welfare, or enjoyment of any other person in the area, by reason of noise, vibrations, glare, fumes, odor, electrical interferences, unsanitary or unsightly conditions, fire hazards, or the like that are involved in or resulting from such home-based business.
- D. A home-based business must not generate sewage or water use in excess of what is normally generated from a single family dwelling in a residential area.
- E. A home-based business must be conducted within the dwelling unit or within an accessory building.
- F. *Class 1 home-based businesses* do not require a permit but are subject to the following additional requirements.
  - 1. There may be no on-site employees other than members of the family, as defined in Article 2, living on the parcel.
  - 2. There must be no additional parking spaces provided for the home-based business.
  - 3. There must be no more than one (1) on-site customer or client at any time.
  - 4. The exterior storage of materials, equipment, or refuse associated with the home-based business is prohibited.

5. No signs may be used to advertise the home-based business.
  6. No article may be sold or offered for sale on the premises.
- G. *Class 2 home-based businesses* require a Commercial Business License and Zoning Certificate, both issued by the City of Berkley. Class 2 home-based businesses are subject to the following additional requirements.
1. In lieu of a site plan, the application requires a plot plan that includes the information indicated in Article 15, Site Plan Review.
  2. There may be up to one (1) on-site employee other than members of the family, as defined in Article 2, living on the parcel.
  3. No more than one (1) parking space for an employee, customer, or client may be provided for the home-based business. The parking space must be on-site and meet all applicable parking regulations in this Ordinance and in the City Code.
  4. One sign, consistent with Article 11, Signs, is permitted.
  5. There must be no more than one (1) on-site customer or client at any time.
  6. No article may be sold or offered for sale on the premises except as is prepared within the dwelling or accessory building or is provided as incidental to the service or profession conducted therein.
  7. Vehicles associated with Class 2 home-based businesses are subject to parking regulations in this Ordinance and in the City Code.
  8. The exterior storage of material, equipment, or refuse associated with the Class 2 home-based businesses may be permitted if adequate screening is provided from adjacent properties and streets.

## SECTION 8.02 SINGLE FAMILY DWELLINGS

One (1) individual single family dwelling located on a parcel of land or lot in a single family residential district is permitted, provided that all of the following conditions are met.

- A. The building must comply with all pertinent building and fire codes for single family dwellings including but not limited to the Michigan Residential Code.
- B. The building must be firmly and permanently attached to a solid foundation or basement no less in area than the perimeter area of the dwelling. The foundation or basement must be constructed in accordance with the Michigan Residential Code.
- C. The building must not have any exposed wheels, towing mechanism, or undercarriage.
- D. The building must be connected to a public sewer and water supply.

### SECTION 8.03 ADULT-ORIENTED USES

- A. *Intent and Purpose.* In the development and execution of this Article, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Specific regulations of these uses are necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this Section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area. The uses to which these controls refer are as follows: Adult book or video stores, adult entertainment centers, and adult mini entertainment centers.
- B. *Definitions of Adult Business Uses.* For the purposes of this Section, “adult business uses” are defined as and include the following:
  - 1. Sexually oriented businesses, defined as and including the following:
    - a. Adult arcade, defined as a place to which the public is permitted or invited to view motion pictures, video or laser disc pictures, or other products of image-producing devices where the images displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”



- b. Adult book store, adult novelty store, or adult video store, defined as a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration reading materials, photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" or instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."
  - c. Adult cabaret, defined as a nightclub, bar, restaurant, auditorium, theater, or similar commercial establishment which, as one of its principal purposes features: persons who appear in a state of nudity or semi-nudity; live performances which are characterized by the exposure of "specified anatomical areas or by "specified sexual activities"; or, films, motion pictures, videos cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
  - d. Sexual encounter center, defined as a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration: (a) physical contact between two or more persons when one or more of the persons is in a state of nudity.
2. Adult motels, defined as an establishment for temporary lodging where each individual room has a main entry door on the exterior of the building and where rooms are advertised for rent for less than a twelve-hour period or where rooms are rented at hourly rates, or both.
- C. *Other Definitions.* In addition to the definitions set forth in Section 8.03.B, the following additional definitions are used in the regulation of adult businesses.
- 1. Nudity or a state of nudity means knowingly or intentionally displaying 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

nipple, or a showing of the covered male genitals in a discernibly turgid state. Public nudity does not include a woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to feeding.

2. Principal Purpose, Primary Purpose, or Primarily means the sale or display of regulated material that comprises ten percent or more of sales volume or occupies ten percent or more of the floor area or visible inventory within the establishment.
  3. Semi-nude or semi-nude condition means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition includes the entire lower portion of the human female breast but does 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.
  4. Specified anatomical areas means the human male genitals in a discernibly turgid state, even if completely or opaquely covered; or less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.
  5. Specified sexual activities means any of the following: the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; sex acts, actual, or simulated, including intercourse, oral copulation, masturbation, or sodomy; or excretory functions as part of or in connection with any of the activities previously mentioned in this definition.
- D. *Locational Requirements.* In addition to compliance with the other provisions of this Section, the following separation and distancing requirements apply to adult business uses:
1. No adult business use may be located within one thousand feet from the parcel line of another adult business use. For purposes of this subsection, the distance between any two adult business uses must be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which the business is located.

2. No adult business use may be located within five hundred feet from the parcel line of school parcel, place of worship, public park, child care facility, nursery school, preschool, or other use which is primarily oriented to youth (less than eighteen years of age) activities. For the purpose of this subsection, measurement must be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult business use is conducted, to the nearest parcel line of any school parcel, place of worship, public park, child care facility, nursery school, preschool, or other use which is primarily oriented to youth (less than eighteen years of age) activities.
  3. No adult business use may be located on any parcel in any principal or accessory structure already containing a separate adult business use.
- E. *Existing Structures.* Existing structures or uses that are in violation of this Section are subject to the regulations set forth in Article 16, Nonconformities.
- F. *Parking.* All off-street parking areas for any adult business use must comply with Section 14, Parking and Access. Additionally, any adult business use must be illuminated during all hours of operation, and until one hour after the business closes.
- G. *Other Requirements.*
1. No person operating an adult business use may permit any person under the age of eighteen years of age to be on the premises.
  2. Entrances to a proposed adult business use must have signs posted on both the exterior and interior walls, in a location clearly visible to those entering and exiting the business and using lettering no less than two inches in height that reads: "Persons under the age of eighteen are not permitted to enter the premises."
  3. Adult business uses are permitted in the Woodward Zoning District only and are subject to in all respects the standards and use provisions applicable to the district in which it is located or proposed to be located.
  4. Any display of adult oriented materials must be shielded from public view either by being placed behind a counter, or by providing a

separately established room which has restricted access controlled by the owner or employee.

5. The location of the counter or room must be limited to an area away from the main entry.
6. Adult business uses must comply with all other laws and ordinances applicable to the particular type of use, including without limitation, certification, and licensing laws.

**SECTION 8.04 MULTIPLE FAMILY DWELLINGS CONTAINING SIX OR MORE UNITS**

- A. Multiple family dwellings containing more than six units are subject to the following conditions.
  1. The minimum site area requirements for purposes of calculating density are as follows:

Table 8.04 - minimum site area requirements	
<i>Dwelling unit size</i>	<i>Site Area/ Unit (square feet)</i>
Studio and one bedroom	2,000
Two bedroom	2,500
Each additional bedroom	500

2. The required parking spaces must be conveniently located in close proximity to the dwellings they are intended to serve.

**SECTION 8.05 NURSING HOMES, SENIOR ASSISTED LIVING FACILITIES, AND CONVALESCENT CENTERS**

- A. The minimum lot area must be no less than fifteen hundred square feet per bed or one acre, whichever is greater.

- B. The lot location must be such that at least one parcel line abuts an arterial or collector street. More than one point of vehicle ingress and egress must be provided directly from said street.
- C. Ambulance entrances must be screened from adjacent residential areas in accordance with the standards set forth in Article 12, Landscaping and Screening.
- D. *Senior assisted living facility.* Where such facilities contain individual dwelling units with kitchen facilities, the density requirements in Table 8.05.D will apply. Where facilities do not contain kitchen facilities within individual dwelling units, the lot area per bed is four hundred square feet.

Table 8.05.D – Senior Assisted Living Minimum Floor Area	
<i>Dwelling Unit Size</i>	<i>Assisted Living Unit</i>
Studio	250
One bedroom	400
Two bedroom	650
Each additional bedroom	150

1. *Minimum Site Area.* The minimum site area is one acre.
2. *Open Space/Recreation.* Recreation facilities must be appropriate and designed to meet the needs of the resident population. Active recreation must be located conveniently in relation to the majority of dwelling units intended to be served.
3. *Resident Services.* Support services offered solely to residents may be permitted, provided such services are contained within the principal building and are strictly accessory to the principal use as a senior residential facility. Such support services may include congregate dining, health care, personal services, and social, recreational, and educational facilities and programs.
4. *Security.* The applicant must specify and install a security system designed to protect the safety and welfare of residents. Such systems must be certified by the project architect or engineer to be designed consistent with the standards of the industry.

## SECTION 8.06 AUTOMOTIVE USES

### A. *Automobile Repair.*

1. *Outdoor storage.* Dismantled, wrecked, or inoperable vehicles waiting for repair must not be stored outdoors for a period exceeding five days. Outdoor storage must be enclosed by a masonry wall when adjacent to residential uses or an opaque fence when adjacent to non-residential uses. The wall or fence must be six to eight feet in height or must utilize landscape screening meeting the standards set forth in Article 12, Landscaping and Screening.
2. *Disposal containers.* Suitable containers must be provided and used for disposal of used parts, fluids, and such containers must be screened from view.
3. *Enclosed buildings.* All repair and maintenance activities, including hydraulic hoists, lubrication pits, and similar activities, must be performed entirely within an enclosed building.
4. *Retail sales limitations.* Retail sales must be limited to those items necessary to carry out the vehicle repair occurring on the subject site.

### B. New, used, and vintage automobile sales.

1. *Setbacks.* No vehicle may be parked or displayed within five feet of any street right-of-way.
2. *Noise.* Loudspeakers broadcasting voice or music outside of a building are not permitted within five hundred feet of any residential zoned or used parcel.
3. All repair and maintenance activities must conform to the standards set forth in Section 8.06.A.

### C. Automobile fueling/multi-use station.

1. *Setbacks.* The following minimum setbacks apply to canopies and pump facilities constructed in conjunction with fueling/multi-use.

Table 8.06 – Automotive fueling/multi-use station setbacks			
Setback	Canopy Support (feet)	Pump Islands (feet)	Canopy Edge (feet)
Front	35	30	25
Side	20	20	10
Rear	30	20	20

2. Fueling areas must be arranged so that motor vehicles do not park on or extend over abutting landscaped areas, sidewalks, streets, buildings, or adjacent properties while being served.
3. Required fire protection devices under the canopy must be architecturally screened so that the tanks are not directly visible from the street. The screens must be compatible with the design and color of the canopy.
4. Canopy lighting must be recessed so that the light source is not visible from off-site.
5. Automotive fueling/multi-use stations must be designed in a manner that promotes pedestrian and vehicular safety. The parking and circulation system within each development must accommodate the safe movement of vehicles, bicycles, pedestrians, and refueling activities throughout the proposed development and to and from surrounding areas in a safe and convenient manner.
6. All repair and maintenance activities must conform to the standards set forth in Section 8.06.A. Dismantled, wrecked, or immobile vehicles are not permitted to be stored on site.
7. If an accessory vehicle wash is proposed, it must comply with the standards set forth in Section 8.06.D.

D. *Automotive Wash.*

1. All washing activities must be carried out within a building. Vacuuming activities must be located at least fifty feet from adjacent residential zoned or used parcel.
2. Automatic car wash facilities must have a mechanical dryer operation at the end of the wash cycle.

3. All automatic car wash facilities must provide a demonstrated means at the exit ramp for each wash bay to prevent pooling or freezing of water.
4. For vehicle washes that include drive-through wash facilities, a sufficient additional lane must be provided for the active or passive drying of the vehicle after the wash. Where the drying process is to be passive, greater lane space may be required at the discretion of the Planning Commission.
5. *Self-service automotive wash.* Four entry stacking spaces and one-and-a-half exit stacking spaces are required per service lane.
6. *Automatic automotive wash.* Ten entry stacking spaces and two-and-a-half exit stacking spaces are required per service lane.

## SECTION 8.07 FUNERAL HOMES AND MORTUARIES

A funeral home or mortuary must be a licensed facility by the State of Michigan. A funeral home may contain one dwelling unit for the owner or caretaker.

## SECTION 8.08 CONTRACTOR'S YARDS

- A. Outdoor storage must be accessory to the contractor's principal office use of the parcel. Such outdoor storage must not be located within the front yard and must be enclosed by an opaque fence up to eight feet in height or landscape screening meeting the standards set forth in Article 12, Landscaping and Screening.
- B. All travel surfaces must be paved as a condition of approval.
- C. Cranes, booms, or other extensions on equipment, trucks, or other vehicles parked on site must be stored in the lowest possible configuration.

## SECTION 8.09 GARDEN CENTERS AND NURSERIES

- A. Outdoor display and sales are permitted in the front yard only in areas defined by the site plan.



- B. Stored materials may not be located in any required parking or loading space(s). Storage of any kind may not interfere with the ingress and egress of fire and emergency vehicles and apparatus.
- C. Open storage of building materials, mulch, sand, gravel, stone, lumber, open storage, or construction contractor's equipment and supplies is permitted, provided such storage is screened on those sides abutting any residential district or public thoroughfare in accordance with the requirements of Article 12, Landscaping and Screening.
- D. The location and size of areas for storage, nature of items to be stored therein, and details of the enclosure, including a description of materials, height, and typical elevation of the enclosure, must be provided as part of the information submitted under Article 15, Site Plan Review.
- E. The loading and unloading of equipment must be conducted entirely within the site and is not to be permitted within a public right-of-way.

#### **SECTION 8.10 DRIVE-THROUGH AND DRIVE-IN FACILITIES**

- A. All drive-through and drive-in facilities for permitted and special land uses including, but not limited to restaurants, banks, etc. are restricted to the side or rear elevations of all structures that provide drive-through services.
- B. A setback of at least sixty feet must be maintained from an existing or proposed right-of-way.
- C. Ingress and egress points must be located at least sixty feet from the intersection of any two streets measured from the street right-of-way lines.
- D. The screening requirements in Table 8.10 must be provided where drive-through facilities abut residential zoning districts or uses.

Table 8.10 Screening Requirements for Drive-Throughs		
<i>Use</i>	<i>Screening Material</i>	<i>Screening height</i>
Bank	Fence, berm, or landscaping	5 feet
Pharmacy	Fence, berm, or landscaping	5 feet
Restaurant	Opaque wall	6 feet

- E. *Noise.* Loudspeakers broadcasting voice or music outside of a building are not permitted within five hundred feet of any residential zoned or used parcel.

## SECTION 8.11 OPEN AIR BUSINESSES

Open air businesses may be permitted as a special land use as set forth in Article 10, Special Land Uses. Open air businesses include the following uses.

- A. Retail sales of trees, shrubbery, plants, flowers, seeds, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment, and other home garden supplies and equipment.
- B. Retail sale of fruit and vegetables.
- C. Tennis courts, archery courts, shuffleboard, horseshoe courts, miniature golf, golf driving range, children’s amusement park, or similar recreation uses.
- D. Bicycle, utility truck or trailer, motor vehicles, boats, or home equipment sale, rental, or repair services.
- E. Outdoor display and sale of garages, swimming pools, motor homes, modular buildings, snowmobiles, farm implements, and similar products.
- F. Outdoor sale and storage of building materials, lumber, contractor’s equipment, and similar materials.

## SECTION 8.12 SELF-STORAGE FACILITIES

- A. All storage must be contained within a building.
- B. Other than the rental of storage units and accessory sales of boxes, tape, and similar items, no commercial, wholesale, retail, industrial, or business use may be permitted on or operated from the premises.
- C. The storage of any toxic, explosive, corrosive, or hazardous material is prohibited.
- D. On-site management, controlled access, or both must be provided during hours of operation.
- E. All storage units must be served by paved access drives between buildings. Access drives must provide for continuous traffic circulation around all storage buildings. The minimum width of access drives serving storage units is twenty-four feet when storage units open onto one side of the access drive and thirty-six feet when storage units open onto both sides of the access drive.
- F. All self-storage facilities must comply with the design standards of the applicable zoning district as detailed in Article 6, Site Design Based Districts.

## SECTION 8.13 ADULT FOSTER CARE FACILITIES

- A. Adult foster care facilities are classified by the number of persons that they serve, according to the below description.

Type A: Adult foster care small group homes serving between seven and twelve persons.

Type B: Adult foster care small group homes serving between thirteen and twenty persons.

Type C: Adult foster care congregate facilities serving more than twenty persons.

- B. Adult foster care facilities are subject to the following requirements:

Table 8.13.B. Adult Foster Care Facility Requirements			
	A	B	C
A site plan, prepared in accordance with Article 15, Site Plan Review, must be submitted.	X	X	X
A separate drop-off and pickup area is required adjacent to the main building entrance, located off of a public street and the parking access lane, and must be of sufficient size so as to not create congestion on the site or within a public roadway.		X	X
The subject parcel must meet the minimum lot area requirements for the zoning in which it is located, provided there is a minimum site area of two thousand sq. ft. per adult, excluding employees and or caregivers.	X	X	X
The parcel is maintained in a manner that is consistent with the character of the neighborhood.	X	X	X
One off-street parking space per employee or caregiver, plus one visitor parking space must be provided.	X	X	X
Appropriate licenses with the State of Michigan must be maintained.	X	X	X
The building must meet all design standards for the underlying zoning district.	X	X	X
Such facilities may include multi-purpose recreational rooms, kitchens, and meeting rooms. Such facilities may also include medical examination rooms and limited space for ancillary services for the residents of the facility, such as barber and beauty facilities.			X

## SECTION 8.14 CHILD CARE FACILITIES

**A.** Child care facilities are classified by the State by the number of children that they serve and the facility where they are located, according to the below definitions.

1. *Child day care centers:* A facility, other than a private residence, where more than one child is received for care and supervision, unattended

by a parent or legal guardian, except children related to an adult member of the family.

2. *Child family day care home:* A private residence where six or fewer children are received for care and supervision, unattended by a parent or legal guardian, except children related to an adult member of the family. A family day care home is considered a residential use of parcel. The total number of children receiving care may be modified when increased capacity, as defined herein, is granted by the State.
3. *Child day care home:* A private residence where between seven and twelve children are received for care and supervision, unattended by a parent or legal guardian, except children related to an adult member. The total number of children receiving care may be modified when increased capacity, as defined here, is granted by the State.
4. *Increased capacity:* The addition of one child in a family day care home and two children in a group child day care home when granted by the State of Michigan in accordance with Act 116 of 1973, as amended.

B. The following regulations apply to child day care centers, family day care homes, and child group day care homes.

Table 8.14.B Child Care Facility Requirements			
	Child day care centers	Child family day care homes	Child group day care home
Care provided for 6 children or fewer.	X	X	
Care provided for 7 to 12 children.			X
Considered a residential use of parcel and is a permitted use in all residential districts.	Special Land Use	X	Special Land Use
Appropriate licenses with the State of Michigan must be maintained.	X	X	X
The subject parcel must meet the minimum lot area requirements for the zoning district in which it is located.	X	X	X

The parcel must be maintained in a manner that is consistent with the area.	X	X	X
On-site outdoor play areas must comply with the State standards for child care facilities.	X	X	X
Indoor activity spaces must comply with State standards for child care facilities.	X	X	X
On-site outdoor play areas must be enclosed by a fence at least 4 feet in height, but no higher than 6 feet, built to discourage climbing.	X	X	X
A separate drop-off and pick-up area must be provided adjacent to the main building entrance, located off a public street and the parking access lane and must be of sufficient size so as to not create congestion on the site or within a public roadway.	X		
The hours of operation must not exceed sixteen hours within a twenty-four hour period.	X	X	X
One off-street parking space per non-resident employee must be provided.	X		X
No exterior identification sign is permitted.		X	X
The licensee must be a resident of the private residence.		X	X

## SECTION 8.15 PLACES OF ASSEMBLY

Places of assembly include theaters, convention centers, auditoriums, banquet halls, sports arenas, stadiums, places of worship, and other similar facilities where more than twenty people meet or are assembled.

- A. All activities must primarily take place in a fully enclosed building. Areas designated for outdoor social, recreational, or worship activities must be designated on the site plan as set forth in Article 15, Site Plan Review.
- B. There must be no outside loudspeakers or amplified sound outside of a completely enclosed building, except for church bells, calls to prayer, or other similar purposes.

- C. In stadiums, sports arenas, places of worship, and other places of assembly in which those in attendance occupy benches, pews, or other similar seating facilities, each twenty-four inches of such seating is counted as one seat. In cases where a place of assembly has both fixed seats and an open assembly area, requirements must be computed separately for each type and added together.
- D. Facilities incidental to religious institutions, when located in residential districts, must be used for worship or religious education purposes, in a manner that is consistent with residential zoning and compatible with adjacent residential parcel. No buildings may be used, leased, or rented for commercial purposes.
- E. Specific standards
  - 1. The minimum lot width is one hundred and fifty feet.
  - 2. The minimum site size is one acre.

## SECTION 8.16 INDOOR RECREATION FACILITIES

Indoor recreation facilities are enclosed establishments that provide exercise facilities including court sport facilities, team sports activities, skating rinks, arcades, bounce arenas, climbing facilities, indoor golf, swimming facilities, bowling, archery ranges, and similar activities. The following regulations apply to indoor recreation facilities.

- A. All uses must be conducted completely within a fully enclosed building.
- B. The buildings must be soundproofed.

## SECTION 8.17 OUTDOOR SERVICE AREAS

Outdoor service areas are permitted when in compliance with the following regulations:

- A. *Permit.* An outdoor service area may be permitted only upon the approval of an outdoor service permit by the Zoning Administrator. All outdoor service

area permits will expire on December 31st of the current year unless another time frame is specified on the permit or by the requirements of this Section. Outdoor service area permits are required to be renewed annually, subject to administrative review.

All applications for an outdoor service area permit or permit renewal must include the following:

1. *Sketch Plan:* A sketch plan with:
  - a. The location of an outdoor service area in relation to the business it will serve; the entrance to the business; adjacent properties (include addresses) and their building entrances; and existing landscaping, street, trees, catch basins, fire hydrants, and other utilities.
  - b. The dimensions of the outdoor service area footprint.
  - c. The location of the access ramps, platforms, and enclosures.
  - d. Details of any hardware such as fasteners to be used in the construction of ramps and platforms.
  - e. The location and dimensions of all street furniture and furnishings, including, but not limited to tables, chairs, trash receptacles, benches, and sun shading.
  - f. The location of outdoor lighting fixtures, if proposed, as well as the location of wiring and a description of how the wiring will be secured to prevent tripping or electrical hazards.
  - g. Location of on-site driveways and adjacent alleys.
  - h. If using on-site parking spaces, the setback dimensions of the enclosure from traffic lanes, vehicle circulation aisles, alleys, and adjacent parking spaces not used in the outdoor service area.
2. Photographs, drawings, or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas, awnings, canopies, lighting, or other furnishings and fixtures related to the outdoor service area, including but not limited to portable heaters, and other fixtures used during colder weather.



3. A signed Hold Harmless Agreement as provided by the City.
  4. For an outdoor service area proposed in a public right-of-way or on other public parcel, a Certificate of Liability Insurance, in an amount acceptable to the City, and naming the City as an additional insured party.
  5. For an outdoor service area in which alcohol is served, a liquor liability policy or certificate of insurance naming the City as an additional insured.
  6. If outdoor lighting is proposed, the Zoning Administrator may require a photometric plan.
  7. If temporary shelters are proposed, a separate sketch plan must be submitted with the following:
    - a. The location and dimensions of all temporary shelters within the permitted outdoor service area.
    - b. A dimensioned interior seating layout.
    - c. The materials of which the shelters are fabricated.
    - d. The type, size and location of portable heating elements, fuel tanks, and decorative lighting.
    - e. The type and location of lighting to be used.
    - f. The power source for portable heating elements and lighting, with description of how the wiring will be secured to prevent tripping or electrical hazards.
- B. *Location.* Outdoor service areas are allowed in on-site parking spaces or lots, sidewalks, and similar areas, with the following limitations:
1. When located in the side or rear yard of a site, an outdoor service area must be a minimum fifty feet from the parcel line of any single family or multiple family zoning district.
  2. Outdoor service areas must be setback at least two feet from adjacent vehicle traffic lanes, vehicle circulation aisles, or alleys.
  3. Outdoor service areas must be at least three feet from adjacent parking spaces not used as an outdoor service area.

4. Outdoor services areas only may be allowed in on-site parking spaces or parking lots when parking provided without the spaces to be used for the outdoor service area still meets the minimum parking requirements for the principal building on-site as well as for any existing parking agreements.
- C. *Time of Operation.* Permitted outdoor service areas may be operated all year. However, outdoor service areas in the public right-of-way are limited to April 1<sup>st</sup> through October 31<sup>st</sup>.
- D. *Temporary Shelters.* Outdoor service area permittees may be allowed to erect temporary shelters, such as tents, igloos, bubbles, garden sheds, or similar types when in compliance with the following regulations.
1. Non-electric heating elements are prohibited inside any temporary shelters.
  2. The location of all non-electric portable heating elements must be a minimum of ten feet from temporary shelters.
- E. *Access.* All outdoor service areas, whether located on a sidewalk or accessed from a sidewalk, must allow a minimum of five feet of unobstructed pedestrian access along the sidewalk, as well as ingress and egress to the principal use for which the outdoor service area is accessory. Outdoor service areas must comply with the Michigan Barrier Free Code.
- F. *Ramps and Platforms.* Ramps and platforms for outdoor service areas must comply with the following regulations:
1. Bolting of ramps and platforms into the street or penetrating the surface of the street or parking space is prohibited. Ramps and platforms may be bolted to the existing curb, but curbs must be restored to the satisfaction of the City of Berkley Department of Public Works.
  2. Ramps and platforms must be designed and constructed to maintain unobstructed drainage flow along the gutter.
  3. Platform and ramp substructures must be made of quality materials: i.e., wood, treated wood, or composite materials. Platform and ramp surfaces must be of a non-slip material.

- G. *Enclosures.* Enclosures are required for outdoor service areas in the following circumstances: when alcohol is served, when outdoor service areas on the sidewalk are within one foot of the back of the curb, and when using parking spaces. Enclosures must comply with the following regulations:
1. The enclosures must be clearly marked, using railings, planters, fencing, or similar materials.
  2. Enclosures must not block the view of traffic, including pedestrian traffic, or block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.
  3. The minimum height of an enclosure is thirty-six inches, and the maximum height is forty-two inches.
  4. For outdoor service areas serving alcohol, the enclosure must define and secure the outdoor service area for alcohol consumption.
  5. For sidewalk outdoor service areas within one foot of the back of the curb, the enclosure must be located along the curb separating the outdoor service area from the roadway.
  6. For outdoor service areas using parking spaces, the enclosure must be a continuous, rigid physical separation with a height of forty-two inches on all sides of the outdoor service area adjacent to vehicle traffic lanes, vehicle circulation aisles, alleys, and parking spaces not used as an outdoor service area.
- H. *Alcohol service.* Alcoholic beverages may be served in an outdoor service area, as licensed by the State, for consumption by customers of the licensee. If the outdoor service area is located in a Social District approved by the City of Berkley, alcoholic beverages may be consumed by customers of the licensee beyond the outdoor service area within the Social District.
- I. *Street furniture and furnishings.* Street furniture and furnishings are allowed in outdoor service areas when the following regulations are met:
1. Outdoor service area street furniture and fixtures must not block the view of traffic, including pedestrian traffic, or block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.

2. All outdoor service area street furniture and fixtures must be of substantial weight so that at no time could the outdoor service area furniture present an obstruction or risk to public safety, especially during inclement weather. All umbrellas must be closed or removed each evening.
  3. Hanging or overhead objects, including umbrellas, must have a minimum clearance of at least seven feet.
  4. All outdoor service area furniture/fixtures must be maintained in a state of good repair. Any outdoor service area furniture or fixtures having broken, peeling, or rusting features or showing other signs of disrepair must be promptly removed and replaced.
  5. All sun shading must be constructed of fire-retardant materials.
- J. *Lighting.* Temporary, decorative outdoor lighting, such as string lights or electric candles, may be permitted in outdoor service areas when such lighting is limited to the hours of operation of the outdoor service area, does not create glare that negatively impacts public safety or adjacent properties, and is secured in a manner to prevent trip or electrical hazard. All other lighting must meet the requirements in Article 13, Exterior Lighting Standards.
- K. *Heating elements.* Electric and non-electric heating elements may be permitted in outdoor service areas. Non-electric heating elements must be placed a minimum of ten feet from all permanent or temporary structures. Electric heating elements must be secured in a manner to prevent tripping or electrical hazards.
- L. *Maintenance.* The maintenance of an outdoor service area is the responsibility of the establishment. Maintenance includes, but is not limited to surface treatment and cleaning, litter control, sweeping, and snow and ice removal. Any sidewalk or public parcel permitted to be used as an outdoor service area must be always kept neat and clean and free from any substance that may cause pedestrian injury or damage to the sidewalk or public parcel.

## SECTION 8.18 MARIHUANA BUSINESS REGULATIONS

- A. Marihuana Businesses are subject to the regulations in Article XV of Chapter 30 of the City of Berkley Code of Ordinances.
- B. A marihuana business must front on an arterial street with the primary ingress and egress onto a major thoroughfare.
- C. The marihuana business must have all applicable state and local licenses and approvals to operate.
- D. The parcel where the marihuana business will be located must be entirely within the boundaries of the City and must not be within one thousand feet of a pre-existing public or private school providing education in kindergarten or any of grades first through twelfth.
- E. Notwithstanding any other provision in the Zoning Ordinance, a marihuana business must operate within a fully enclosed building.

## SECTION 8.19 TOBACCO AND VAPE SHOPS

The parcel where a tobacco and vape shop is located must not be within one thousand feet of another tobacco and vape shop or a pre-existing public or private school providing education in kindergarten or any of grades first through twelfth within the boundaries of the City of Berkley.

## SECTION 8.20 OUTDOOR STORAGE

- A. *General Standards.* The outdoor storage of goods and materials in all districts is prohibited unless otherwise specifically permitted herein. For those uses where the outdoor storage of goods, materials, and equipment is permitted either by right or through a variance granted by the Zoning Board of Appeals, the following conditions apply:
  - 1. The location and size of areas for such storage, nature of items to be stored therein, and details of the enclosure, including a description of materials and the height and typical elevation of the enclosure, must be provided as part of the site plan as set forth in Article 15, Site Plan Review.

2. Such storage must not be located within the area between the front face of the building, as extended across the entire width of the lot, and the street right-of-way, or in any required side or rear yard setback.
3. Such storage must not be located in any required parking, streets, drives, driveways, or loading space.
4. Such storage must be strictly and clearly incidental to the principal use, and only products and materials owned or produced by the principal business, and equipment owned and operated by the principal use, are permitted for storage. Such storage must not be permitted as a principal use of a lot.
5. The area for such storage must be screened from view on all sides in a manner as approved by the Planning Commission during the Site Plan Review process.

## SECTION 8.21 ACCESSORY DWELLING UNITS

- A. *Purpose.* Accessory Dwelling Units (ADUs) are permitted to enable a new housing type that respects the look and scale of single family residential neighborhoods while:
  1. Supporting more efficient use of existing housing stock and infrastructure;
  2. Providing housing that responds to changing family needs, smaller households, and increasing housing costs; and
  3. Providing accessible housing for seniors and persons with disabilities.
- B. *ADUs Permitted.* One ADU is permitted per parcel in all residential zoning districts. An ADU may only be located on a parcel that has an existing single family dwelling unit. ADUs are not permitted as an accessory use to a two family or multiple family dwelling unit.
- C. *Design.* ADUs must be designed so that the appearance of the principal building remains that of a single family dwelling unit. When a detached accessory structure, an ADU must be designed to have the appearance of a detached garage or other detached accessory structure allowed under this Ordinance. All ADUs must meet the following standards:

1. ADUs must be located in the following locations within a primary or accessory structure.
  - a. Above an attached garage.
  - b. Above a detached garage, in compliance with Section 9.11, Accessory Buildings and Structures.
  - c. As a standalone structure, in compliance with Section 9.11, Accessory Buildings and Structures.
  - d. As a ground level or upper level addition to a single family dwelling unit.
  - e. Within the upper level of a single family dwelling unit.
  - f. Within the ground level of a single family dwelling unit.
2. An entrance to the ADU must not be visible from the right-of-way along the front parcel line, excluding the exterior side yard parcel line for corner lots. ADU entrances may be visible from a side or rear parcel line.
3. Any pedestrian pathways that connect from the right-of-way to the primary structure, separate from a driveway, are limited to no more than one per front yard. For corner lots, there may be two pedestrian pathways: one in the front yard and one in the exterior side yard.
4. When an ADU entrance fronts a side or rear yard, a landscape screen, wall, or fence at least six feet in height is required to separate the side yard from the neighboring parcel.
5. Standards for building additions to accommodate ADUs.
  - a. Additions that are taller than the original building must be located toward the rear of the building so that the new addition does not visually overpower the original structure.
  - b. Large additions must be broken down into smaller, varied components that relate to the scale and massing of the original structure.
  - c. Additions must respect the massing, scale, and height of the primary structure.

- D. *Rental duration.* Short-term rentals or the leasing of an ADU for less than thirty days is prohibited.



# ARTICLE 9

## GENERAL PROVISIONS

### SECTION 9.01 PURPOSE

The regulations in this Article must apply in all zoning districts unless specifically provided otherwise in a Section of this Article.

### SECTION 9.02 FENCES AND WALLS

- A. *Permit or Certificate Required.* The erection, construction, or substantial rebuilding of any fence, screen wall, or wall must be performed in compliance with all municipal codes and require a zoning certificate. Building permits will be required, when required by the Building Code.

Substantial rebuilding is the reconstruction of more than fifty percent of the structure, a change in the height of the structure, or a change from existing material within a twelve-month period. Painting, cleaning, replacement of like materials, or other actions commonly considered as general maintenance are not defined as substantial rebuilding.

- B. *Requirements for All Districts.*
1. No wall or fence may have barbed wire, razor wire, an electric current, concertina wire, or any other material installed for the purpose of causing injury or harm. Similar material must be determined by the code enforcement officer.
  2. Each fence or screen wall owner must maintain their fences or walls in accordance with the provisions of all maintenance codes adopted by the city and with the provisions of any site maintenance agreement they may have entered into with the City.
  3. Fences and screen walls must be maintained plumb and true with adequate support and in a safe and slightly manner. The owner of a fence or screen wall must remove or repair a fence or screen wall that is dangerous, dilapidated, or otherwise in violation of this Ordinance.

*C. Requirements for Residential Districts.*

1. Fences or walls must be constructed of steel, iron, wood, masonry, or other durable material.
2. A fence or wall must not be erected between the front building line and the front lot line.
3. Landscape treatments may be located between the front building line and the front lot line.
4. Landscape treatments which fall within the front yard or the exterior side yard and which are parallel to, or are placed along, a lot line are limited as follows:
  - a. Setback of not less than two feet when adjacent to an adjoining parcel owner's driveway.
  - b. Placement on the parcel line or setback at least twelve inches from the sidewalk, whichever is greater.
5. No portion of a fence, wall, landscape treatment, or landscaping may project beyond the fence owner's parcel line. The footing of any fence or wall may not encroach underground beyond the fence owner's parcel line.
6. The maximum height of a fence or privacy fence is six feet, four inches in height, as measured from the lowest existing adjacent grade. Where a residential parcel line is adjacent to a nonresidential district, the maximum height must not exceed eight feet for fences on said parcel line.
7. The maximum number of fences is one fence per parcel line for each parcel owner. Ownership of a fence is determined by the fence permit applicant as follows:
  - a. By a search of building permits issued to their and adjacent properties; or
  - b. By mutual agreement of the adjacent parcel owners.
8. The maximum height of privacy screen structures is six feet above the surface of the deck, patio, pool, or other area to be screened. Privacy screen structures exceeding the maximum height require a variance

from the Zoning Board of Appeals.

9. When erecting a fence next to an existing fence, the maintenance of the area between the fences will be the responsibility of the person erecting the new fence. Fence panels must be raised four inches above grade to allow for maintenance of the area between fences.
10. Any fence having an unfinished side (e.g., stockade fence) must be installed so that the finished side of the fence faces adjacent properties or the street.
11. The maximum length of privacy screen structures is eighteen feet.
12. Any fence or landscape treatment erected within ten feet of a driveway or public right-of-way intersection must permit a motorist an unobstructed view of the public right-of-way when exiting a driveway. The sidewalk must be visible for a distance of ten feet on both sides of the driveway. Visibility is judged from the garage door jambs or ten feet from the sidewalk along the driveway's edge, whichever is closer. Visibility is judged from thirty inches above the sidewalk. The Community Development Director or their designee will be the judge of visibility. These requirements apply whether or not the fence is on the same parcel as the driveway.
13. Fences around swimming pools are required per Section 9.10.H.

D. Requirements for Nonresidential districts.

1. The maximum height for a fence or wall is eight feet high as measured from the lowest existing adjacent grade.
2. Required screen walls adjacent to all parcel lines separating non-residential parcel from residential parcel must comply with the regulations in Article 12, Landscaping and Screening.
3. No portion of a fence, wall, or screen wall may project beyond the fence owner's parcel line. The footing of any fence, wall, or screen wall may not encroach underground beyond the fence owner's parcel line.
4. The Planning Commission may revise the screen wall requirements for nonresidential districts if the Commission finds that the standards for site plan approval, as outlined in Article 12, Landscaping and Screening, have been met.

- E. Fences around public or institutional parks are required if they incorporate a playfield (baseball, football, soccer, tennis, etc.).
- F. In the Cemetery Zoning District, the regulations in Section 5.08 apply.

**SECTION 9.03 WIND ENERGY**

- A. *Intent.* The general purpose and intent of the City is to balance the need for clean, renewable, and abundant energy resources that may reduce dependence upon fossil fuels, with the necessity to protect the public health, safety, and welfare of the city, as well as to preserve the integrity, character, parcel values, and aesthetic quality of the community at large. The City therefore finds these regulations are necessary to facilitate adequate provision of sites for wind energy systems and ensure they are situated in appropriate locations and relationships to other land uses, structures, and buildings, without significantly increasing the cost or decreasing the efficiency of such systems.
- B. *General Requirements.*
  - 1. No more than one wind energy system may be placed on any parcel.
  - 2. No signage may be installed on any wind energy system.

	Districts Permitted	Maximum Height from Roof <i>or</i> Minimum Height Clearance	Minimum Setback	Other Regulations	Review Required
Roof-mounted – on site consumption.	Single-Family Residential, R-2, Multiple-Family Residential, Community Centerpiece, Flex, Gateway, Woodward Cemetery,	10 feet	No portion of the system's blades, rotor or other exposed moving part may extend beyond the edge of the building line to	Wind energy systems with a rated capacity of up to 2 kilowatts (2 kW) and solar energy systems are allowed as an accessory use subject to the required standards of this Section; provided they are incidental and subordinate to a use on the same parcel, and must supply electrical power	Administrative review and zoning certificate required

	Districts Permitted	Maximum Height from Roof <i>or</i> Minimum Height Clearance	Minimum Setback	Other Regulations	Review Required
	Residential Corridor		which it is attached	exclusively for on-site consumption	
Free-standing on-site consumption	Gateway, Flex, Woodward, Cemetery	15 feet	Equal to height of tower	Must be located in rear yard. Wind energy systems with a rated capacity of up to 2 kilowatts (2 kW) and solar energy systems are allowed as an accessory use subject to the required standards of this Section; provided they are incidental and subordinate to a use on the same parcel, and must supply electrical power exclusively for on-site consumption	Special land use approval and site plan approval required prior to obtaining any permits
Roof-mounted—Off-site consumption	High Rise Multiple-Family Residential Woodward, Flex	160 feet for High Rise Multiple Family 80 ft for Woodward, Flex	No portion of the system's blades, rotor or other exposed moving part may extend beyond the edge of the building line	Arrays of multiple-turbine roof-mounted wind energy systems may be allowed provided they are architecturally integrated with the building upon which they are attached as determined by the Planning Commission, and otherwise comply with the required standards of this Section. Wind systems may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not	Site plan approval by the Planning Commission is required prior to obtaining any permits

	Districts Permitted	Maximum Height from Roof <i>or</i> Minimum Height Clearance	Minimum Setback	Other Regulations	Review Required
				presently needed for on-site use may be used by the utility company in accordance with applicable state and federal law. Wind energy systems with a rated capacity of more than 20 kilowatts (20 kW) that are intended to produce electricity for sale to a utility or other customers for offsite consumption is permitted	
Free-standing off-site consumption	Cemetery	15 feet	Equal to height of tower	Wind systems may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with applicable state and federal law. Wind energy systems with a rated capacity of more than 20 kilowatts (20 kW) that are intended to produce electricity for sale to a utility or other customers for offsite consumption is permitted. A shadow flicker analysis must be submitted as part of the special land use application	Special land use approval and site plan approval required prior to obtaining any permits

## SECTION 9.04 SOLAR ENERGY

- A. *Intent.* The City of Berkley promotes the effective and efficient use of solar energy systems. To protect public health, safety, and welfare, it is in the interest of the City to regulate the siting, design, and installation of solar energy systems so that they are compatible with the subject and neighboring land uses.
- B. *Permit required.* Building-mounted solar energy system installations require a Zoning Certificate approved by the Community Development Department. Ground-mounted solar energy system installations require a site plan that may be approved administratively. All solar energy systems proposed as part of a site plan must be indicated on the site plan.
- C. *Exemptions.* The following instances are exempt from a zoning review by the Community Development Department. Building permits may still be required.
1. The installation of a solar energy system to power a single device or specific piece of equipment such as a lawn ornament, lights, weather station, clock, well pump, or other similar device, provided that the solar energy system is no larger than six square feet and the device itself is not subject to zoning compliance approval.
  2. The repair or replacement of an existing approved solar system that does not result in an expansion of the solar energy system coverage area.
  3. This Section applies to any solar energy system or facility with a nameplate capacity below fifty megawatts.
- D. *Standards for solar energy systems.* The following requirements apply to all solar energy systems.
1. The exterior surfaces of solar energy systems must be generally neutral in color and substantially non-reflective in light.
  2. Solar energy systems must be functional and in good repair.
  3. Solar energy systems must be installed, maintained, and used only in accordance with the manufacturer's directions. Upon request, a copy of such directions must be submitted to the Building Official prior to

installation. The Building Official may inspect the completed installation to verify compliance with the manufacturer's directions.

4. All solar energy systems must comply with the City building code, the electrical code, and other applicable building and construction codes.
- E. The following requirements apply to building-mounted solar energy systems.
1. Building-mounted solar energy systems are permitted as an accessory use in any zoning district and are subject to the regulations set forth in this Article.
  2. Building-mounted solar energy systems must be incidental and subordinate to a use on the same parcel.
  3. Building-mounted solar energy systems that are mounted on the roof of a building must not project more than five feet above the highest point of the roof.
  4. Building-mounted solar energy systems in the Downtown Zoning District must not be visible from the street level.
  5. Building-mounted solar energy systems that are mounted on a wall must not project above the highest point of the roof.
  6. Building-mounted solar energy systems must not exceed the maximum building height requirements for the respective zoning district.
  7. Building-mounted solar energy systems must not project horizontally beyond the eaves of the roof.
  8. Building-mounted solar energy systems must not be mounted on a building wall that is parallel to an adjacent public right-of-way.
  9. Building-mounted solar energy systems that are mounted on a building wall must not project into the required setback of the respective zoning district.
  10. Solar energy systems mounted on the roof of a building must be only of such weight as can safely be supported by the roof and the weight of snow and ice that they collect. Building-mounted solar energy systems must be permanently and safely attached to the building or



structure. Proof of the safety and reliability of the means of such attachment, in the form of certification by a professional engineer or other qualified person, must be submitted to the Building Official prior to installation; such certification is subject to the Building Official's approval.

- F. The following requirements apply to ground-mounted solar energy systems.
1. Ground-mounted solar energy systems are a permitted accessory use in the Flex, Cemetery, and Community Centerpiece zoning districts.
  2. Ground-mounted solar energy systems must be located in the rear yard or side yard, not within any required setbacks unless permitted by the Planning Commission as a deviation in its approval of the site plan and provided it does not project into more than one required setback area.
  3. Ground-mounted solar energy systems must not exceed the maximum building height in the respective zoning district, measured from the ground at the base of the equipment.
  4. The area of the ground-mounted solar energy system must not exceed fifty percent of the square footage of the ground floor area of the primary building of the parcel unless it is sited over required parking in which case there is no maximum lot coverage for the ground-mounted solar energy system.
  5. Ground-mounted solar energy systems do not count towards the maximum square footage of accessory structures allowed on site or maximum impervious surface area limits if the ground under the solar energy system is pervious.
  6. If the ground under the ground-mounted solar energy system is impervious, the total area of ground-mounted solar energy systems must be included in the calculation of the maximum permitted lot coverage requirement for the parcel of land.

## SECTION 9.05 DRIVEWAYS

- A. *Purpose.* The purpose of this Section is to establish guidelines for the location

and design of driveways that can be used for new construction in undeveloped areas and the redevelopment of existing developed areas. The objectives of these requirements are to reduce the frequency of conflicts between vehicular movements and to increase the spacing between conflict points, thereby providing motorists with increased decision process time, which will increase safety and assure smoother traffic flow.

- B. No opening in or through any curb of any street must be made without first obtaining a written permit from the city manager or his designee. Curb cuts and sidewalk driveway crossings to provide access to private parcel must comply with the following:
1. No single curb cut must exceed twenty-five feet nor be less than ten feet.
  2. The minimum distance between any curb cut and a public crosswalk must be five feet.
  3. The minimum distance between curb cuts, except those serving residential parcel, must be twenty-five feet.
  4. The maximum number of lineal feet of sidewalk driveway crossing permitted for any lot, parcel of land, business, or enterprise, must be forty-five percent of the total abutting street frontage up to and including two hundred lineal feet of street frontage plus twenty percent of the lineal feet of street frontage in excess of two hundred feet.
  5. The necessary adjustments to utility poles, light standards, fire hydrants, catch basins, street or railway signs, signals or other public improvements or installations must be accomplished without cost to the city.
  6. All construction must be in accordance with plans and specifications approved by the City Manager of the City of Berkley.
- C. *Construction.* All driveways must be provided with paving having an asphaltic or portland cement binder at least four inches in depth so as to provide a permanent, durable, and dustless surface. Single family residential driveways may be constructed of masonry pavers. All parking areas must be graded and drained so as to dispose of all surface water accumulated within the area according to Oakland County requirements prior to the issuance of

an occupancy permit. Approaches must be provided with paving having a portland cement binder at least six inches in depth. Approaches must have a two-foot flare on each side of the driveway.

D. *Single or Two Family Residential Uses.* For single-family or two-family homes in all zoning districts, the following regulations apply:

1. Number of driveways: The number of driveways is limited per the table below:

Table 9.05.D.1.	
Lot Width	Number of Driveways
0 to 79.99 feet	1 per dwelling
80 to 99.99 feet	1 per dwelling unit
100 feet or more	Circular driveway with 2 approaches
100 feet or more on a corner lot	Circular driveway with 2 approaches and 1 driveway from side street for garage facing the side street

2. *Driveway widths:* The widths of driveways must meet the following requirements:

Table 9.05.D.2.			
Type of Lot	Maximum Driveway Width	Minimum Driveway Width	Location
Interior lot	16 feet	9 feet	Between the front building line and the front lot line
Interior lot with attached garage	Width of garage façade and taper uniformly to 16 feet		At the front lot line

Table 9.05.D.2.			
Type of Lot	Maximum Driveway Width	Minimum Driveway Width	Location
Corner lot when garage faces side street	20 feet or the width of the garage, whichever is greater		At the side street lot line

3. *Circular driveways.* Circular driveways may not exceed ten feet in width, may not be less than five feet from the front building line, may not be less than five feet from the side lot line as measured along the front lot line, and the total pavement coverage of the front yard may not exceed thirty-five percent of the front yard.
4. *Site Design Based Districts.* Driveways for single-family and two-family dwellings in the site design based districts are also subject to the requirements in Article 6, Site Design Based Zoning Districts.

E. *Number of Driveways Per Parcel.*

1. A maximum of one driveway opening is permitted to a particular parcel from any abutting street unless these regulations conflict with the requirements of the agency that has jurisdiction over the street.
2. The Community Development Director may permit one additional driveway entrance along a continuous site with frontage in excess of three hundred and thirty feet and two additional driveway entrances along a continuous site if driveway access volumes exceed five thousand vehicles per day and frontage exceeds six hundred feet.
3. A dual-service (median-divided) driveway is considered to be one, direct-access driveway.
4. Only one pair of one-way drives may be used per two hundred and fifty feet of street frontage.

## SECTION 9.06 ESSENTIAL SERVICES

Essential services are permitted as authorized and regulated by law and other ordinances of the City. It is the intention of this Section to exempt such essential services from the application of this Ordinance.

## SECTION 9.07 STRUCTURE COMPLETION

- A. Nothing in this Ordinance can require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption of this Ordinance or later amendment which may apply. Actual construction is defined to include the placing of construction materials in a permanent position and fastening them in a permanent manner. Excavation, demolition, or the removal of materials is defined as construction.
- B. Where a building permit has been issued, said building or structure must be completed in accordance with the approved plans for which the building permit was issued, and further, must upon completion be occupied by the use for which it was originally designed. Approved construction must be diligently pursued to completion within one of the zoning certificate or building permit's effective date unless a longer period has been permitted or extended by the Building Official.
- C. Adoption of this Ordinance must not limit the construction of any building or structure for which a zoning certificate or building permit had been obtained prior to the Effective Date of adoption or amendment of this Ordinance even though said building or structure does not conform to the provisions of this Ordinance.

## SECTION 9.08 USES AND BUILDINGS PER LOT

Lots must be used as outlined below unless otherwise permitted in this Ordinance:

- A. *One Use.* The maximum number of principal uses per individual lot is one principal use, unless otherwise permitted in this Ordinance. In the case of Planned Unit Developments, more than one use may be approved during the PUD approval process.

- B. Number of Buildings per Lot.
  - 1. There may be only one single family dwelling, or one two-family dwelling permitted per lot, provided all other requirements of this Ordinance are met.
  - 2. For all developments subject to site plan review, more than one principal building per lot may be permitted, as long as all other requirements of this Ordinance are met.
- C. *Illegal Dwellings.* The use of any portion of a garage, accessory building, tent, recreational vehicle, or a partially completed building for dwelling or sleeping purposes is prohibited, unless otherwise permitted in this Ordinance.

## SECTION 9.09 LOT LIMITATIONS

- A. *Division of lots.* No lot may hereafter be divided into two or more lots and no portion of any lot may be sold, unless all lots resulting from each such division or sale conform with all the applicable bulk regulations of the zoning district in which the parcel is located, in compliance with the Michigan Land Division Act.
- B. *Location of required open space.* All yards and other open spaces allocated to a building or dwelling group must be located on the same lot as such building or dwelling group.

## SECTION 9.10 ACCESSORY BUILDINGS AND STRUCTURES

Accessory buildings and structures must be classified as defined in Article 2, Definitions of this Ordinance and, unless otherwise provided in this Ordinance, are subject to this Section. By their definition and nature, accessory buildings and structures must be secondary and clearly incidental to the principal building on a parcel of land. Such buildings or structures therefore are not permitted as the only building or structure on a parcel of land.

- A. Layout requirements.
  - 1. Where the accessory building or structure is attached to a main building it must conform to all regulations of this chapter applicable

to the main building.

2. The width of a front-loading attached garage must not be more than forty-five percent of the total width of the main building as measured along the front building line.
  3. Accessory buildings or structures may only be erected in a rear yard.
  4. In no instance may the combined floor area of all accessory buildings and structures exceed eight hundred square feet or one-half the ground floor of the main building, whichever is greater. Lot coverage must also conform to requirements set forth in the schedule of regulations in Article 5, Use-Based Districts, or Article 6, Site Design Based Districts. Dog runs are excluded from the maximum lot coverage calculation.
  5. Setbacks.
    - a. Detached accessory buildings, except dog houses and dog runs, must not be located closer than ten feet to any main building or other accessory building.
    - b. No accessory building or structure may be located within five feet of the side lot line unless proper fire separation has been installed. In no instance may any portion of an accessory building or structure be located closer than eighteen inches to a side lot line, including encroachments allowed elsewhere in this Ordinance such as gutters or eaves.
    - c. No accessory building or structure may be located within five feet of any rear lot line. In no instance may an accessory building or structure be located within a dedicated easement or right-of-way.
- B. *Height.* The maximum height of an accessory structure is determined by its location in relation to the lot lines, as follows:

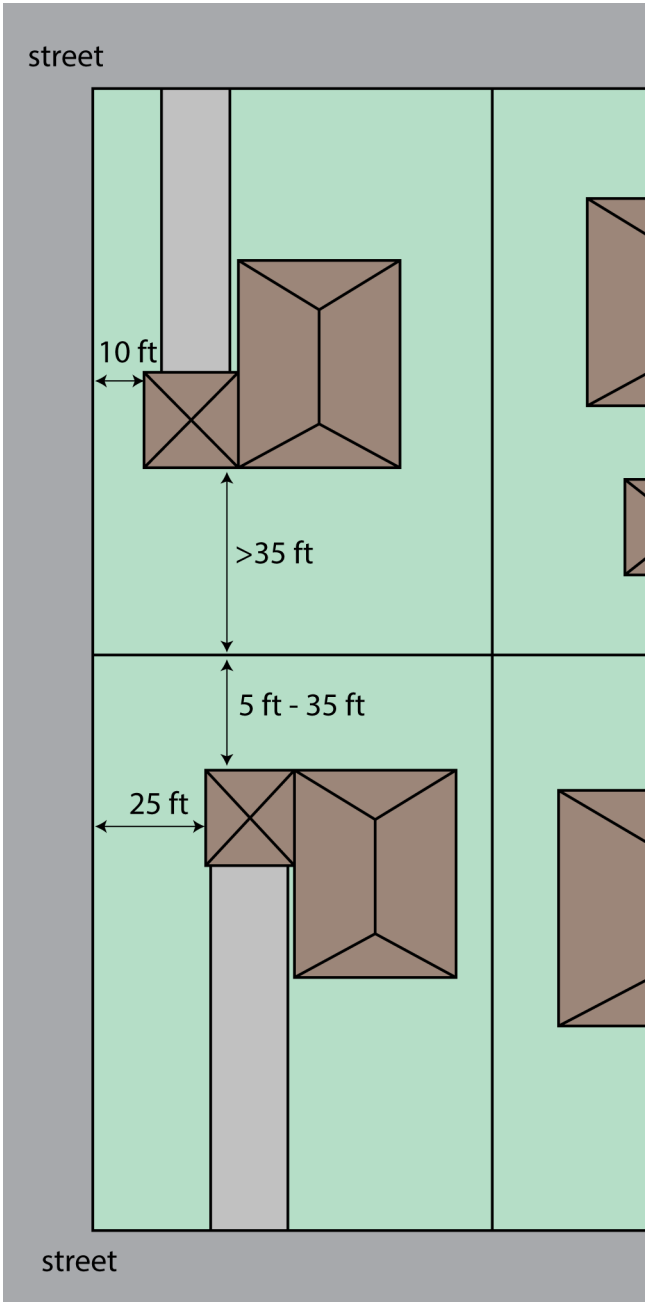
Table 9.10.B.	
Distance from Rear Lot Line to Structure	Height of Structure Allowed
Less than 5 feet	No structures permitted
5 - 35 feet	15 feet
Greater than 35 feet	Maximum height allowed in the zoning district.

- C. An accessory building is considered two stories if the second floor contains a room as defined per the current MRC code. Accessory buildings with two stories must have proper fire separation as required by the state building code.
- D. Attics that do not have sufficient headroom or area to qualify as a room are permitted for storage use only. Access to such storage area is permitted by ladder or drop-down stairs only.
- E. In no instance may a rooftop deck on an accessory building be permitted.
- F. Antennas.
  - 1. Pole or mast-type antennas may be constructed to a height equal to the permitted maximum height of structures in the respective zoning district. Roof-mounted antennas or antennas attached to a building must not extend more than twelve feet above the highest point of the roof.
  - 2. No more than two antenna structures (no more than one of which may be ground-mounted) is permitted for each lot or parcel, with the following exception: on nonresidential parcels, two antenna structures are permitted for the first twenty thousand square feet of gross building area, with one antenna structure permitted for each additional twenty thousand square feet of gross building area, or major portion thereof.
- G. *Windows.* On elevations facing neighboring properties, where the window header is eight feet or more above grade, the amount of glazing must be limited to no more than eight square feet per elevation.
- H. Swimming Pools.



1. A wall of a swimming pool must be located more than six feet from any rear or side parcel line.
  2. A wall of a swimming pool that has a capacity greater than six hundred gallons must be located more than six feet from the main building or other accessory building or structure. Swimming pools that have a capacity of six hundred or fewer gallons may be excepted from this setback requirement.
  3. Construction must require a site plan, building permit, and all applicable electrical heating and plumbing permits. All pools, which contain twenty-four inches or more of water in depth at any point, must be surrounded by an adequate enclosure in accordance with the City's current building codes. Electrical service conductors and other overhead wires must be located a minimum of ten feet from the pool's edge or a minimum of twenty-two feet above the pool surface. Pool heaters must be installed according to the current adopted city code. All swimming pools must be provided with a recirculating skimming device. The water of all swimming pools must be sanitized. The installation of swimming pools must be in accordance with the requirements of the building and electrical code.
- I. *Corner Lots.* On corner lots, garages may be attached to the principal structure provided that the principal structure including the garage is at least five feet from the rear lot line and all other setback requirements are met. The garage door or combination of garage doors must not exceed eighteen feet. Accessory structures or buildings on corner lots must adhere to the following regulations:
1. When a rear yard abuts a rear yard, the exterior side yard setback must not be less than ten feet.
  2. When a rear yard abuts a side yard, the required exterior side yard setback is as follows:

Table 9.10.I.	
Distance from Rear Lot Line to Structure	Exterior Side Yard Setback required
5—35 feet	25 feet
Greater than 35 feet	10 feet



- J. Trailer-mounted accessory buildings and structures are prohibited.

## SECTION 9.11 WIRELESS COMMUNICATION FACILITIES

- A. *Intent.* It is the general purpose and intent of the City to carry out the will of the United States Congress by authorizing communication facilities needed to operate wireless communication systems. However, it is the further purpose and intent of the City to provide for such authorization in a manner that will retain the integrity of neighborhoods and the character, parcel values, and aesthetic quality of the community at large. In fashioning and administering the provisions of this Section, an attempt has been made to balance these potentially competing interests. Recognizing the number of providers authorized to establish and operate wireless communication services and coverage, it is the further purpose and intent of this Section to:
1. Facilitate adequate and efficient provision of sites for wireless communication facilities;
  2. Establish predetermined districts or zones of the number, shape, and location considered best for the establishment of wireless communication facilities, subject to applicable standards and conditions;
  3. Recognize that the operation of a wireless communication system may require the establishment of facilities in locations not within the predetermined districts or zones. In such cases, it has been determined that it is likely that there will be greater adverse impact upon neighborhoods and areas within the community. Consequently, more stringent standards and conditions should apply to the review, approval, and use of such facilities;
  4. Ensure that wireless communication facilities are situated in appropriate locations and relationships to other land uses, structures, and buildings;
  5. Limit inappropriate physical and aesthetic overcrowding of land use activities and avoid adverse impacts upon existing population, transportation systems, and other public services and facility needs;
  6. Promote public health, safety, and welfare;

7. Provide for adequate information about plans for wireless communication facilities in order to permit the community to effectively plan for the location of such facilities;
  8. Minimize the adverse impacts of technological obsolescence of such facilities, including a requirement to remove unused or unnecessary facilities in a timely manner; and
  9. Minimize the negative visual impact of wireless communication facilities on neighborhoods, community landmarks, historic sites and buildings, natural beauty areas, and public rights-of-way. This contemplates the establishment of as few structures as reasonably feasible, and the use of structures that are designed for compatibility, including the use of existing structures and the avoidance of lattice structures that are unnecessary, taking into consideration the purposes and intent of this Section.
- B. The City Council finds that the presence of numerous tower and pole structures, particularly if located within residential areas, would decrease the attractiveness, and destroy the character and integrity of the community. This, in turn, may have an adverse impact on parcel values. Therefore, it is necessary to minimize the adverse impact of the presence of numerous tower or pole structures having low architectural and other aesthetic appeal to most persons, recognizing that the absence of regulation would result in a material impediment to the maintenance and promotion of parcel values, and further recognizing that this economic component is an important part of the public health, safety, and welfare.
- C. *Small Cell Wireless Facilities.* Small cell wireless facilities are exempt from this Section and subject to Article V - Small Cell Wireless Facilities Deployment of Chapter 118 of the City of Berkeley Code of Ordinances.
- D. *Permitted Uses.* Subject to the standards and conditions set forth in subsection D.1 of this Section, wireless communication facilities are permitted uses in the following circumstances:
1. In the following circumstances, a proposal to establish a new wireless communication facility must be deemed a permitted use:
    - a. An existing structure, including public utility poles and structure, which will serve as an attached wireless communication facility where the existing structure is not, at the

discretion of the Planning Commission, proposed to be either materially altered or materially changed in appearance, provided the accessory equipment building is either not visible from any residence or can be screened in accordance with the standards set forth in Article 12, Landscaping and Screening.

- b. A proposed collocation upon an attached wireless communication facility that had been preapproved for such collocation as part of an earlier approval by the City.
  - c. A proposed collocation that will not do any of the following:
    - i. Increase the overall height of the wireless communications support structure by more than twenty feet or ten percent of its original height, whichever is less.
    - ii. Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.
    - iii. Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.
    - iv. Increase the area of the existing equipment compound to greater than twenty-five hundred square feet.
2. A collocation or other proposal for attached wireless communication facilities that satisfies the following criteria does not require special land use or site plan approval. Confirmation that these criteria are satisfied must be determined by an administrative review and written certification by the Community Development Director or their designee to the Building Official prior to issuance of any construction code permits. Such proposals must also be reviewed for compliance with the standards and conditions in subsection D of this Section, with the certification to identify any items of noncompliance.
- a. The existing wireless communications support structure and wireless communications equipment compounds are in compliance with this ordinance, and if not, are in compliance with a prior approval under this ordinance.
  - b. The proposal complies with the terms and conditions of any

prior final approval under this ordinance of the wireless communications support structure and wireless communications compound.

- c. The proposal will not increase the height of the wireless communications support structure by more than twenty feet or ten percent of its original height (as first erected without any later additions), whichever is greater.
  - d. The proposal will not increase the width of the wireless communications support structure by more than necessary to the stated and documented purpose of the increase.
  - e. The proposal will not increase the area of the existing wireless equipment compound enclosure to greater than twenty-five hundred square feet.
3. Proposals to place or install wireless communications equipment on an existing wireless communications support structure or in an existing wireless communications equipment compound that involve increases in height, width, or area greater than those specified in subsection C.2 above, or that do not comply with the terms or conditions of a prior Zoning Ordinance approval, are permitted subject to review and approval of a site plan or site plan amendment conforming to the standards in subsection D, and are subject to any prior special land use approval conditions for the wireless communications support structure or wireless communications equipment compound.
- E. *Special Land Uses.* A wireless communication facility may be authorized as a special land use in the circumstances listed in this subsection. The Planning Commission must consider the standards and conditions in subsection F below as part of the special land use process.
1. A special land use in the Cemetery or Community Centerpiece zoning districts if the following is demonstrated by an applicant:
    - a. A wireless communication facility is not reasonable as a permitted use under subsections C of this Section.
    - b. A wireless communication facility is required in order to operate a wireless communication service, then, within a special land

use overlay zone, as shown on the overlay map made a part of this Section, with the approval of the Planning Commission following a public hearing, considering the standards and conditions set forth in subsection D.1 of this Section.

2. A special land use in elsewhere in the City, subject to the standards and conditions in subsection F and the following:
  - a. At the time of the submittal, the application must demonstrate that a location within a permitted use in the Community Centerpiece or Cemetery zoning districts cannot meet the need required for operation of a system.
  - b. Wireless communication facilities must be of a design such as (without limitation) a steeple, bell tower, or other form which is the most compatible with the existing character of the proposed site, neighborhood, and general area, as approved by the Planning Commission, taking into account any alternative designs submitted by the applicant or identified during the review process.
  - c. The applicant demonstrates the need for the proposed facility to be located as proposed, based upon the presence of one or more of the following factors:
    - i. Proximity to a major thoroughfare;
    - ii. Areas of population concentration;
    - iii. Concentration of commercial, industrial, or other business centers;
    - iv. Areas where signal interference has occurred due to tall buildings, masses of trees, or other obstructions;
    - v. Topography of the proposed facility location in relation to other facilities with which the proposed facility is to operate; and
    - vi. Other specifically identified reasons creating the need for the facility.
  - d. The applicant's demonstration of good faith efforts to identify

- and evaluate alternate sites, locations, designs, placements, or features for the proposed facility that would or could be more consistent with the ordinance purposes stated in subsection A.
- e. For each alternate site, location, design, placement, or feature for the proposed facility identified by the applicant or otherwise, the applicant's demonstration that the proposed facility is more consistent with the ordinance purposes stated in subsection A, or that such alternative is not feasible.
  - f. Any additional information necessary for the City to complete the review. Additional information the Community Development Director or Planning Commission finds necessary and may include but is not limited to: natural features, stormwater management, surrounding land uses, public facilities and services, public utilities, and traffic.
- F. *Standards and Conditions applicable to all facilities.* All applications for wireless communication facilities must comply and be reviewed in accordance with the following standards and conditions, and, if approved, must be constructed, and maintained in accordance with such standards and conditions. In addition, if the facility is approved, it must be constructed and maintained with any additional conditions imposed by the Planning Commission at its discretion.
- 1. Facilities must be located and designed to be harmonious with the surrounding area. Among other things, all reasonable attempts must be made and thoroughly explored to utilize existing structures on which to place facilities, i.e., to utilize attached wireless communication facilities.
  - 2. Wireless communication facilities must comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions, as confirmed by the submission of a certification of compliance by the applicant's licensed engineer.
  - 3. Applicants must demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs, which might result in lower heights.
  - 4. The proposal must be reviewed in conformity with the collocation requirements of this Section.



5. The maximum height of the new or modified support structure and antenna must be the minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to collocate on the structure). The accessory building contemplated to enclose such things as switching equipment must be limited to the maximum height for the accessory structures within the respective district.
6. The setback of a new or materially modified support structure from any residential district must be at least the height of the highest point of any structure on the premises. The setback of the support structure from any existing or proposed rights-of-way or other publicly traveled streets must be no less than the height of the structure.
7. Where the proposed new or materially modified support structure abuts a parcel of land zoned for a use other than residential, the minimum setback of the structure, and accessory structures, must be in accordance with the required setbacks for main or principal buildings as provided in the schedule of regulation for the zoning district in which the support structure is located. (See subsection E.3. of this Section).
8. There must be unobstructed access to the support structure, for operation, maintenance, repair, and inspection purposes, which may be provided through or over an easement. This access must have a width and location determined by such factors as:
  - a. The location of adjacent thoroughfares and traffic and circulation within the site;
  - b. Utilities needed to service the tower and any attendant facilities;
  - c. The location of buildings and parking facilities;
  - d. Proximity to residential districts and minimizing disturbance to the natural landscape; and
  - e. The type of equipment which will be needed to access the site.
9. The division of parcel for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements and conditions are met;

10. Where an attached wireless communication facility is proposed on the roof of a building, if the equipment enclosure is proposed as a roof appliance or penthouse on the building, it must be designed, constructed, and maintained to be architecturally compatible with the principal building. The equipment enclosure must be located within the principal building or an accessory building. If proposed as an accessory building, it must conform with all district requirements for principal buildings, including yard setbacks. For collocation facilities served by an accessory building, there should be a single, architecturally uniform accessory building for all providers.
11. The design and appearance of the support structure and all accessory buildings must minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with surroundings. It must be the responsibility of the applicant to maintain the wireless communication facility in a neat and orderly condition.
12. The support system must be designed to support, or be capable of supporting, the proposed equipment, and be constructed in accordance with all applicable state construction codes and must include the submission of a soils report from a geotechnical engineer, licensed in the state. This soils report must include soil borings and statements confirming the suitability of soil conditions for the proposed use. The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission must be noted.
13. A maintenance plan, and any applicable maintenance agreement, must be presented and approved as part of the site plan for the proposed facility. Such a plan must be designed to ensure long-term, continuous maintenance to a reasonably prudent standard.
14. The use of high-intensity (strobe) lighting on a wireless communication facility is prohibited, and the use of other lighting is prohibited absent a demonstrated need.
15. Applications made which do not include the signature of the licensed operator of a wireless communication service at the time of community processing may be tentatively approved but must not receive final approval unless and until the application has been amended to include a signature on behalf of a licensed operator. A

tentative approval is valid for ninety days. If, during a ninety day period, final approval is granted to authorize a wireless communication facility within two miles of the parcel on which a facility has been tentatively approved, such tentative approval must thereupon expire unless the applicant granted tentative approval demonstrates that it would not be feasible for it to collocate on the facility that has been newly granted final approval; and

16. The antenna and other attachments on a wireless communication facility must be designed and constructed to include the minimum attachments required to operate the facility as intended at the site, both in terms of number and size of such attachments and must be designed and constructed to maximize aesthetic quality.

G. *Applications, Reviews, and Decisions.*

1. *Administrative Review.*

- a. All applications for wireless communication facilities must be submitted to the Community Development Director or their designee. The Zoning Administrator must review the application and required information and determine within fourteen business days if the submission is complete. If the Zoning Administrator does not notify the applicant within fourteen business days of any deficiencies in the submission, the application must be considered administratively complete. Such review on behalf of the Planning Commission for special land use and site plan approval applications.
- b. Upon a special land use or site plan approval application being administratively complete, the Community Development Director must promptly schedule it for a Planning Commission meeting that will allow for a Planning Commission site plan decision or special land use decision after the required public hearing within the time periods in subsection 3 below.
- c. If an application discloses professional opinions supporting the application and the Zoning Administrator or Planning Commission has determined that independent professional review for the City of any such opinion should be performed, the reasonable costs of such review may be assessed to the

Applicant by a written notice from the Zoning Administrator, as a professional review cost to be paid in accordance with the notice.

2. *Information Required for all Applications.*

- a. The site plan prepared in accordance with Article 6.0 must be submitted, showing the location, size, screening and design of all buildings and structures, including fences, and the location and size of outdoor equipment, and the location, number, and species of proposed landscaping. In the case of an existing structure, including public utility poles and structures, which will serve as an attached wireless communication facility, the director may waive the requirements for conceptual site plan approval and allow the applicant to submit a final site plan, provided all other applicable requirements are met.
- b. The site plan must also include a detailed landscaping plan where the support structure is being placed at a location which is not otherwise developed, or where developed areas will be disturbed. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory buildings, and enclosure.
- c. The application must include a signed certification by a state licensed professional engineer with regard to the manner in which the proposed structure will fall, which certification will be utilized, along with other criteria such as applicable regulations for the district in question, in determining the appropriate setback to be required for the structure and other facilities.
- d. The application must include a description of security to be posted with the City at the time of receiving a building permit for the facility to ensure removal of the facility when it has been abandoned or is no longer needed, as provided in subsection G. of this Section. In this regard, the security must meet one of the following:
  - i. Cash
  - ii. Check; or

- iii. An agreement in a form approved by the City Attorney and recordable at the office of the register of deeds, establishing a promise of the applicant and owner of the parcel to remove the facility in a timely manner as required under this Section, with the further provision that the applicant and owner is responsible for the payment of any costs and attorney's fees incurred by the community in securing removal.
  
- e. The application must include a map showing locations and heights of existing and known proposed wireless communication facilities within the City and within areas surrounding the borders of the City in the location, and in the area, which are relevant in terms of potential collocation or in demonstrating the need for the proposed facility. On the same or a separate map, facilities the applicant is using or has the right to use, and the heights at which its antennas are or may be installed, must be disclosed. Any such information which is a trade secret or other confidential commercial information which, if released would result in commercial disadvantage to the applicant, may be submitted with a request for confidentiality in connection with the development of governmental policy (MCL 15.243(1)(g)). This Section serves as the promise to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated in order to bring it to the attention of the community.
  
- f. The application must include the name, address, and phone number of the person to contact for engineering, maintenance, and other notice purposes. This information must be continuously updated during all times the facility is on the premises.
  
- g. The application must include the application fee, in the amount specified by City Council resolution.
  
- h. The owner or duly authorized representative of all ownership interest in the land on which the wireless communication facility is proposed to be located must sign the application. In addition, if a licensed entity intended to be the operator of the facility does not sign the application, approval must be restricted as

provided in subsection D of this Section.

- i. Identification of the dates, nature, and conditions of any prior zoning approvals or permits for the parcel.
- j. If the application is for a new wireless communication support structure or to place or install additional wireless communications equipment on an existing support structure, a structural analysis and certification to the City by a registered professional engineer that the structure is designed to support, or is capable of supporting the proposed wireless communications equipment. Any modifications necessary to a structure being capable of supporting the proposed equipment must be specifically identified in the analysis and certification.
- k. If modifications to a wireless communications support structure are identified in a structural analysis under subsection j above, a written determination by the City construction code building official that, subject to review of an actual building permit application and plans, the identified modifications would be allowed and that with the modifications, the structure would meet construction code requirements.
- l. If the application is for a new wireless communications support structure or to increase the height of an existing structure, a written analysis and justification by a registered engineer that the proposed height is the minimum necessary for the provision of personal wireless services and to provide collocation.
- m. If the application is for a new wireless communications support structure, identification of all other structures and properties considered for the proposed use and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.
- n. If the application is for a new wireless communications support structure, identification of possible alternative locations, designs, or features, whether those alternatives were considered, and if so, a factual explanation of why those alternatives are not proposed.
- o. Disclosure and copies of all other required governmental

permits or approvals and the status and copies of pending applications for those permits or approvals.

- p. If the application is for a special land use or site plan approval, the name, expertise, and relationship to the applicant of each licensed or registered professional that has or will provide evidence to support the application, with a summary of that evidence that includes any opinions expressed and the bases for such opinions.
- q. For each professional opinion disclosed by the applicant as supporting the application, a statement of whether the applicant agrees that it should be subject to separate review by or for the City, and if so, the type, scope, time, and cost of such a separate review that applicant believes would be reasonable.

3. *Review and Decisions on an Application.*

- a. All complete submissions requiring site plan approval, must be reviewed in accordance with the applicable procedures set forth in Article 15, Site Plan Review.
- b. All complete submissions requiring both special land use and site plan approval must be reviewed in accordance with the applicable procedures set forth in Article 15, Site Plan Review, and Article 10, Special Land Use Procedures and Standards.
- c. The Planning Commission must approve or deny a special land use application for a new wireless communications support structure not more than ninety days after it is administratively complete.
- d. For all special land use and site plan applications other than new wireless communications support structures, the Planning Commission must approve or deny the application not more than sixty days after it is administratively complete.

4. *Post-Approval Costs, Fees, and Administrative Actions.* For all special land use and site plan applications other than new wireless communications support structures, the Planning Commission must approve or deny the application not more than sixty days after it is administratively complete.

- a. Any conditions of the special land use or site plan approval.
- b. Payment of any outstanding professional review costs as described in subsection G.2.d.
- c. Payment of a reasonable zoning certificate fee in an amount established by or in accordance with a Resolution of the City Council.

H. *Collocation.*

1. *Statement of Policy.* It is the policy of the City to minimize the overall number of newly established locations for wireless communication facilities and wireless communication support structures within the community and encourage the use of existing structures for attached wireless communication facility purposes, consistent with the statement of purpose and intent set forth in subsection A. of this Section. Each licensed provider of a wireless communication facility must, by law, be permitted to locate sufficient facilities in order to achieve the objectives promulgated by the United States Congress. However, particularly in light of the dramatic increase in the number of wireless communication facilities reasonably anticipated to occur as a result of the change on federal law and policy in and related to the Federal Telecommunications Act of 1996, it is the policy of the City that all users should collocate on attached wireless communication support structures in the interest of achieving the purposes and intent of this Section, as stated in subsection A. of this Section. If a provider fails or refuses to permit collocation on a facility owned or otherwise controlled by it, where collocation is feasible, the result will be that a new and unnecessary additional structure will be compelled, in direct violation of and in direct contradiction to the basic policy, intent, and purpose of the City. The provisions of this subsection H are designed to carry out and encourage conformity with the policy of the City.
2. *Feasibility of Collocation.* Collocation must be deemed to be feasible, for purposes of this Section, where all of the following are met:
  - a. The wireless communication provider entity under consideration for collocation will undertake to pay market rent or other market compensation for collocation;
  - b. The site on which collocation is being considered, taking into



consideration reasonable modification or replacement of a facility, is able to provide structural support;

- c. The collocation being considered is technologically reasonable, e.g., the collocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like; and
- d. The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the City, taking into consideration the intent and purpose of this Section and the several standards contained in subsection D. of this Section.

3. *Requirements for Collocation.*

- a. A special land use permit for the construction and use of a new wireless communication facility must not be granted unless and until the applicant demonstrates that a feasible collocation is not available for the coverage area and capacity needs.
- b. All new and modified wireless communication facilities must be designed and constructed so as to accommodate collocation.
- c. The policy of the City is for collocation. Thus, if a party who owns or otherwise controls a wireless communication facility fails or refuses to alter a structure so as to accommodate a proposed and otherwise feasible collocation, such facility must thereupon and thereafter be deemed to be a nonconforming structure and use, and must not be altered, expanded, or extended in any respect.
- d. If a party who owns or otherwise controls a wireless communication facility fails or refuses to permit a feasible collocation, and this requires the construction or use of a new wireless communication support structure, the party failing or refusing to permit a feasible collocation must be deemed in direct violation and contradiction of the policy, intent and purpose of the City, and, consequently such party must take responsibility for the violation, and must be prohibited for receiving approval for a new wireless communication support structure within the City for a period of five years from the date

of the failure or refusal to permit the collocation. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in this context, means a demonstration that enforcement of the five year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services, or that such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

4. *Incentive.* Review of an application for collocation, and review of an application for a permit for use of a facility permitted under subsection C.1.a. of this Section must be expedited by the City.

- I. *Removal.*

1. A condition of every approval of a wireless communication facility must be adequate provision for the removal of all or part of the facility by users and owners upon the occurrence of one or more of the following events:
  - a. When the facility has not been used for one hundred and eighty days or longer. For purposes of this Section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission or reception of radio signals) must be considered as the beginning of a period of nonuse; or
  - b. Six months after new technology is available at a reasonable cost as determined by the municipal legislative body, which permits the operation of the communication system without the requirement of the support structure, or with a support structure that is lower or more compatible with the area.
2. The situations in which removal of a facility is required, as set forth in subsection I of this Section, may be applied and limited to portions of a facility.
3. Upon the occurrence of one or more of the events requiring removal, specified in subsection I of this Section, the parcel owner or persons who have used the facility must immediately apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition and removal,

restoring the premises to an acceptable condition as reasonably determined by the Building Official.

4. If the required removal of a facility or a portion thereof has not been lawfully completed within sixty days of the applicable deadline, and after at least thirty days' written notice, the City may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn, collected, or enforced from or under the security posted at the time application was made for establishing the facility.
5. The person who has used the facility must immediately notify the City Clerk in writing if and as soon as the use of a facility ceases.

J. *Effect and Approval.*

1. Final approval under this Section is effective for a period of six months.
2. If construction of a wireless communication facility is commenced within two miles of the land on which a facility has been approved, but on which construction has not been commenced during the one year period of effectiveness, the approval for the facility that has not been commenced must be void thirty days following notice from the City of the commencement of the other facility unless the applicant granted approval of the facility which has not been commenced demonstrates that it would not be feasible for it to collocate on the facility that has been newly commenced.

## SECTION 9.12 PROHIBITED MATERIALS IN RESIDENTIAL ZONING DISTRICTS

No junk or waste materials, building materials, parts of motor vehicles, or parts of machines or equipment not generally suited for use on the premises may be kept or stored outside a building or structure except.

## SECTION 9.13 FRONTAGE ON PUBLIC STREET REQUIRED

The development of all parcels in the City of Berkley must be predicated on having frontage on a public street. Said frontage must be in compliance with the provisions

of this ordinance and any other applicable code or ordinance, and all resulting parcels must meet all of the minimum requirements for area, width, and depth of the applicable zoning district, Oakland County Health Department requirements for on-site sewage disposal systems or water supply, where a public water system is not available, and subject to the requirements of the City Subdivision and Combination of Land Ordinance.

## SECTION 9.14 SPECIAL EVENTS, SEASONAL SALES, AND OTHER TEMPORARY USES

- A. The Zoning Administrator may grant temporary use of land and structures for special events and other temporary uses, subject to the following general conditions.
1. Adequate off-street parking must be provided.
  2. The applicant must specify the exact duration of the temporary use.
  3. Electrical and utility connections must be approved by the Zoning Administrator.
  4. The applicant must obtain a Peddlers' and a Solicitors' license with the City Clerk's Office under Chapter 30, Article 9 of the Berkley Code of Ordinances when the proposed temporary use falls under the provisions of that Chapter.

The following conditions apply to specific temporary uses:

- B. Special Events.
1. A community special event includes an event or promotion that is not limited to a single business. Community special events include but are not limited to the following: art fairs, sidewalk sales, and festivals. Community special event permits must be available to business, civic, or service organizations.
  2. A community special event permit is valid for no more than one week.
  3. The organization is required to apply for a community special event permit and pay any associated fees per the fee schedule set by City Council. A list of participating businesses and organizations must be

on file at the City prior to approval of a community special event permit. Upon receipt of a complete application, an applicant must be notified of the City's disposition.

4. Special events applications are administered by the City Clerk and require the approval of the City Council.

C. Seasonal Sales.

1. The maximum duration is forty-five days, up to four times per calendar year.
2. The sales area must not be located in or adjacent to any developed residential area.
3. All waste, including stumps, branches, and other debris must be completely removed from the site within twenty-four hours of the sale ending.

D. Promotional Events and Sidewalk Display

1. The maximum duration is ninety days, up to three times per year.
2. Must be located in a non-residential zoning district.
3. The display area must not cover more than fifty percent of the width of the sidewalk.

E. Carnival or Circus.

1. The maximum duration is ten days.
2. Must not be located in or adjacent to any parcel zoned or used for single family residential use, except at a place of worship, school, or municipal parcel.

## SECTION 9.15 EXTERIOR APPLIANCES

A. *Location.* Exterior appliances are prohibited from being located in the front yard or within a recorded easement or right-of-way that would prohibit, hinder, or disrupt utilities, drainage, access, etc.

1. Residential uses.

- a. Power generators and other exterior appliances must be located in the rear yard at least six feet from the side parcel line.
  - b. Air conditioning units may be permitted in the side yard under the following conditions:
    - i. The unit must be at least eighteen inches from the side parcel line.
    - ii. The unit must be at least twelve feet from the adjacent dwelling.
    - iii. The unit must be screened on at least three sides by opaque fencing or landscaping, measuring at least four feet in height from grade. The principal structure may be considered one side of screening.
    - iv. Screening must be provided from street view and facing the closest adjacent parcel.
    - v. Chain link fencing is not permissible as a screening material for exterior appliances.
2. Nonresidential uses.
- a. At grade.
    - i. Exterior appliances must be at least five feet from a parcel line.
    - ii. Power generators must be enclosed in a sound-attenuating enclosure, if located adjacent to residential parcel.
    - iii. Exterior appliances must be screened on at least three sides with opaque fencing or landscaping, measured at least four feet in height from grade. The principal structure may be considered one side of screening. Screening must be provided from street view and facing the closest adjacent parcel. Chain link fencing is not permissible as a screening material for exterior appliances.
  - b. Rooftop.

- i. Exterior appliances located on the rooftop of commercial buildings must be screened so as to not be visible from street level. Screening materials must be consistent with the color, materials, design, and aesthetic of the building.
    - c. The Planning Commission may modify the location of the exterior appliances on non-residential properties during the site plan review if the applicant can demonstrate an alternative location does not negatively impact adjacent properties, or pedestrian or vehicular traffic.
- B. *Restrictions.* Generator testing is permitted Monday through Friday, 9 a.m. through 6 p.m.
- C. *Nonconforming exterior appliances.*
  - 1. Nonconforming exterior appliances include appliances that were lawfully installed but are no longer in compliance with the provisions of this article. Screening of those nonconforming appliances, such as fencing or landscaping, are not considered part of the nonconformity.
  - 2. Nonconforming exterior appliances may be continued, maintained, and replaced.
  - 3. If the structure that is served by a nonconforming exterior appliance is damaged or partially destroyed by less than fifty percent of its market value, the exterior appliances may be restored, and its previous use continued. If the structure that is served by a nonconforming exterior appliance is damaged or partially destroyed by fifty percent or more than fifty percent of its market value, then any restoration or new construction must comply with all current building and zoning codes.

## SECTION 9.16 COVERED PATIOS, GAZEBOS, PERGOLAS, PAVILIONS, AND SIMILAR TYPE "OPEN-AIR" STRUCTURES

- A. Covered patios, gazebos, pergolas, pavilions, and similar type "open-air" structures are permitted on single-family residential lots, units, or parcels for accessory recreation or leisure use provided they meet the following requirements:

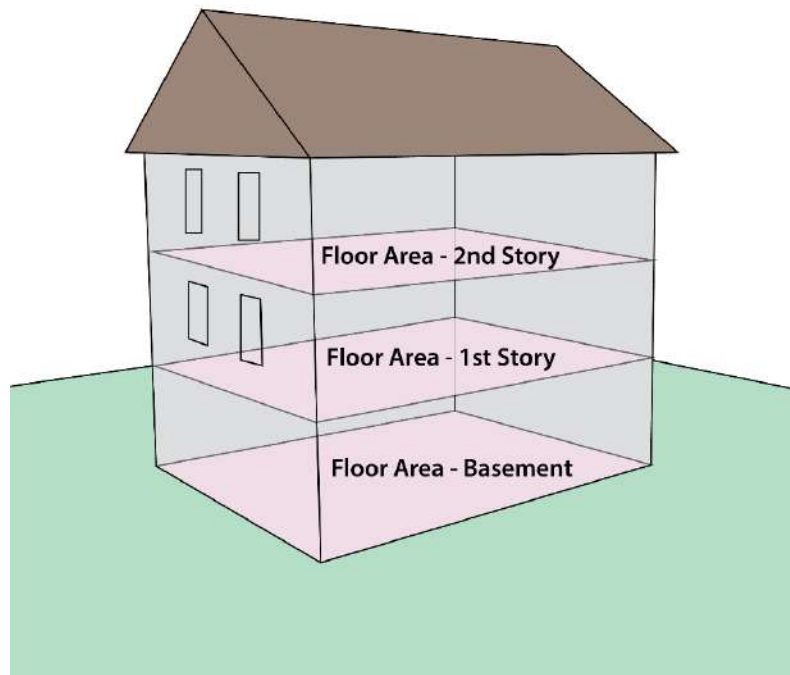
1. The "open-air" structures must not be enclosed or partially enclosed with walls.
2. The structures must be located in a manner to meet the required setbacks and locations for an accessory structure, however, does not require separation distance from the principal structure or swimming pool.
3. The structures must not exceed twelve feet in height.
4. The area of these structures is not counted towards the allowance for accessory building area, towards the lot coverage, or towards the number of accessory buildings permitted.

## SECTION 9.17 CALCULATING GROSS FLOOR AREA

- A. *Gross Floor Area:* The gross floor area is the sum of the gross horizontal areas of all the floors of a building, measured from the exterior walls or from the centerline of walls separating two buildings. In particular, floor area includes basement space; elevator shafts or stairwells; floor space for mechanical equipment, penthouses, balconies, mezzanines, enclosed porches, and accessory buildings; attic floor space (whether or not floor has been laid) providing structural headroom of seven feet and six inches. Floor area must not include elevator or stair bulkheads, accessory water tanks, or cooling towers; uncovered steps, or attic floor space less than seven feet and six inches high.
- B. *Floor area, usable (for the purposes of computing parking).* That area used for, or intended to be used for, the sale of merchandise or services or for use to serve patrons, clients, or customers. One-half of such floor area that is used principally for the storage or processing of merchandise, such as hallways, basements, stairways, and elevator shafts, or for utilities or sanitary facilities, must be excluded from this computation of usable floor area. Measurement of usable floor area is the sum of the horizontal areas of all the floors of a building, measured from the interior faces of the exterior walls.
- C. *Floor area, usable (for the purpose of determining building size).* All horizontal floor area within the enclosed living space of a dwelling unit, measured from the interior faces of the exterior walls; provided that usable

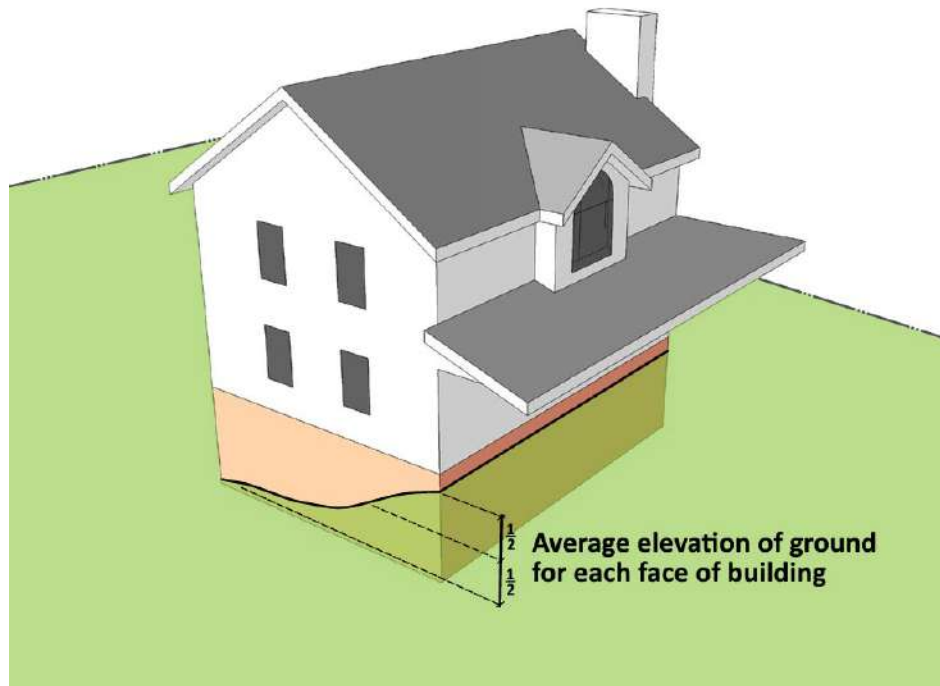


floor area does not include basements, cellars, unfinished attics, garages, breezeways, enclosed and unenclosed porches, space used for off-street parking, elevators, accessory structures, and utility rooms.



## SECTION 9.18 CALCULATING GRADE

The building grade is the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade must be determined by computing the average elevation of the ground for each face of the building and taking the average of several averages.

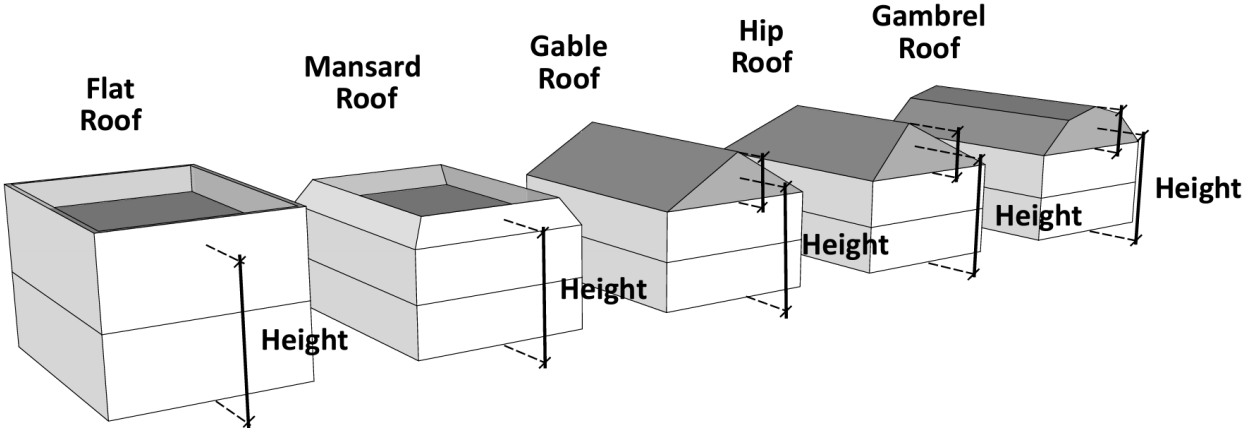


## SECTION 9.19 CALCULATING BUILDING HEIGHT

- A. *Building height:* The height of a building is measured from the average established grade to a point halfway between the eaves and the peak of the roof. Buildings with flat roofs must be measured from grade to the highest point of the roof's surface. In measuring the height of a building, the following must be excluded: chimneys, cooling towers, flagpoles, mechanical penthouses, tanks, water towers, radio towers, ornamental cupolas, domes, spires, and parapet walls not exceeding four feet in height.
1. *Gable roof:* A roof sloping downward in two parts at an angle from a central ridge, so as to leave a gable at each end. A gable roof must have an angle of at least fourteen degrees (or a 3:12 pitch).
  2. *Gambrel roof:* A roof sloping downward in two parts from a central ridge each side of which has a lower slope angled not less than thirty degrees (or a 7:12 pitch) above a steeper one angled not greater than sixty degrees (or a 20:12 pitch).
  3. *Hip roof:* A roof sloping downward in four parts (ends and sides) from a central ridge. A hip roof must have at least a 3:12 slope.
  4. *Mansard roof:* A roof sloping downward in four parts (ends and sides) from a central point. Each side of which has a lower slope angled not

greater than a 3:12 pitch above a steeper one angled not greater than a 60:12 pitch.

- 5. *Shed roof*: A roof having a single slope with at least a 3:12 pitch.
- 6. *Flat roof*: A roof with less than a 3:12 pitch.



# Article 10

## SPECIAL LAND USES

### SECTION 10.01 INTENT

This Article provides a set of procedures and standards for special uses of land or structures, which, because of their unique characteristics, require special consideration in relation to their location and compatibility with adjacent properties, other permitted uses, and the City of Berkley as a whole.

The regulations and standards, herein, allow the Planning Commission to determine the appropriateness of a given Special Land Use in relationship to its: location; design; size; intensity; impact on traffic, public services, utilities, and effect on natural features and resources. This Article also authorizes the Planning Commission to impose reasonable conditions on a Special Land Use that are necessary to ensure the protection of public health, safety, convenience, and general welfare of the community.

### SECTION 10.02 PROCEDURES

- A. *Applicant.* An applicant must be the owner of the land, an agent of the owner, or a person having an interest in the land for which the Special Land Use approval is sought. In all cases, the parcel owner is required to give written consent of the Special Land Use application.
- B. *Application.*
  1. If the proposed special use involves the construction of a new building, construction of additional parking, or other substantial renovations to an existing building that requires an architect's or engineer's seal, site plan approval must also be required as set forth in Article 14, Site Plan Review. The Site Plan Review application must be applied for concurrently with the submittal of the Special Land Use application. The Site Plan Review application will be reviewed by the Planning Commission after or concurrently during the meeting where the Special Land Use is approved. All application forms must be supplied by the City of Berkley.

2. If the proposed special use will utilize an existing building, without the need for substantial renovations, then no additional site plan submittal will be required. However, a legible sketch plan illustrating the proposed activity and a narrative describing the proposed use and how it meets the standards outlined in Section 15.03 of this Ordinance is required.
  3. Any additional information that is necessary for the City to complete the review. Additional information the Zoning Administrator or Planning Commission finds necessary and may include but is not limited to natural features, stormwater management, surrounding land uses, public facilities/services, public utilities, and traffic.
- C. *Public Hearing.* Upon initiation of a Special Land Use review, a public hearing on the proposed Special Land Use must be scheduled before the Planning Commission. Notice of the hearing must be given in accordance with the provisions of Section 3.10, Public Notice Requirements.
- D. *Planning Commission Review and Recommendation.* Following the public hearing, the Planning Commission must identify and evaluate all factors relevant to the petition and report its findings and recommendations to the City Council. The Planning Commission may recommend approval, approval subject to conditions, or denial of a proposed Special Land Use as follows:
1. *Approval.* The Planning Commission may recommend approval of the Special Land Use if it is determined to be consistent with the standards and requirements of Section 10.03 of this Ordinance.
  2. *Conditional Approval.* The Planning Commission may recommend approval of the proposed Special Land Use subject to conditions, as set forth in Section 15.04 of this Ordinance.
  3. *Denial.* The Planning Commission must recommend the denial of an application if the Special Land Use does not comply with all the standards and requirements of this Ordinance or any provisions specific to the Zoning District that the proposed use is permitted by right.
  4. *Postpone.* The application may be postponed if it is determined to be incomplete, if the applicant has not fully responded to the deficiencies identified in the review, or if the Planning Commission determines more time is needed to fully evaluate the Special Land

Use request. When postponing an application, the application must be tentatively rescheduled for a future meeting date.

- E. *City Council Review and Action.* Following receipt of the findings and recommendation of the Planning Commission, the City Council must consider the proposed Special Land Use. A public hearing on the proposed Special Land Use must be scheduled in accordance with Section 3.10 of this Ordinance.
- F. *Notice of Decision.* The decision on a Special Land Use must be incorporated in a statement of findings and conclusions relative to the Special Land Use which specifies the basis for the decision and any conditions imposed in accordance with the Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, MCL 125.3101 *et seq.*, as amended.

### SECTION 10.03 STANDARDS FOR SPECIAL LAND USES

The Planning Commission must consider all of the following general standards and any standards established for a specific use when reviewing a special use request.

- A. *Compatibility with Adjacent Uses.* The Special Land Use must be designed and constructed in a manner harmonious with the character of adjacent properties and the surrounding area, as compared to the impacts of permitted uses.
- B. *Compatibility with the Master Plan.* The proposed Special Land Use must be compatible and in accordance with the goals and objectives of the City of Berkley Master Plan and any associated sub-area and corridor plans, including the Downtown Master Plan.
- C. *Traffic Impact.* The proposed Special Land Use must be located and designed in a manner that will minimize the impact of traffic, taking into consideration the following:
  - 1. Pedestrian access and safety,
  - 2. Vehicle trip generation,
  - 3. Types of traffic,
  - 4. Access location and design,

5. Loading and unloading;
6. Circulation,
7. Parking design,
8. Street and bridge capacity, and
9. Traffic operations at nearby intersections and access points.

Efforts must be made to ensure that multiple transportation modes are safely and effectively accommodated in an effort to provide alternate modes of access and alleviate vehicular traffic congestion.

- D. *Impact on Public Services.* The proposed Special Land Use must be adequately served by essential public facilities and services, such as streets, pedestrian or bicycle facilities, police and fire protection, drainage systems, refuse disposal, water and sewage facilities, and schools. Such services must be provided and accommodated without an unreasonable public burden.
- E. *Compliance with Zoning Ordinance Standards.* The proposed Special Land Use must be designed, constructed, operated, and maintained to meet the stated intent of the zoning districts and must comply with all applicable ordinance standards.
- F. *Impact on the Overall Environment.* The proposed Special Land Use must not unreasonably impact the quality of natural features and the environment in comparison to the impacts associated with typical permitted uses.
- G. *Special Land Use Approval Specific Requirements.* The general standards and requirements of this Section are basic to all uses authorized by Special Land Use Approval. The specific and detailed requirements relating to particular uses and area requirements must also be satisfied for those uses.
- H. The following factors will also be considered by the Planning Commission when reviewing a Special Land Use request.
  1. The nature and character of the activities, processes, materials, equipment, or conditions or operation, either specifically or typically associated with the use.
  2. Vehicular circulation and parking areas.

3. Outdoor activity, storage, and work areas.
4. Hours of operation.
5. Production of traffic, noise vibration, smoke, fumes, odors, dust, glare, light, or other public nuisances.

#### SECTION 10.04 CONDITIONS OF APPROVAL

- A. *Authority.* The City Council and Planning Commission, in their review of a request for Special Land Use approval, may at its discretion impose additional conditions when it is determined that such increases in standards or additional conditions are required to achieve or assure compatibility with adjacent uses and structures or to implement the Master Plan.
- B. *Scope.* Conditions that are imposed by the Planning Commission or City Council must accomplish the following:
  1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration, residents, and landowners immediately adjacent to the proposed land use or activity, and the community as a whole;
  2. Be related to the valid exercise of the police power and purposes that are affected by the proposed use or activity;
  3. Be necessary to meet the intent and purpose of this Section;
  4. Be related to the standards established in this Section for the land use or activity under consideration; and
  5. Be necessary to ensure compliance with those standards.
- C. The conditions imposed with respect to the approval of a Special Land Use or activity must be written in the record of the approval action and must remain unchanged except upon the mutual consent of the approving authority and the landowner. The City must maintain a record of changes granted under the conditions of initial approval.
- D. In approving a Special Land Use, the City Council may require a performance guarantee per Section 3.09 of this Zoning Ordinance.



## SECTION 10.05 EXTENSIONS, AMENDMENTS, EXPANSIONS, AND CHANGES IN USES

The following provisions apply when there is an amendment or a proposed expansion to an approved Special Land Use or when there is a proposed change from one Special Land Use to another.

- A. *Extensions.* Special Land Use approval is valid for a period of two years from the date of final action by the City Council within which time all necessary building or construction permits must be secured, and substantial construction completed. A single extension may be granted for a period of no more than two years, as determined by the Zoning Administrator. The request for an extension must be made in writing to the Zoning Administrator and include a statement of why the extension is necessary, and confirmation of the ability to complete construction in conformity with the Special Land Use approval and, if applicable, final site plan as approved.
- B. *Amendments.* Any applicant who has been granted Special Land Use approval must notify the Zoning Administrator of any proposed amendment to the approved site plan. The Zoning Administrator must determine whether a proposed amendment requires new Special Land Use approval.
- C. *Expansions.* An expansion of any use requiring a Special Land Use approval that results in an increase of ten percent or more of the building, parking, paved areas, or site area requires resubmittal in the manner described in this Article. A separate Special Land Use approval is required for each use requiring Special Land Use approval on a lot, or for any expansions of a Special Land Use approval.
- D. *Change in Use.* The applicant is responsible for informing the Zoning Administrator of any change in an approved use, operations, or activities prior to any such change. The Zoning Administrator must determine if a new Special Land Use approval is required. A significant change means any departure from the operation or use described in the approved application or any change that may cause external impacts such as additional traffic, hours of operation, noise, additional outdoor storage, or display.

## SECTION 10.06 INSPECTIONS

The City may make periodic investigations of developments authorized by Special Land Use Permits to determine continued compliance with all requirements imposed by the Planning Commission, City Council, and this ordinance. Noncompliance with the requirements and conditions approved for the Special Land Use constitutes grounds to terminate said approval following a public hearing.

## SECTION 10.07 REVOCATION

The revocation of a Special Land Use may occur if its recipient fails to abide by its terms, conditions, or development agreement. The revocation procedure is as follows:

- A. If the City receives credible information that the Special Land Use Permit or conditions of approval have been violated, the Zoning Administrator must prepare a report in writing specifying (i) the specific factual details of such violation(s); and (ii) any other information or recommendation relevant to a proper determination by the City Council as to the nature of such violation(s) and the appropriate action to be taken by the City.
- B. The Zoning Administrator, after the investigation and based on the facts discovered, will determine if the case goes forward. If the case does not go forward, the Zoning Administrator must give the approving body a written report as to why that determination was made. If the case goes forward, the process in subsections C-H below must be followed.
- C. The Zoning Administrator must file the original report prepared under Section 10.07(A) with the City Council and serve a copy of such report upon the owner of the parcel for which the Special Land Use Permit was granted or its authorized agent or employee, personally or by registered mail.
- D. After the report has been filed with the City Council, the Zoning Administrator must set a date for a hearing before the City Council on the alleged violation(s) for a determination by the City Council as to whether or not the City Council must revoke the Special Land Use Permit. Notice of this hearing must be served by the Zoning Administrator upon the owner of the parcel for which the Special Land Use Permit was granted or its authorized agent or employee, personally or by registered mail, not less than ten days

before the scheduled hearing date, and such notice must contain the following:

1. Notice of proposed action;
  2. Reason for the proposed action;
  3. Date, time, and place of hearing;
  4. A statement that the parcel owner may present evidence and testimony and confront adverse witnesses;
  5. A statement that the parcel owner has the right to be represented by legal counsel at the hearing.
- E. At all such hearings, the parcel owner has the legal right to defend against the allegations made by way of confronting any adverse witnesses, by being allowed to present live witnesses on their own behalf, by being allowed to present other evidence on their own behalf, and by being allowed to present arguments personally or through legal counsel in their own behalf.
- F. The City Council must prepare a written statement of its findings, which may be formal or informal in nature, after the conclusion of all such hearings. Such statement of findings may be embodied in a resolution adopted by the City Council.
- G. If the City Council determines after due notice and proper hearing that competent, material, and substantial evidence exists that a violation of the Special Land Use Permit and the conditions of approval has been committed by a parcel owner or that, even if no violation has been demonstrated, nevertheless the interests of public health, safety, or welfare warrant that the City Council revoke the Special Land Use Permit issued to the parcel, the City Council may revoke the Special Land Use Permit.
- H. *Criteria for revocation.* The City Council may revoke the Special Land Use Permit upon a determination by the City Council or Planning Commission that based upon competent material and substantial evidence presented at the public hearing, any of the following exists:
1. Violation of the Special Land Use Permit, any of the conditions of the Special Land Use, and any provisions of a development agreement attached to the Special Land Use Permit.

2. Abandonment of the Special Land Use by the parcel owner.
3. Maintenance of a nuisance upon the premises, including, but not limited to, any of the following:
  - a. Existing violations of building, zoning, health, fire, or regulatory codes.
  - b. A pattern of conduct on the parcel which violates the terms of the Special Land Use Permit.
  - c. A pattern of conduct on the parcel which creates a public nuisance.
  - d. Perjury or any material misrepresentation of information in any application required or hearing held pertaining to the grant, renewal, or revocation of any license or permit.

# ARTICLE 11

## SIGN REGULATIONS

### SECTION 11.01 INTENT

- A. The intent of this Article is to regulate the location, size, construction, and manner of display of signs and outdoor advertising in order to minimize their harmful effects on public health, safety, and welfare. While this Article recognizes that signs and outdoor advertising are necessary to satisfy the needs of sign users for adequate identification and communication, failure to regulate them may lead to poor identification of individual businesses, deterioration and blight of the business and residential areas of the City, conflicts between different types of land use, reduction in traffic safety to pedestrians and motorists, and other impacts that are contrary to the purposes, intent, and interests identified in this Section.
- B. The following municipal interests are considered by the City to be compelling government interests. Each interest is intended to be achieved under this Article in a manner that represents the least restrictive means of accomplishing the stated interest, and in all events is intended to promote an important government interest that would not be effectively achieved absent the regulations in this Article. Regulating the location, size, construction, and manner of display of signage in the most narrowly tailored manner represents the least restrictive means of addressing the targeted government interests of avoiding unsafe and nuisance-like conditions while maintaining and improving pedestrian and vehicular safety and efficiency; character and quality of life; economic development and parcel values; parcel identification for emergency response and wayfinding purposes; and unique character of areas of the City.
1. *Public Safety.* Maintaining pedestrian and vehicular safety are predominant and compelling government interests throughout the City, with particular emphasis on the safety of pedestrians. The sidewalk network provides facilities for pedestrians situated between vehicular streets and private properties throughout the City.

Since most signage on the private parcel is intended and designed to attract the attention of operators of motor vehicles, thereby creating

distractions that can jeopardize traffic and pedestrian safety, this ordinance is intended to regulate signs so as to reduce such distractions and, in turn, reduce the risk of crashes, parcel damage, injuries, and fatalities, particularly considering the rate of speed at which the vehicles are traveling in the districts identified in this article.

This Article is also intended to protect public safety by requiring signs that are poorly maintained or structurally unsafe to be repaired or removed to protect against fallen signs or deteriorating sign debris from entering improved roadways and sidewalks causing dangerous conditions for all modes of transportation, including pedestrians.

- a. The City encourages signage that will inform motorists and pedestrians of their desired destinations without conflicting with other structures and improvements. These interests are legitimately supported by limiting the maximum size of signage, providing setbacks, and specifying minimum-sized characters for efficient perception by motorists and pedestrians, while minimizing distractions that could put pedestrians at risk.
  - b. In some circumstances, adjusting the size, setback, and other regulations applicable to signage may be important to avoid confusion and promote clarity where vehicular speeds vary on commercial thoroughfares.
  - c. In multi-tenant buildings and centers, it is compelling and important to provide distinct treatment with a gradation of regulation for individual identification depending on base sign size, amount of street frontage, and the like, all intending to provide clarity to alleviate confusion and thus additional traffic maneuvers, provide a minimum size of characters to allow identification, and maintain maximum-sized overall signage to prevent line-of-sight issues.
  - d. Maximum size and minimum setback of signage is compelling and important to maintain clear views for both traffic and pedestrian purposes.
2. *Character and Quality of Life.* Achieving and maintaining attractive, orderly, and desirable places to conduct business, celebrate civic events, entertain people, and provide for housing opportunities is

directly related to the stability of parcel values needed to provide and finance quality public services and facilities within the City. This Article intends to allow signs that are of sufficient, but not excessive, size to perform their intended function as necessary to provide and maintain the City's character and support neighborhood stability. Signs that contribute to the visual clutter, contribute to the potential conflict between vehicular and pedestrian traffic, and distract from scenic resources and views, will be prohibited in efforts to preserve the character, aesthetic qualities, and unique experience within the City. It is also the intent of this Article that signs will reflect the character of unique districts as may be established by the City's Master Plan, other adopted plans, the Zoning Article, or this Article.

3. *Economic Development and Parcel Values.* The establishment of the restrictions in this Article has a direct relationship to creating stability and predictability, allowing each private interest to secure reasonable exposure of signage, and thus promoting business success. The application of the restrictions in this Article allows businesses to reasonably command attention to the content and substance of their messages while concurrently allowing the promotion of other visual assets, including (without limitation) landscaping and architecture, all of which contribute to economic development and parcel value enhancement.
4. *Avoidance of Nuisance-Like Conditions.* Due to the concentration of people and activities, there is a potential for, and it is a compelling interest to avoid, blight, physical clutter, and visual clutter in the City. The result of these conditions leads to diminished parcel values, reduced attractiveness of the community, and reduced quality of life within the districts. Minimum regulations that substantially relate to signage are important and necessary for the maintenance and well-being of positive conditions, good character, and quality of life in the City. Ultimately, these regulations are compelling and important for the protection of all police power values.
  - a. An excessive number of signs in one location creates visual blight and clutter, as well as confusion for the public. Thus, limiting the number of signs on properties, establishing setbacks from parcel lines, and requiring reasonable spacing

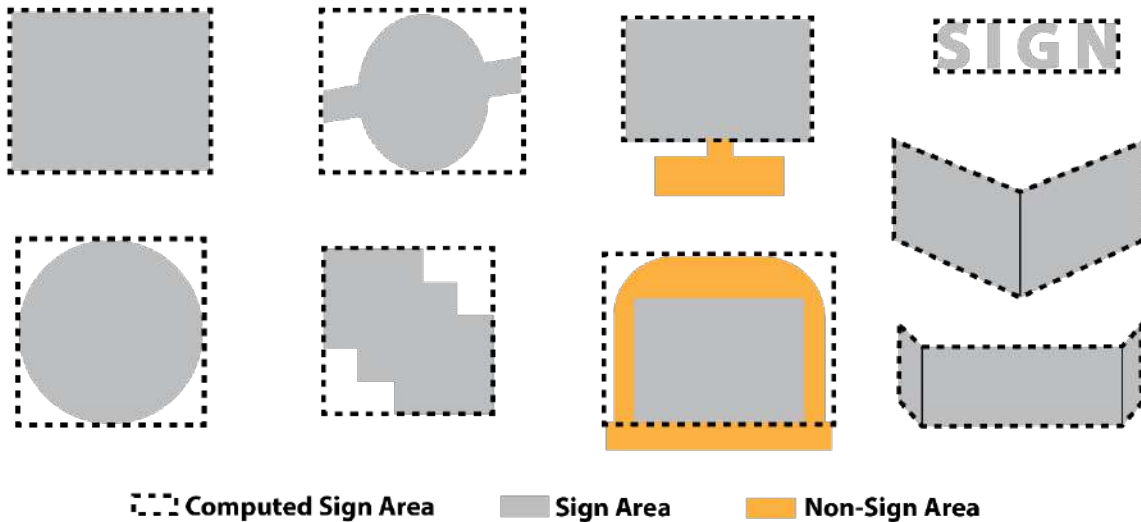
- between signs are compelling interests that can be directed with minimum regulation.
- b. Signs that are too large can lead to confusion, undermine the purposes of the signs, and ultimately lead to physical and visual clutter. Establishing maximum sizes can be the subject of clear and effective regulations that address this compelling and important interest.
  - c. Requiring maintenance specifications for signs can minimize the creation of blight and clutter due to the deterioration of signs that are not durable or otherwise well-constructed, and such regulations would be consistent with construction codes for other structures.
  - d. There is a compelling governmental interest that signs avoid glare, light trespass, safety issues, and skyglow. The selection of proper fixture types, and location, use of supportive lighting technology, and control of light levels in a reasonable fashion is consistent with regulations that are narrowly tailored to achieve the City's interests.
5. *Parcel Identification for Emergency Response and Wayfinding Purposes.* Locating a business or residence by police, fire, and other emergency responders can be a matter of life and death, and thus it is a compelling interest to ensure that proper, understandable, unambiguous, and coordinated signage be permitted and required, and specifications for such purposes can be accomplished in a simple and narrow manner, as required by Chapter 106, Article V Numbering of Buildings of the City of Berkeley's Code of Ordinances. Wayfinding for vehicular and pedestrian purposes is also a compelling interest to avoid confusion in public rights-of-way, and unnecessary intrusions on private parcel. Sign specifications for such wayfinding can be coordinated with parcel identification for such emergencies and other purposes.
6. *Maintaining Unique Character of Areas of the City.* Acknowledge the unique character of certain areas and districts, and establish special time, place and manner regulations that reflect the unique aesthetic, historical, and cultural characteristics of these areas and districts.



7. *Protection of the Right to Receive and Convey Messages.* The important governmental interests and regulations contained in this Article are not intended to target the content of messages to be displayed on signs, but instead seek to achieve *non-speech* objectives. In no respect do the regulations of signage prohibit a parcel owner or occupant from an effective means of conveying the desired message. Nothing in this Article is intended to prohibit the right to convey and receive messages, specifically noncommercial messages such as religious, political, economic, social, philosophical, or other types of speech protected by the First Amendment of the United States Constitution.

## SECTION 11.02 SIGN COMPUTATION

- A. *Sign area.* The area of a sign face is the smallest square, circle, rectangle, triangle, or combination of these that encompass the extreme limits of the writing, representation, emblem, or other display that forms an integral part of the background of the sign. The sign face must not include any supporting framework. In the case of awning signs, the cumulative sign area on all three sides of the awning must be considered to be one sign face.
- B. *Height.* The height of a sign is the distance from the base of the sign at ground level to the top of the highest attached component of the sign. Any berm or grading at the base of the sign will be included in the height, taking the measurement from the base of the berm or grading.



### SECTION 11.03 EXEMPT SIGNS

- A. The following signs are permitted in all districts and are generally exempt from the regulations of this Article.
1. Any public notice or warning required by a valid and applicable federal, state, or local law, regulation, or ordinance.
  2. Any sign inside a building that is not attached to a window or door and is not legible from a distance of more than three feet beyond the building where such sign is located.
  3. Signs mounted to a wall, mailbox, or lamppost not exceeding two square feet in size, located on single family residential lots only.
  4. Flags, with a limit of three flags per location.
- B. The following signs are permitted in non-residential districts and are exempt from the regulations of this Article.
1. Barber poles, not exceeding twelve inches in diameter and eight feet in height.
  2. Fuel pumps.
  3. Vehicle signs.
  4. Window signs, not exceeding twenty-five percent of the glass area.

## SECTION 11.04 PROHIBITED SIGNS

All signs not expressly permitted under this Article or exempt from regulation in accordance with Section 11.03 are prohibited. Prohibited signs include:

- A. Off-premises advertising signs.
- B. Animated signs.
- C. Electronic messaging signs.
- D. Blade signs.
- E. Beacons.
- F. Pennants.
- G. Signs that mimic official traffic control signs and devices.
- H. Illuminated signs that shine light directly onto traffic or that shine directly onto adjacent parcel.
- I. Illuminated signs that have blank sign faces.
- J. Sign support structures that do not support a sign or sign face.
- K. Any sign unlawfully installed, erected, or maintained.
- L. Signs installed in the public right-of-way without a permit from the controlling agency of the street in question.

## SECTION 11.05 GENERAL STANDARDS

- A. *Safety.* All signs must meet the following requirements:
  - 1. All signs must be erected and maintained in compliance with all applicable state construction codes, and other applicable ordinances governing construction within the City. In the event of conflict between this Article and other laws, the most restrictive must govern.
  - 2. All signs must be placed so as to not interfere with the visibility or effectiveness of any official traffic sign or signal; driver vision at any access point or intersection; or pedestrian movement on any public sidewalk. No sign may be erected or maintained which imitate, or may

be confused with or construed as, an official traffic sign, signal, or device, in size, color, lettering, or design any traffic sign or signal or other word, phrase, symbol, or character in such manner as to interfere with, mislead, confuse, or create a visual impediment or safety hazard to pedestrian or vehicular traffic.

3. No sign may be established or maintained on any parcel that will cause a traffic hazard by obstructing the view of drivers. Signage must also comply with the requirements of the Road Commission for Oakland County and Michigan Department of Transportation. No sign may be located within, project into, or overhang a public right-of-way, except as otherwise permitted herein.
  4. No sign may be erected, relocated, or maintained so as to obstruct firefighting or prevent free access to any door, window, or fire escape.
  5. Within all non-residential zoning districts, the street address must be displayed in a manner that complies with Chapter 106, Article V Numbering of Buildings of the City of Berkley's Code of Ordinances. Up to four square feet of the area devoted to the street address may be excluded from the allowable sign area.
  6. Setbacks.
    - a. No monument, pole, or pylon sign, except for those permitted in the public right-of-way must have a setback less than three feet from any parcel line.
    - b. No sign shall be erected within a ten-foot radius of a driveway/sidewalk intersection or within a five-foot radius of a sidewalk/sidewalk intersection.
- B. *Framework.* All signs must be designed so that the supporting framework, other than the supporting poles on a freestanding sign, is contained within or behind the face of the sign or within the building to which it is attached so as to be totally screened from view.
- C. *Illumination.* All signs which have illumination must meet the following standards:
1. *General Requirements.* If illumination is proposed, signs must be illuminated only by steady, stationary, shielded electrical light sources directed solely at the sign, or internal to it. All external lighting fixtures

used to illuminate a sign must be shielded to direct light towards the sign. All illuminated signs must comply with the current National Electric Code requirements.

2. *Traffic Hazards.* Sign illumination that could distract motorists or otherwise create a traffic hazard is prohibited.
3. *Facing Residential Properties.* Illuminated signs facing residentially-zoned or used properties must be turned off completely at 10:00 p.m. or close of business, whichever is later.
4. The illumination of all signs must not exceed 0.3 footcandles above ambient light levels based on illumination measurement criteria set forth in Table 11.05.

Table 11.05 Sign Area Versus Light Measurement Distance	
Area of Sign (Sq. ft.)	Light Measurement Distance (ft.)
10	32
15	39
20	45
25	50
30	55
35	59
40	63
45	67
50	71
*For signs with an area in square feet other than those specifically listed in this table (e.g., 12 sq. Ft., 400 sq. Ft., etc.), the measurement distance may be calculated with the following formula: Measurement Distance = $\sqrt{\text{Area of Sign Sq. Ft.} \times 100}$	

## SECTION 11.06 PERMITTED SIGNS

Table 11.06 below indicates the zoning district or corridor where certain sign types are permitted. Regulations for specific sign types are in Sections 11.08, 11.09, and 11.10.

Table 11.06							
Permitted Signs by Zoning District							
District / Corridor	Awning	Monument	Pole / Pylon	Projecting	Roof	Wall	Portable
R-1 districts		Permitted				Permitted	
R-2		Permitted				Permitted	
R-M & R-M-H	Permitted	Permitted		Permitted		Permitted	
Community Centerpiece		Permitted				Permitted	
RC: <i>Greenfield</i>	Permitted	Permitted		Permitted		Permitted	Permitted
RC: <i>11 Mile</i>	Permitted	Permitted		Permitted		Permitted	Permitted
Downtown	Permitted	Permitted		Permitted		Permitted	Permitted
Woodward	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted
Gateway Corridor	Permitted	Permitted		Permitted	Permitted	Permitted	Permitted
Flex	Permitted	Permitted		Permitted		Permitted	Permitted
Cemetery		Permitted	Permitted				

## SECTION 11.07 PERMANENT SIGNS

Permanent signs are to be designated as either freestanding signs or building mounted signs. Freestanding signs include monument signs, pole signs, and pylon signs.

- A. All permanent freestanding signs must comply with the following regulations.

Table 11.07A				
Regulations for Freestanding Signs by Zoning District or Corridor				
District/ Corridor	Minimum Setback (ft)	Maximum Height (ft)	Maximum Area Per Side (sq. ft.)	Number of permitted signs per business, per street frontage
R-1 AB and CD	3	3.5	15	1
R-2	3	3.5	15	1
R-M & R-M-H	3	7	40	1

Table 11.07A				
Regulations for Freestanding Signs by Zoning District or Corridor				
District/ Corridor	Minimum Setback (ft)	Maximum Height (ft)	Maximum Area Per Side (sq. ft.)	Number of permitted signs per business, per street frontage
Community Centerpiece	3	7	50	1
RC: <i>Greenfield</i>	3	7	15' if 50' or less in lot width  40' if greater than 50' in lot width	1
RC: <i>11 Mile</i>	3	7	40	1
Downtown	3	7	40	1  None if the lot is less than 50' in width or the building is less than 10' from the ROW
Gateway Corridor	3	7	40	1  None if the lot is less than 50' in width or the building is less than 10' from the ROW
Woodward	3 for monument  5 for pole	20 for pole/pylon signs  7 for monument	50	1
Flex	3	7	40	1
Cemetery	3	7	50	1

- B. Building mounted signs include awning signs, projecting signs, roof signs, and wall signs. All permanent building mounted signs must comply with the following regulations.

Table 11.07B			
Regulations for Building Mounted Signs By Zoning District or Corridor			
District/ Corridor	Maximum Area (sq. ft.)	Number of permitted signs per business per frontage	Additional regulations
R-1 districts	6	1	Projecting and awning signs vertical clearance from ground level: 8 ft
R-2	6	1	
R-M & R-M-H	10% of adjoining wall up to 100 sq. ft.	1	
Cemetery	50 sq. ft.	1	Projecting and awning signs max projection into ROW: 5 ft
All other zoning districts	10% of adjoining wall up to 100 sq. ft.	1	
RC: <i>11 Mile</i>	10% of adjoining wall up to 100 sq. ft.	1	Roof sign max height: no higher than highest point of roof structure
Downtown	10% of adjoining wall up to 100 sq. ft.	1	
Gateway	10% of adjoining wall up to 100 sq. ft.	1	
Woodward	10% of adjoining wall up to 100 sq. ft.	1	
Flex	10% of adjoining wall up to 100 sq. ft.	1	
Cemetery	50 sq. ft.	1	

## SECTION 11.08 TEMPORARY AND PORTABLE SIGNS

### A. *Temporary Signs in Non-Residential Districts.*

1. All temporary signs in non-residential districts are subject to the regulations in Table 11.08A below:



Table 11.08A			
Temporary Signs In Non-Residential Districts			
Type of Sign	Ground	Banner	Portable
Maximum Number per Business	1	1	1
Maximum Height	6 ft	6 ft, if ground mounted Height of building facing the street on which the sign is located if wall-mounted	3.5 ft
Maximum Sign Area (per side)	20 sq. ft.	20 sq. ft.	6 sq. ft.
Minimum Setback from ROW	5 ft	5 ft, 0 ft. if wall-mounted	See item 2
Illumination Allowed	No	No	No
Permit Needed	Yes	Yes	No

2. *Requirements for Portable Signs:* Portable signs may be allowed when the following standards are met:
  - a. Signs are placed at public entrances to businesses, on either private parcel or the public sidewalk. For businesses with front and rear customer entrances, or frontages on two streets, one additional portable sign may be permitted at the second entrance.
  - b. No sign may be placed within a distance of ten feet from any fire hydrant, or twenty-five feet from any intersection.
  - c. The sign must be placed at least five feet from the curb. A clear path of five feet of pedestrian passage must be maintained at all times.
  - d. Each sign must be placed outside only during the hours when the business is open to the general public and must be stored indoors at all other times.
  - e. Portable signs on wheels are prohibited.

- f. Portable signs that are chained or otherwise secured to a building, bench, pole, or other permanent structure or furnishing are prohibited.

B. *Temporary Signs in Residential Districts.* All temporary signs in residential districts are subject to the regulations in Table 11.08B below:

Table 11.08B		
Temporary Signs in Residential Districts		
Land Use	Single Family & Two Family Homes	Non-Residential Uses
Type(s) Allowed	Ground	Ground or banner
Maximum Number per Parcel	4	1
Maximum Height	4 feet	
Maximum Sign Area	6 sq. ft. R-1 & R-2 10 sq. ft. R-M and R-M-H	25 sq. ft. for banners, 16 sq. ft. for ground signs
Minimum Setback	5 ft from all parcel lines	
Illumination Allowed	No	No
Permit Needed	No	Yes, if over 6 sq. ft.

C. *Standards for All Temporary Signs.*

1. Temporary signs must be constructed of durable, all-weather materials and designed to remain in place and in good repair so long as they remain on display.
2. For promotional events with a permit from the City, display of temporary banners and temporary signs mounted on building walls (temporary wall signs) are allowed for up to two continuous periods no greater than thirty days in a calendar year.

## SECTION 11.09 DESIGN, CONSTRUCTION, AND MAINTENANCE REQUIREMENTS

A. *Location.* Building mounted signs must not obscure windows, moldings, or other architectural details of a building.

- B. *Character.* Signs must be designed to be subordinate to the overall building composition and feature simple design character. A sign's lettering should be easy to read. Contrasting or complementary colors should be utilized to increase a sign's readability.
- C. *Materials.* Sign materials should be compatible with a building façade. Permanent durable materials are preferred, including glass, plastic with a matte finish, wood, metal, fabric, stone, or concrete. Highly reflective materials should be avoided.
- D. Building mounted signs for businesses in the Downtown and Gateway Zoning Districts that share the same building should be aligned with one another.

## SECTION 11.10 NONCONFORMING SIGNS

All nonconforming signs or their support structures:

- A. Must not be replaced by another nonconforming sign;
- B. Must not be structurally altered so as to prolong the life of the sign or so as to change the shape, size, type, or design of the sign;
- C. Must not be reestablished after the activity, business, or usage to which it relates has been discontinued for ninety days or longer;
- D. Must not be reestablished after damage or destruction if the estimated expense of reconstruction exceeds thirty-five percent of the appraised replacement cost.
- E. The words or symbols used, or the message displayed on a nonconforming sign may be replaced as long as the nonconformity is not increased.

# ARTICLE 12

## LANDSCAPING AND SCREENING

### SECTION 12.01 INTENT

The intent of this Section is to promote public health, safety, and welfare and the visual appearance and character of the City by requiring landscaping, screening, or both for each development for which site plan, condominium plan, and subdivision plat review is required. It is further the intent of this Section to achieve the following:

- A. Minimize noise, air, and visual pollution.
- B. Improve the overall aesthetics and appearance, divide the expanse of pavement, and define parking areas and vehicular circulation within off-street parking lots and other vehicular use areas.
- C. Require buffering of residential areas from more intense land uses and public street rights-of-way.
- D. Prevent soil erosion depletion and promote subsurface water retention.
- E. Encourage an appropriate mixture of plant material, such as evergreen and deciduous trees and shrubs, to protect against insect and disease infestation and produce a more aesthetic and cohesive design.
- F. Promote the integration of existing trees and vegetation in landscape plans.

### SECTION 12.02 APPLICATION OF REQUIREMENTS

These requirements apply to all uses for which Site Plan Review is required in Article 14. No site plan may be approved unless a landscape plan is provided that meets the requirements set forth herein and the requirements of Chapter 130, Article 2 – Trees, Bushes, and Shrubs of the Code of Ordinances for the City of Berkeley.

## SECTION 12.03 LANDSCAPE PLAN REQUIREMENTS

A separate landscape plan must be prepared, signed, and sealed by a landscape architect registered in the State of Michigan. The landscape plan must be submitted in conjunction with the review of a site plan. The landscape plan must demonstrate that all requirements of this Section are met, including the landscape plan requirements in Article 15, Site Plan Review, as well as, but not necessarily limited to, the following items:

- A. The location, spacing, size (caliper), root type (bare root or balled and burlapped), and descriptions for each plant type, including grass and ground cover, to be used within the required landscape area.
- B. A minimum scale of one inch equals thirty feet for parcel one acre or less, or one inch equals fifty feet for parcel greater than one acre.
- C. Existing and proposed grades on site and fifty feet beyond the site at intervals not to exceed one foot.
- D. Height and type of construction of fences and walls, including footings, and typical straight cross section including slope, height, and width of berms and type of ground cover.
- E. Construction details to resolve specific site conditions, such as tree wells to preserve existing trees or culverts to maintain natural drainage patterns.
- F. Details in either text or drawing form to ensure proper installation and establishment of proposed plant materials.
- G. Identification of existing trees and vegetative cover to be preserved.
- H. Utility lines and structures must be shown.
- I. Demonstration that the Clear Vision requirements set forth in Section 14.03 are met.
- J. Identification of landscape maintenance program including a statement that all diseased, damaged, or dead materials must be replaced in accordance with the standards of this Ordinance.

**SECTION 12.04 SCREENING BETWEEN LAND USES**

Transitions between neighborhoods and between land uses of different intensities are required to ensure compatibility between new or redeveloping commercial or mixed uses and adjacent low-scale residential neighborhoods.

- A. Buffering between commercial or mixed uses and single-family residential uses must be achieved by a wall, decorative fencing, a landscaped screen barrier, a planting strip, landscape berm, or any combination of these as determined by the Planning Commission.
- B. A screening wall or decorative fencing must be a minimum of six feet in height and a maximum of eight feet in height as measured on the side of the proposed wall having the higher grade. A required wall must be located on the lot line except where underground utilities interfere and except in instances where conformity with front yard setback is required. Upon review of the landscape plan, the Planning Commission may approve an alternate location for a wall.
- C. The following screening requirements apply to commercial and multiple-family residential buildings, based on the use group assignments from Table 6.03(C). When calculating the required number of trees and shrubs, round up to the nearest whole number. When the subject parcel's parking lot abuts a residential use, the requirements of Section 12.05 will apply.

<i>Table 12.04</i>						
		When adjacent to these land uses				
		Single Family Residential / Duplex	Multiple Family Residential	Office / Retail / Institutional	Industrial	Automotive
Subject parcel	Single Family Residential / Duplex					
	Multiple Family Residential	Screen 1	Screen 1	Screen 1	Screen 1	Screen 1
	Office / Retail / Institutional / Service	Screen 2	Screen 2			
	Automotive	Screen 3	Screen 3	Screen 3		

	Industrial	Screen 3	Screen 3	Screen 3		
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Screen 1: One ornamental AND one evergreen tree every forty lineal feet along the parcel line.

Screen 2: One ornamental OR one evergreen tree AND seven upright shrubs per each thirty lineal feet along the parcel line

Screen 3: One ornamental AND one evergreen tree AND four upright shrubs per each thirty lineal feet along the parcel line.

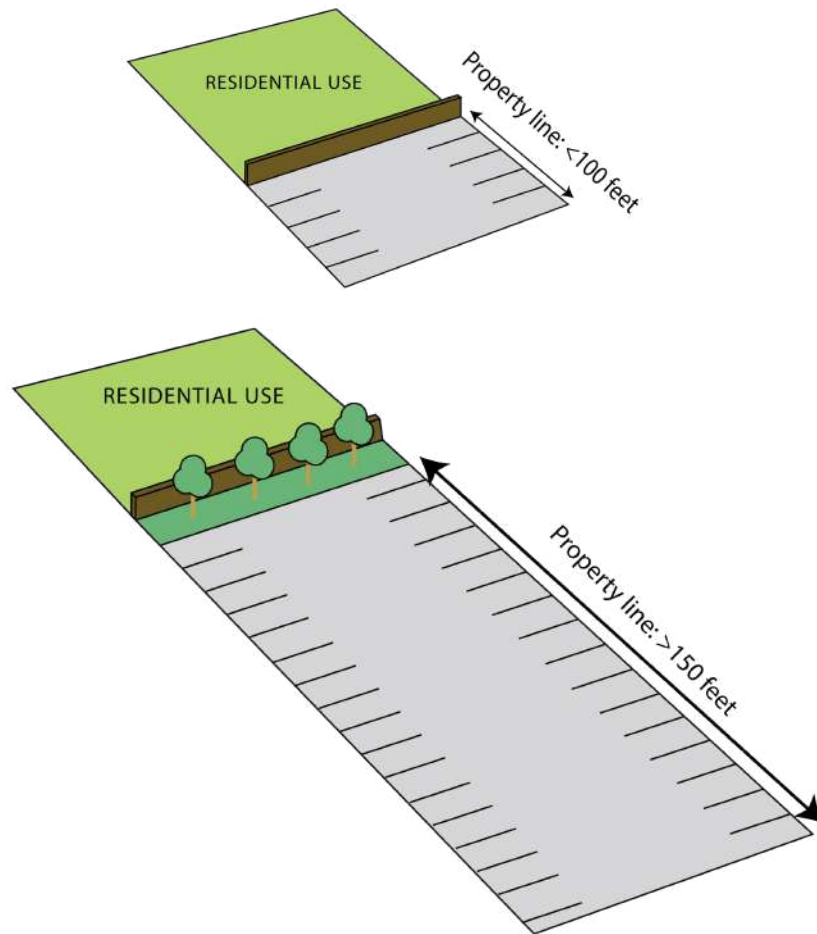
## SECTION 12.05 PARKING LOT LANDSCAPING

A. *Required landscaping within parking lots.* Separate landscape areas must be provided within parking lots that break up the broad expanse of pavement, guide the circulation of vehicular and pedestrian traffic, and moderate the changes to the micro-climate that results from the additional pavement. The following requirements must be met unless a waiver is granted under Section 12.13:

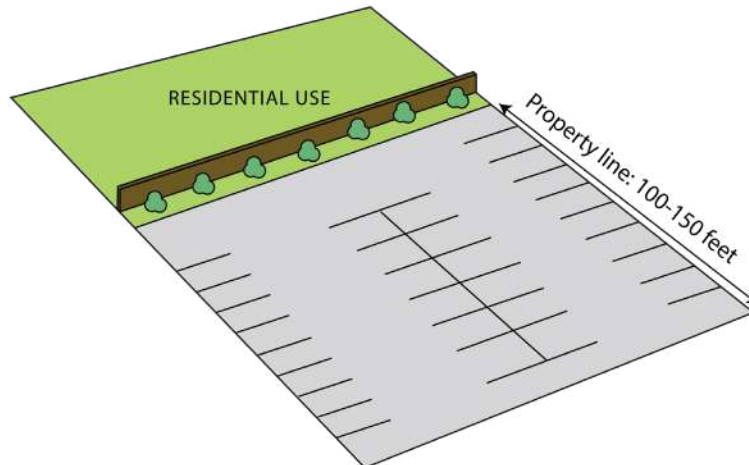
1. There must be a minimum of one tree for every eight parking spaces, rounding down, when eight or more parking spaces are provided.
2. Landscaping arranged in curbed islands within the parking lot must not be less than one hundred and forty-four square feet in area, with minimum dimensions of eight feet by eighteen feet.
3. A minimum distance of three feet from the backside of the curb and the proposed landscape plantings must be provided. Where vehicles overhang a landscape island or strip, a minimum distance of five feet from the backside of the curb and the proposed landscape plantings must be provided.

B. Where a parking lot in a Site Design Based District abuts a low-scale residential neighborhood or single-family land uses, the screening requirements depend on the lot dimension of the abutting parcel line, as indicated below.

Table 12.05	
Length of parcel line perpendicular to residential use	Landscape buffer requirement
Less than 100 feet	A wall at least 6 feet in height
100 to 150 feet	A wall at least 6 feet in height AND a landscaped area at least 10 feet in depth
Over 150 feet	A wall at least 6 feet in height AND a landscaped area at least 10 feet in depth AND a row of trees spaced no less than 20 feet apart

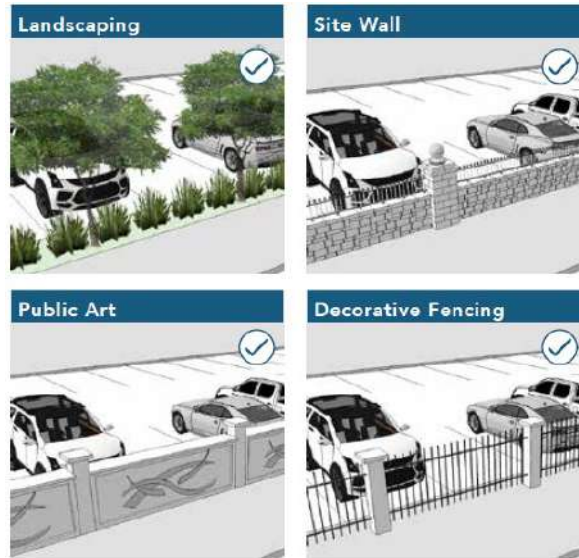






C. *Landscaping at the perimeter of parking lots.* Landscaping at the perimeter of a proposed parking lot must meet with following requirements:

1. All off-street parking areas must be screened or buffered in a manner that separates the parking areas as seen from the public right-of-way.
2. If facing single-family residential land uses or zoning districts, the landscaping must completely screen the parking area up to thirty inches high from grade.
3. A minimum six-foot-wide buffer between the parking lot and street right-of-way or sidewalk must be shown. The buffer must include at least one of the following:
  - a. Landscaping: minimum one tree and ten shrubs every forty feet.
  - b. Masonry screening wall: thirty inches high from grade at the parcel line for the length of the wall at the right-of-way line.
  - c. Public art or various possible building materials: thirty inches high from grade at the parcel line for the length of the art piece.
  - d. Decorative metal fencing: thirty inches high from grade at the parcel line for the length of the fence, when facing non-residential uses of districts.



The Planning Commission may, at its discretion, approve alternative landscape plans at the perimeter of parking lots where landscaping within parking lots would be impractical due to the size of the parking lot or detrimental to safe and efficient traffic flow, or would create an unreasonable burden for maintenance and snowplowing. The alternative landscape plan must include a differentiation between the parking lot and adjacent sidewalks, such as different materials, curbing, landscape planters, etc.

- D. *Streetscape Landscaping Required.* Buildings set back from the sidewalk's edge must include streetscape landscaping.
- E. *Landscaped Curb Extensions.* Landscaped curb extensions must be installed at intersections.

## SECTION 12.06 REQUIRED STREET TREE GREENBELT PLANTING

The frontage of all public or private streets for any new or altered use within the project area which requires Site Plan Review must be landscaped with street trees as follows:

- A. *Location.* The street trees must be centered between the sidewalk and the back of the street curb. The Planning Commission may grant a waiver of this condition with a finding that utilities necessitate a different location, or that the proposed location of the trees will align with already-established street trees along the same block face, provided that said existing trees are to

remain. Trees should be planted at roughly even intervals.

- B. *Quantity.* A minimum of one tree for every thirty lineal feet of frontage, inclusive of proposed or existing access drives. Existing trees in good health to be preserved may count towards the street tree requirements.
- C. *Planting Area Size.* Tree planting areas provided for street trees must be sufficient for the species of tree provided. Tree pits or wells are discouraged and may only be allowed on blocks where tree pits or wells exist. Where no sufficient planting bed exists or can be provided for street trees within the right-of-way, the applicant may choose to either plant and maintain the required trees within the front yard; or to provide a fee in lieu of planting in the amount of one hundred percent of the materials and installation cost, as determined by the Director of Public Works or their designee.
- D. *Placement and Utilities.* Street trees must not be planted within six feet of water or sewer lines and must not interfere with overhead utility lines or underground utilities. Consideration should be given to the mature size and height of the tree when evaluating placement and species selection near utilities, both underground and overhead.
- E. *Required Species.* Street trees must be deciduous trees. Non-deciduous conifers and evergreens are not permitted to be used as street trees since they interfere with visibility, pedestrian safety, and vehicular circulation.
- F. *Recommended Species.* Native species are generally preferred. Canopy trees are preferred for street trees, but ornamental trees may be allowed under overhead utility lines. Preferred native plant species should comply with the most recent list provided by the [Michigan State University Extension, Native Plants and Ecosystems Services department](#).

## SECTION 12.07 SITE LANDSCAPING

- A. In addition to any adjacent land use screening, street tree greenbelt, or parking lot landscaping required by this Section, five percent of the site area, excluding existing public rights-of-way, must be landscaped. Such site area landscaping may include a combination of the following:
  - 1. Preservation of existing tree cover
  - 2. Planting of new trees and plant material

3. Landscape plazas and gardens
  4. Bioswales, rain gardens, or retention ponds
  5. Planter beds
  6. Green roofs
  7. Green walls (must equal a minimum of 10% of the site area)
- B. Site area landscaping must be provided to screen potentially incompatible, unsightly, or objectionable site features such as, but not limited to, retention and detention ponds, transformer pads, air conditioning units, and loading areas.

## SECTION 12.08 NONRESIDENTIAL WASTE RECEPTACLE SCREENING

- A. *Where Required.* The standards set forth in this Section apply to all nonresidential uses that have refuse disposal service by collective trash container. This does not include curbside pickup for single-family residential uses.
- B. *Standards.*
1. Landscaping to screen waste receptacles and required walls can contribute to the five percent site area requirement for general site landscaping.
  2. Waste receptacles must be screened on all sides with a wall, and gate at least as high as the container, but no less than six feet in height, and must be faced with masonry or materials that match the architectural materials used in the site development.
  3. Waste receptacles must be consolidated to minimize the number of collection sites, located in close proximity to the building they serve, and easily accessed by refuse vehicles without potential damage to parked vehicles.
  4. Enclosures for waste receptacles must be located in a side or rear yard and screened from public view whenever possible.
  5. Waste receptacles and enclosures must be situated so that they do not

cause excessive nuisance or offense to occupants of nearby buildings.

6. Concrete pads and aprons of appropriate size and construction must be provided.

## SECTION 12.09 TREE REPLACEMENT STANDARDS

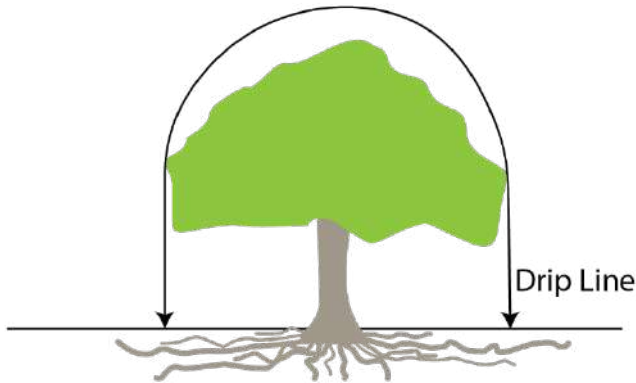
The standards below are intended to encourage the preservation of existing mature, healthy trees on private parcel which contribute to the character, welfare, and quality of life in Berkley. These standards are intended to prevent the unnecessary removal of trees prior to, during, and following construction on a site. The standards of this Section in conjunction with the standards for Site Plan Review promote the goals of the Berkley Master Plan and Chapter 130, Article 2 - Trees, Bushes, and Shrubs of the Code of Ordinances for the City of Berkley.

- A. *Applicability.* The regulations in this Section apply only to developments subject to Site Plan Review.
- B. *Tree Replacement.* A tree location survey and tree protection plan, per Section 130-44 of the City Code of Ordinances must be submitted as part of any required site plan. Tree replacement must comply with the table in Section 130-44(b)(7).
- C. *Clearance of twenty-five percent or more of existing trees.* The owner of any parcel, excluding single-family residential properties, or their representative proposing to clear more than twenty-five percent the trees of eight inch diameter at breast height (DBH) or greater on a site, as determined by the Planning Commission, must first notify the City of the intent of such clearing or earth change and submit a proposed plan describing the site's features for review and approval by the Planning Commission.

This sub-section does not prevent tree clearing for approved building envelopes, decks, essential services, utility lines, or construction drives. The Planning Commission may waive the DBH standard for selective clearing of lower quality and non-native species including, but not limited to box elders, poplars, willows, and cottonwoods.

## SECTION 12.10 LANDSCAPE ELEMENTS

- A. *Quality.* Plant materials must be of generally acceptable varieties and species, free from insects and diseases, hardy to this county, conform to the current minimum standards of the American Association of Nurserymen, and must have proof of any required governmental regulations or inspections.
- B. *Composition.* A mixture of plant material, such as evergreen and deciduous trees and shrubs, is recommended as a protective measure against insect and disease infestation. A limited mixture of hardy species is recommended rather than a large quantity of different species to produce a more aesthetic, cohesive design and avoid a disorderly-appearing arrangement. Native or drought-tolerant species, suitable to the climate of the City, are encouraged, as are salt-tolerant species adjacent to streets, sidewalks, driveways, or parking lots. High-maintenance plants, if necessary, should be limited to small areas. Preferred native plant species should comply with the most recent list provided by the [Michigan State University Extension, Native Plants and Ecosystems Services department](#).
- C. *Berms.* Berms must be constructed with slopes not to exceed a one to three gradient. Berm slopes must be protected with sod, seed, or other form of natural ground cover.
- D. *Coordination with Utilities.* Provision must be made to coordinate landscaping with existing and proposed underground and overhead utility lines that avoid interference with plant growth.
- E. *Credit for Existing Vegetation.* The preservation and incorporation of existing trees and shrubs are encouraged. The Planning Commission, or the Community Development Director for administrative site plans, may allow existing shrubs and trees to satisfy the requirements of this Section if all the following requirements apply:
1. Paving or other impervious site improvements do not encroach upon the drip line of the existing tree(s) to be preserved.
  2. If existing plant material is labeled "To Remain" on site plans by the applicant or required by the City, protective techniques must be installed during construction. No vehicle or other construction equipment may be parked or stored within the drip line of any plant material intended to be saved.



3. The shrubs or trees are in good health. In the event that healthy shrubs or trees that are used to meet the minimum requirements of this Article or those labeled to remain are cut down, destroyed, damaged, or excavated at the drip line, as determined by the City, the applicant must replace them with trees which meet the requirements of this Article.
4. The trees or shrubs proposed for credit are not a species that is invasive, brittle, susceptible to disease and insects, has a root structure that will interfere with underground utilities, drop excessive litter, or other undesirable characteristics. Species listed in Section 130-39 of the City Code are ineligible for credit.
5. The shrubs or trees that meet the following minimum sizes and may receive credit in lieu of new plantings based on size shown in the table below:

<i>Table 12.10A</i>			
Plant Material	Minimum Size	Size	Credit
Trees	2.5" in caliper	2.5" - 7.9"	1 tree
		8" - 11.9"	2 trees
		12" - 20"	3 trees
		Over 20"	5 trees
Shrubs	24" in height	All sizes	1 shrub

F. *Prohibited materials.* The plant materials listed in Section 130-39 of the City

Code are specifically prohibited for use in any plan considered under provisions of these regulations.

G. Installation, maintenance, and completion.

1. All landscaping required by this Section must be planted before obtaining a certificate of occupancy or the appropriate financial guarantee such as cash, letter of credit, or certified check must be placed in escrow in the amount of the cost of landscaping to be released only after landscaping is completed.
2. All landscaping and landscape elements must be planted, and earth moving, or grading performed, in a sound workmanlike manner, according to accepted planting and grading procedures. All unpaved portions of the site must be planted or covered with grass, ground cover, mulch, or other suitable living plant material which must extend to the edge of any abutting street pavement edge.
3. Landscaping required by this Section must be maintained in a reasonably healthy condition, free from refuse and debris. All unhealthy and dead material must be replaced within one year of damage or death or the next appropriate planting period, whichever comes first. The Community Development Director may allow a minor change in the replacement landscaping. All landscaped areas must be provided with a readily available and acceptable watering system that provides water to plant materials on a regularly scheduled basis.

## SECTION 12.11 MINIMUM SIZE AND SPACING REQUIREMENTS

Where landscaping is required, the following minimum size and spacing requirements for representative landscape materials are applicable, unless otherwise specified in this Section. Where the caliper of a tree is referenced, it must be measured at the diameter at breast height (DBH). Table 12.11 indicates the minimum size and spacing requirements for sample species. The Planning Commission may, at their sole discretion, require alternate minimum size and spacing requirements; where administrative Site Plan Review is permitted, the Community Development Director or their designee may, at their sole discretion, require alternate minimum size and spacing requirements.



<i>Table 12.11 Minimum Size and Spacing Requirements</i>									
	<i>Minimum Size Allowable</i>				<i>Recommended On-Center Spacing (in feet)</i>				
	<i>Height/Caliper (DBH)</i>								
<i>Trees</i>	<i>6'</i>	<i>3' - 4'</i>	<i>2"</i>	<i>2.5"</i>	<i>30</i>	<i>25</i>	<i>15</i>	<i>10</i>	
Evergreen Trees, such as Fir, Spruce, Pine & Hemlock	X						X		
Narrow Evergreen Trees, such as Red Cedar, Arborvitae, and Juniper (selected varieties)		X						X	
Large Deciduous Trees, such as Oak, Maple, Beech, Linden, Ginko (male only), Honey locust (seedless & thornless), Birch, and Sycamore				X	X				
Small Ornamental Deciduous Trees, such as Flowering Dogwood, Cherry, Plum, Pear, Crabapple, Redbud, Magnolia, and Hornbeam			X				X		
	<i>Minimum Size Allowable</i>				<i>Recommended On-Center Spacing (in feet)</i>				
	<i>Height</i>								
<i>Shrubs</i>	<i>6'</i>	<i>3' - 4'</i>	<i>24" - 36"</i>	<i>18" - 24"</i>	<i>10</i>	<i>6</i>	<i>5</i>	<i>4</i>	<i>3</i>
Large Evergreen Shrubs (upright), such as Pyramidal or Hicks Yew, Alberta Spruce, Chinese Juniper, Savin Juniper, and Mugho Pine		X					X		
Large Evergreen Shrubs (spreading), such as Spreading Yews or Junipers			X				X		
Small Evergreen Shrubs (upright), such as Brown's or Ward's, or Yews, and Boxwood				X			X		

Small Evergreen Shrubs (spreading), such as horizontal Juniper varieties or spreading Euonymous varieties				X			X		
Large Deciduous Shrubs, such as Lilac, Sumac, Weigela, Dogwood (Red Osier and Grey), and Viburnum varieties			X			X			
Small Deciduous Shrubs, such as Spirea, Fragrant Sumac, Japanese Quince, Cotoneaster, and Potentilla				X					X

### SECTION 12.12 ACCESSORY STORMWATER CONTROL FEATURES

The integration of stormwater retention and detention ponds in the overall landscape concept is recommended. Naturalized stormwater management features that are integrated in a cohesive and logical manner to take advantage of site topography, orientation, and visibility should be utilized. Ponds with a natural, rather than square or rectangular, design and appearance are encouraged. Only seed mixes and native plants may be used to vegetate retention and detention ponds. The following Low Impact Development (LID) principles for stormwater management are recommended for incorporation into landscape design:

- A. *Swales.* Biofiltration swales are permitted in all districts, subject to adopted engineering standards.
- B. *Pervious paving.* Pervious paving is permitted in all districts, subject to adopted engineering standards.
- C. *Rain gardens.* Rain gardens installed accessory to one- or two-family uses in the R-1AB, R-1CD, and R-2 districts do not require engineering review.
- D. *Rain barrels or cisterns.* Rain barrels or cisterns are permitted in all districts. Underground cisterns or rain barrels are subject to engineering review and constructed in accordance with the State Building Code. Aboveground rain barrel or cistern systems in excess of two hundred and fifty gallons must conform to the accessory building standards in place for those building types and be subject to engineering review and constructed in accordance with the Building Code.
- E. *Vegetated roofs.* Vegetated roof systems are permitted in all districts in accordance with the Building Code.

- F. *Other methods.* Other methods of onsite stormwater control may be submitted to the Community Development Director and, at their discretion, may be approved, approved subject to another City department(s) review, approved subject to Planning Commission review, or denied.
- G. The plant material required by this Section may be used to meet plant material quantity and placement requirements of this Chapter, provided that the Planning Commission or other approving body finds that the intent of this Chapter is met.

### SECTION 12.13 WAIVER OR MODIFICATION OF STANDARDS FOR SPECIAL SITUATIONS

The Planning Commission or Zoning Administrator, when administrative review is allowed under Article 15, Site Plan Review, may determine if existing landscaping or screening intended to be preserved, or a different landscape design, would provide all or part of the required landscaping and screening. In making a determination to waive or reduce the landscape and screening requirements of this Article, the following, where applicable, must be considered.

- A. Extent to which existing natural vegetation provides desired screening.
- B. The existence of a steep change in topography which would limit the benefits of required landscaping.
- C. Existing and proposed building placement.
- D. The abutting or adjacent land is developed or planned by the City for a use other than residential.
- E. Building heights and views.
- F. Conditions similar to the above exist such that no good purpose would be served by providing the landscaping or screening required.

### SECTION 12.14 TREE PROTECTION DURING CONSTRUCTION

Protected trees must be preserved to the greatest extent practicable through the use of site development techniques in Section 130-44 (d) Tree Protection Measures of the City Code of Ordinances.

# ARTICLE 13

## EXTERIOR LIGHTING STANDARDS

### SECTION 13.01 INTENT

The intent of this Section is to provide reasonable regulations to direct the location, design, illumination level, and use of outdoor lighting from both direct and indirect sources to minimize its undesirable effects. Off-street parking and loading areas, driveways, building entryways, walkways, and other outdoor pedestrian ways, and building complexes with common areas need to be sufficiently illuminated to ensure the security and safety of people and parcels. Lighting standards set forth herein are also intended to:

- A. Provide for and control lighting in outdoor public places where public health, safety, and welfare are potential concerns.
- B. Protect drivers and pedestrians from the glare of non-vehicular light sources.
- C. Protect neighbors, the environment, and the night sky from nuisance glare and light trespass from improperly selected, placed, aimed, applied, maintained, or shielded light sources.
- D. Highlight the distinctive features of a site, such as the building entrance, architectural details, signs, outdoor use areas, or public art.
- E. Promote energy-efficient lighting design and operation.
- F. Protect and retain the visual character of Berkley.

### SECTION 13.02 APPLICABILITY

All outdoor lighting installed after the effective date of the Zoning Ordinance must comply with the requirements of Article 13. This includes, but is not limited to, new lighting equipment, light fixtures, replacement lighting, or any other outdoor lighting whether it is attached to structures, poles, buildings, or any other location.

## SECTION 13.03 STANDARDS FOR EXTERIOR LIGHTING

Lighting from direct sources is subject to the following standards:

- A. *Shielding and Light Trespass.* Lighting must be placed, directed, and shielded to direct the light onto the site and away from adjoining properties with the use of full-cutoff luminaires. Lighting must be shielded so that it does not cause glare for vehicles, bicycles, and pedestrians. Directional luminaires such as floodlights and wall-mounted luminaires must be shielded and aimed so they do not create glare when viewed from neighboring properties. The use of floodlights and wall-mounted luminaires to light parking areas is prohibited unless there is a finding by the Planning Commission that no other acceptable means of lighting is possible. Lighting under canopies must be recessed or full cutoff luminaires aimed straight down.
- B. *Maximum Illumination Levels.* Lighting for uses adjacent to residentially zoned or used parcels must be designed and maintained such that illumination levels do not exceed one-half footcandle at ground level along common parcel lines. Lighting for uses adjacent to nonresidential properties must be designed and maintained such that illumination levels do not exceed one footcandle at ground level along common parcel lines. Maximum light levels must not exceed twenty footcandles in any given area measured at ground level.
- C. *Maximum Height.* Lights on poles, including the base, must not be taller than the building whose area they illuminate nor taller than twenty feet whichever is shorter.
- D. *Light Color Standard.* Correlated color temperature of any outdoor light source must not exceed thirty-five hundred Kelvin and must be specified on the lighting plans set forth in Section 13.03.E.
- E. *Lighting Plans.*
  - 1. All lighting, including ornamental lighting, must be shown on site plans in sufficient detail to allow determination of the effects of such lighting upon adjacent properties and traffic safety.
  - 2. The lighting plan must include a photometric plan which plots illuminance in footcandles on a ten-foot by ten-foot horizontal grid over the entire site up to and including all parcel boundaries and extending at least ten feet beyond all of the parcel lines. The lighting

plan must include a layout of all proposed and existing luminaires, and a photometric analysis plotted in a manner that demonstrates that Ordinance requirements are met. The lighting plan must also include luminaire details, glare reduction devices, mounting heights, color temperature, and pole foundation details.

3. Lighting plans must be coordinated with landscape plans to minimize conflict between landscaping and intended light distribution.
- F. *Reduction of Lighting at Night.* All outdoor lighting must be reduced to at least fifty percent of the light level at full illumination one hour after closing. Lighting reductions are not required under the following circumstances:
1. Where a business operates twenty-four hours.
  2. Where lighting is intended to reduce real or perceived risk or where lighting is intended to discourage intruders, vandals, or burglars, and to protect merchandise and parcel.

## SECTION 13.04 CONDITIONS OF APPROVAL

Lighting from indirect or reflected sources are subject to the following standards:

- A. Glare from any process (such as or similar to arc welding or acetylene torch cutting) that emits harmful ultraviolet rays must be performed in such a manner as not to be seen from any point beyond the parcel line, and so as not to create a public nuisance or hazard along lot lines.
- B. The design or screening of the development must minimize to the greatest extent possible that glare from automobile and commercial or industrial vehicle headlights must not be directed into any adjacent parcel, including residential parcel.
- C. Exterior lights must be located, operated, and maintained so as to prevent any glare and light from creating a nuisance or safety hazard to operators of motor vehicles, pedestrians, and neighboring land uses.

## SECTION 13.05 EXEMPTIONS

The following types of lighting are exempt from this Ordinance:

- A. Luminaires used for public roadway illumination.
- B. All temporary emergency lighting needed by the police, fire, or other emergency services, as well as all vehicular luminaires.
- C. Interior lighting within a building that is not visible or does not create glare outside of the building.
- D. Residential lighting fixtures for single-family houses, accessory dwellings, and duplexes that have a maximum exterior illumination level of fourteen footcandles.
- E. Decorative landscape lighting for lawns, gardens, or yards that are within five feet of the ground and have a maximum illumination of fourteen footcandles.
- F. Seasonal lighting associated with holidays including, but not limited to Christmas, Hanukkah, Halloween, New Year, or Diwali with individual lamps that have a maximum illumination level of fourteen footcandles.
- G. All hazard warning luminaires required by federal regulatory agencies are exempt from the requirements of this article, except that all such luminaires used must be shown to be as close as possible to the federally required minimum lumen output requirement for the specific task.
- H. Luminaires used primarily for signal illumination may be mounted at any height required to ensure roadway safety, regardless of lumen rating.
- I. Illumination of the American and state flags, providing that such lighting does not produce glare on roadways and neighboring residential properties.
- J. Installations existing prior to the enactment of this Ordinance are exempt from its requirements. However, any changes to an existing lighting system, fixture replacements, or any nonconforming lighting system that is moved must meet these standards.

## SECTION 13.06 PROHIBITED LIGHTING

The following types of outdoor lighting are specifically prohibited.

- A. Lighting that could be confused for a traffic control device.
- B. Lighting that is oriented upward, except as otherwise provided for in this

Ordinance.

- C. Searchlights, beacons, and laser source light fixtures.
- D. Lights that blink, flash, move, revolve, flicker, change intensity, or change color.
- E. Any lamp or bulb when not within a luminaire and which is visible from the parcel boundary line of the parcel on which it is located, except for building façade or landscape ornamental lighting.
- F. Outlining windows with LED or other lighting materials is not permitted in the Downtown or Corridor Districts.



# ARTICLE 14

## OFF-STREET PARKING, LOADING, AND ACCESS STANDARDS

### SECTION 14.01 INTENT

The intent of this Article is to provide safe, convenient, and well-designed vehicular access, promote pedestrian safety, improve the visual appearance of sites requiring off-street parking, and protect the public health safety and welfare within the City by requiring consistent standards for off-street parking, loading, drive-through facilities, and site access.

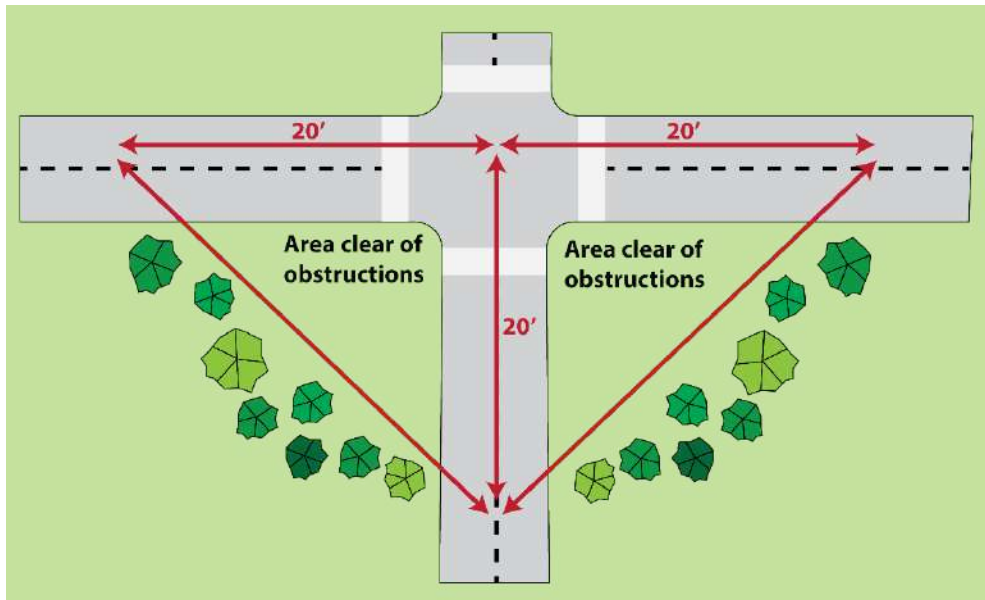
### SECTION 14.02 STREETS, ROADWAYS, AND RIGHTS-OF-WAY

- A. The purpose of this Section is to ensure that the street system proposed for each development provides for continuity in the public street system in Berkley, minimum standards to establish a degree of quality that will enhance and maintain parcel values and protect the rights of the present and future residents of Berkley. To accomplish this purpose the following rules will be in effect:
  - 1. Each development must be provided with local streets, collector streets, street connections, or street stubs at locations where the Planning Commission deems them necessary for the purposes of fire and emergency vehicle access and connectivity between neighborhoods.
  - 2. All streets must meet the requirements of Chapter 106 of the City of Berkley General Code of Ordinances and the Engineering Design Standards of the City.
- B. Public street frontage requirements.
  - 1. The development of all parcels in the City must be predicated on having frontage on a public street that complies with the provisions of this Article and any other applicable City codes or ordinances.

- C. Curb cuts, driveways, and culverts may be located upon approval by the City Engineer, or their designee and such other county and state authorities as required by law; provided, however, such approval must not be given where such curb cuts, culverts, and driveways may cause an unreasonable increase in traffic hazards. All curb cuts, driveways, and culverts must meet the requirements of Chapter 106 of the City of Berkley General Code of Ordinances and the Engineering Design Standards of the City.

### SECTION 14.03 CLEAR VISION ZONE

There must be a clear vision zone at all intersecting streets and at intersecting drives and maneuvering lanes within off-street parking areas consisting of a triangular area defined by the point of intersection of the driveways or maneuvering lanes and the two points extended along a distance of twenty feet. The lines for the triangular area are created by utilizing the edge of the drives or maneuvering lanes closest to an existing or proposed building. The above-described triangular area must have no obstruction to vision permitted from a height of two feet to eight feet above the established grade as set by the City Engineer or their designee.



## SECTION 14.04 VEHICLE PARKING REQUIREMENTS

### *General Standards.*

- A. Whenever a use or activity requiring off-street parking is established, erected, altered, or enlarged, off-street parking spaces and associated maneuvering lanes must be provided in accordance with the standards of this Section. Required off-street parking must be maintained and irrevocably reserved as long as the use or activity requiring off-street parking remains, unless a revision to either the location of or number of spaces is approved by the Community Development Department.
- B. *Area for parking space.* Unless otherwise specified, off-street parking requirements for all uses must be calculated using one hundred percent of the gross floor area, as defined by this Article. For those buildings which feature unique interior features such as atriums and landscaped areas, the floor area occupied by such areas may be deducted from the gross floor area to calculate parking. When usable floor area is cited in the parking requirements, the usable floor area must be calculated per the definition in Article 2, or, when the usable floor area is unknown, eighty percent of the total floor area may be used for computation purposes.
- C. *Fractional requirements.* When units or measurements determining the number of required parking spaces result in the requirement of a fractional space, any fraction up to and including one-half must be disregarded, and fractions over one-half require one parking space.
- D. *Location of parking space for one- and two-family dwellings.* The off-street parking facilities required for one- and two-family dwellings must be located on the same lot or plot of ground as the building they are intended to serve and must consist of any combination of a parking strip, parking apron, carport, or garage, as required by Section 9.05. The parking strip may be part of a driveway, including a circular driveway.
- E. *Location of parking space for other land uses.* The off-street parking facilities required for all other uses must be located on the lot or within five hundred feet of the permitted uses requiring such off-street parking, such distance to be measured along lines of public access to the parcels between the nearest point of the parking facility to the building to be served.

- F. *Seating capacity of seats.* As used in this article for parking requirements, seats means that each twenty-four inches of seating facilities counts as one seat.
- G. *Similar uses and requirements.* In the case of a use not specifically mentioned, the requirements for off-street parking facilities for a use, which is so mentioned, and which said use is similar, must apply.
- H. *Existing off-street parking at effective date of Ordinance.* Off-street parking existing at the effective date of the Ordinance from which this Section is derived, which serves an existing building or use, must not be reduced in size less than that required under the terms of this article.
- I. *Collective provisions.* Nothing in this article must be construed to prevent collective provisions of off-street parking facilities for two or more buildings or uses; provided such facilities collectively must not be less than the sum of the requirements for the various individual uses computed separately in accordance with Section 14.04.C.
- J. *General use conditions.* For nonresidential uses in nonresidential districts, and except when land is used as storage space in connection with the business of a repair or service garage, twenty-four hour time limit for parking in off-street parking areas must prevail, it being the purpose and intention of the foregoing that the requirements of maintaining vehicle storage or parking space is to provide for the public safety in keeping parked cars off the streets, but such requirement is not designed to or intended to provide the storage or parking on such open land of wrecked or junked cars, or for creating a junkyard or a nuisance in such area.
- K. *Restriction on parking on private parcel.* It is unlawful for any person, firm, or corporation to park any motor vehicle on any private parcel, or use said private parcel for vehicle storage, or use any portion of any private parcel as parking space, without the expressed or implied consent, authorization, or ratification of the owner, holder, occupant, lessee, agent, or trustee of such parcels.
- L. *Shared use.* Parking spaces already provided to meet off-street parking requirements for theaters, stadiums, auditoriums, and other places of assembly, stores, office buildings, and industrial establishments, lying within five hundred feet of a place of assembly measured along lines of public access, and that are not normally used between the hours of 6:00 a.m. and

6:00 p.m. on Saturdays or Sundays and that is made available for other parking, may be used to meet not more than fifty percent of the off-street parking requirements of a place of assembly. A shared parking agreement must be established by each use involved.

- M. *On-street parking credit.* On-street parking spaces where the entire space is directly in front of a business's building frontage may be counted toward the required number of parking spaces.
- N. *Leased parking in municipal lots.* If approved by the Community Development Department, parking spaces leased in municipal lots may be counted towards required parking. A lease agreement with the City must be submitted as part of the site plan or change of use in order for leased parking spaces to be counted towards required parking.
- O. *Barrier free parking requirements.* On each site proposed for use, addition, or conversion for which a site plan is required to be submitted, there must be provided on the same site a minimum of one off-street parking space designed pursuant to the State of Michigan Barrier-free Design Standards.
- P. Flexibility in Application.
  - 1. The City recognizes that, due to the specific requirements of any given development, inflexible application of the parking standards set forth in Article 14 may result in development with inadequate parking or parking in excess of that which is needed. The former situation may lead to traffic congestion or unauthorized parking on adjacent streets or neighboring sites. The latter situation may result in excessive paving and stormwater runoff.
  - 2. Accordingly, the Planning Commission may, in the reasonable exercise of discretion, permit deviations from the requirements of Article 14 and may require more or allow up to fifteen percent less parking upon a finding that such deviations are likely to provide an adequate number of parking spaces to accommodate the specific characteristics of the use in question. Such finding must take into consideration the following standards and must be based upon specific facts and information provided by the applicant, and such other information the Planning Commission determines relevant:
    - a. Current or anticipated levels of employees and/or patrons.

- b. Peak period usage versus normal usage.
  - c. Banked or reserved parking for future use.
  - d. Opportunities to provide or accommodate green space, additional landscaping and to minimize impervious areas on the site.
  - e. Neighborhood or other surrounding characteristics justify the requested deviation.
  - f. Strict application of the ordinance would unreasonably hinder development of the site for a permitted use, and an alternate parking requirement would be appropriate.
  - g. Modification will not negatively impact public parking in the city.
  - h. Proximity of the site to local or regional transit, including but not limited to SMART bus stops, bicycle sharing stations, lite rail, etc.
  - i. Inclusion of bicycle parking or electric vehicle parking stations beyond the requirements described in this Article.
3. The Planning Commission may attach conditions to the approval of a deviation from the requirements of Section 14.04.C that bind such approval to the specific use in question. Where a deviation results in a reduction of parking, the Planning Commission may further impose conditions which ensure that adequate reserve area or deferred parking is set aside for future parking, if needed.
- Q. *Off-Street Parking Requirements.* The amount of required off-street parking spaces or new uses or buildings, additions thereto, and additions to existing buildings as specified above must be determined in accordance with the following table, and the spaces so required must be stated in the application for a commercial business license. When multiple methods of calculations are listed below for a single use, the method that yields the higher parking requirement will be enforced:

<i>Table 14.04-1 Off-Street Parking Requirements</i>		
<i>Use</i>	<i>Number of Minimum Vehicle Parking Spaces Per Unit of Measure</i>	
1.	Residential:	
a.	Residential, single family detached and two family dwelling.	2 for each dwelling unit.
b.	Residential, attached single family, and multiple family housing.	1 for studio and one-bedroom units, and 0.5 for each bedroom thereafter (1.5 for a two-bedroom, 2 for a three-bedroom, etc.)
c.	Housing for older persons.	
	(1) Independent living.	1 per employee plus 1 per 5 resident beds, plus 1 drop-off/ pick-up space.
	(2) Assisted living.	1 per employee plus 1 per 20 resident beds, plus 1 drop-off/ pick-up space.
2.	Institutional:	
a.	Places of assembly.	1 per 100 square feet of usable floor area
c.	Homes for the aged and convalescent or nursing homes.	1 per employee plus 1 per 20 resident beds, plus 1 drop-off/ pick-up space.
d.	Elementary and intermediate schools.	1 for each staff member, plus 10 spaces plus 1 drop-off/pick-up space.
e.	High school.	1 for each staff member, plus 10 spaces plus one drop-off/pick-up space.
g.	Private clubs or lodge.	1 per 100 square feet of usable floor area
h.	Private swimming pool clubs or other similar uses.	1 per 500 square feet of usable floor area, plus 1 per employee.
i.	Park (playfield with active sports facilities) General outdoor recreation	5.5 per acre plus 10 per marked playfield
j.	Day care center and nursery schools.	1 per 285 square feet of usable floor area, plus 1 per employee

	k.	Places of outdoor assembly such as stadiums, sports arenas, and similar uses.	1 per 500 square feet of usable floor area plus 1 per employee plus 1 drop-off/pick-up space
	l.	Places of indoor assembly such as theaters, auditoriums, and similar uses.	1 per 4 seats
	m.	Colleges, universities, vocational and other institutions of higher learning.	1 per employee plus 0.5 per enrolled student
	n.	Community Center	1 per 370 square feet of usable floor area
3.	Business and Commercial:		
	a.	Hair and nail care, spas, massage, and similar personal service uses.	1 per chair/station/bed plus 1 per employee OR 1 per 300 square feet of usable floor area plus 1 per employee
	b.	Indoor recreation uses such as bowling, court games, and similar uses.	4 per lane/court plus 1 per employee
	c.	Indoor recreation uses such as dance halls, pool, or billiards, skating rinks, gun ranges, and similar uses.	2 per game table/lane, plus 1 per game device OR 1 space per 100 square feet of usable floor area
	d.	Medical spa or cosmetic spa	1 per 300 square feet of usable floor area
	Restaurants		
	(1) Fast food, coffee shops, carry-out, fast casual, and similar uses		1 per 100 square feet of usable floor area plus 1 per employee at peak shift
	(2) Standard sit-down		2 per 100 square feet of usable floor area plus 1 per employee at peak shift
	(3) Bar, lounge, tavern, or night club, with or without a restaurant		2 per 100 square feet of usable floor area plus 1 per employee at peak shift
	(4) Restaurant with drive-through		1 per 100 square feet of usable floor area, plus 1 per employee at peak shift, plus 7 stacking spaces per drive-through kiosk



f.	Dry-cleaning and laundry outlets.	1 per 300 square feet of usable floor area plus 1 per employee
g.	Laundromats and coin-operated dry cleaners.	1 per 400 square feet of usable floor area plus 1 per employee
h.	Convenience stores/party stores.	4.5 per 800 square feet of usable floor area
i.	Grocery Stores.	5 per 1,000 square feet of usable floor area
j.	Funeral homes and mortuaries.	1 per 200 square feet of usable floor area plus 1 per employee
k.	Lodging, such as hotels and motels.	1.15 per room
l.	General retail stores except as otherwise specified herein.	1 per 500 square feet of usable floor area plus 1 per employee
m.	Repair shop (appliance, furniture, shoe, non-vehicle)	1 per 800 square feet of usable floor area plus 1 per employee
n.	Planned shopping center.	1 per 200 square feet of usable floor area. Restaurants/bars calculated separately
o.	Health/exercise club.	1 per 300 square feet of usable floor area plus 1 per employee
p.	Garden stores, building material sales, and open-air businesses, including greenhouses, nurseries, and agricultural sales	1 per 800 square feet of usable floor area plus 1 per employee
q.	Dance school	1 per 300 square feet of usable floor area plus 1 per employee
r.	Beauty school	1 per operator station plus 1 per employee
s.	Tattoo/body piercing studio	1 per chair plus 1 per employee
t.	Printing and publishing	1 per 300 square feet of usable floor area
u.	Produce market or stand	1 per 100 square feet of usable floor area

	v.	Pawn shop	1 per 300 square feet of usable floor area plus 1 per employee
	w.	Miniature golf course	2 per hole of play
	x.	Hardware store	2.5 per 400 square feet of usable floor area
	y.	Adult bookstore, nude, photographic studio, massage establishment	1 per 100 square feet of usable floor area
	z.	Marijuana dispensary	1.5 per 200 square feet of usable floor area, plus 1 per employee
4.	Offices:		
	a.	Banks, credit unions, and similar uses.	1.5 per 400 square feet of usable floor area plus 5 stacking spaces per drive-through kiosk
	b.	Business or professional offices.	1 per 300 square feet of usable floor area
	c.	Veterinarian clinic	1 per 350 square feet of usable floor area
	d.	Blood and plasma office	1 per 225 square feet of usable floor area
	e.	Office, dental, psychology, or medical	1 per 300 square feet of usable floor area
5.	Industrial:		
	a.	Industrial establishments, research, and testing laboratories	1 per 800 square feet of usable floor area
	b.	Heavy equipment storage yard, lumber and building materials yard	1 per 500 square feet of usable floor area for showroom/sales area, plus 1 dedicated space per company vehicle
	c.	Manufacturing establishment or establishment for production, processing, assembly, compounding, preparation, cleaning, servicing, testing, repair, or storage of materials, goods, or products, and business offices accessory thereto	1 per 750 square feet of usable floor area

	d.	Wholesale and warehouse establishments	1 per 1,500 square feet of usable floor area
6.	Automotive Uses:		
	a.	Auto body shop, oil change shop	2 per service stall plus 1 per employee
	b.	Automotive sales, auto parts store, motorcycle service and sales, auto rental	7 per 500 square feet of usable floor area plus 1 per employee
	c.	Automotive repair shop	2 per service stall plus 1 per employee
	d.	Automotive fueling/ multi-use service station w/ convenience or food service	1 per fueling position, plus 1 stacking spaces per fueling position, plus 1 per employee, plus 1 per each 100 square feet of floor area devoted to retail sales and customer service.
		Automotive fueling/ multi-use service station w/o convenience or food service	1 per fueling position, plus 1 stacking spaces per fueling position, plus 1 per employee
	e.	Automotive wash, self-service	1 per employee plus 4 entry stacking spaces and 1.5 exiting stacking spaces per service lane
	f.	Automotive wash, automatic	1 per employee plus 10 entry stacking spaces and 2.5 exiting stacking spaces per service lane

R. *Off-Street Parking Facilities Space Layout, Standards, Construction, and Maintenance.* Wherever the off-street parking standards in this Section require the construction of an off-street parking facility, such off-street parking lots must be laid out, constructed, and maintained in accordance with the following standards and regulations.

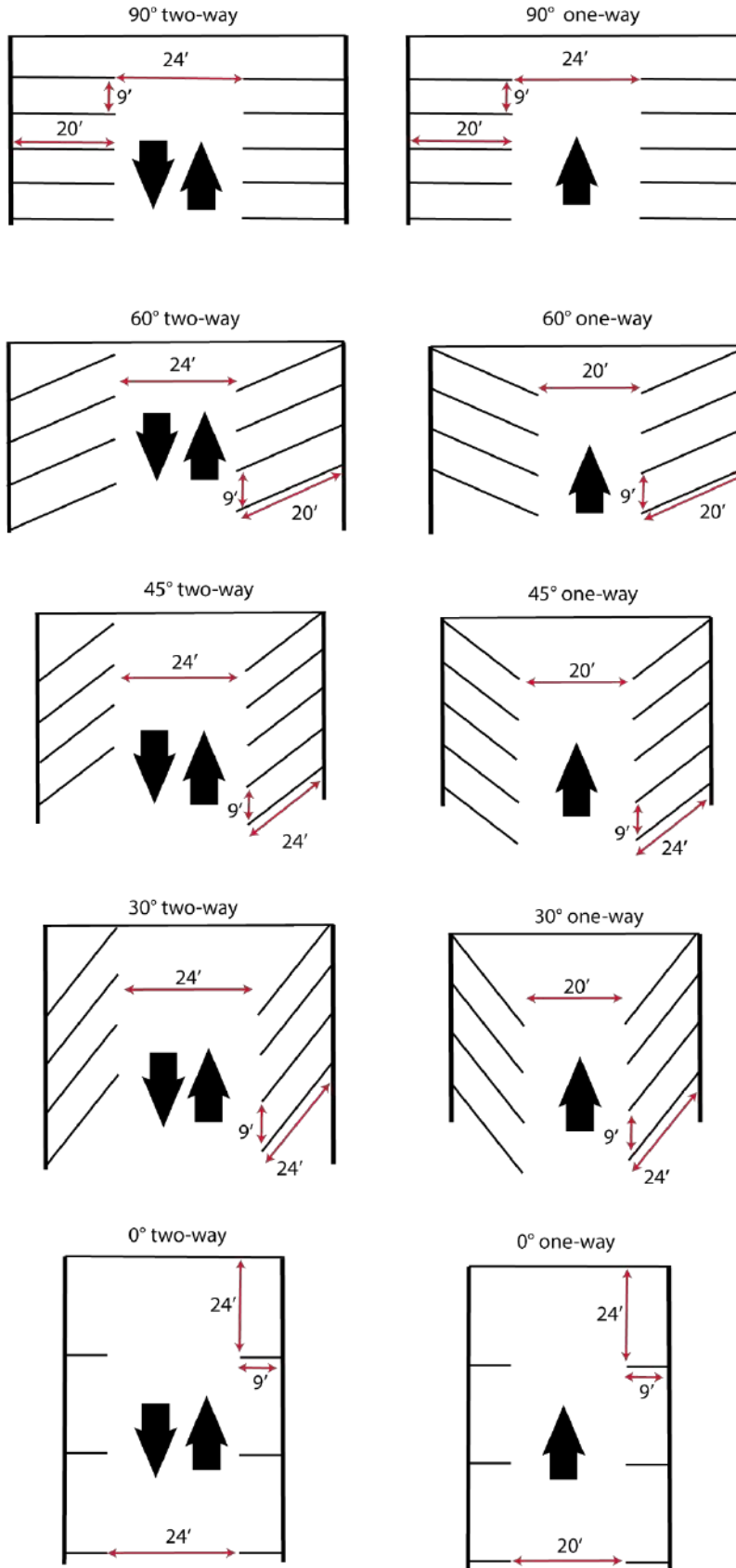
1. The construction of any parking lot must be in accordance with the requirements and provisions of this Section and Chapter 26 of the City of Berkley Code of Ordinances and the City's Engineering Design Standards and must not commence until a permit is issued by the Building Official or their designee. Construction must be completed prior to issuance of a Certificate of Occupancy.
2. Plans for the development of any parking lot must be submitted to the Community Development Director or their designee and reviewed by

the City Engineer or their designee. Plans must be prepared and sealed by an engineer, architect, or surveyor registered in the State of Michigan and must be prepared at a scale of not less than fifty feet equals one inch, indicating existing and proposed grades, drainage, water mains, and sewers, surfacing and base materials to be used and the layout of the proposed parking lot.

3. Parking lots must be curbed, paved, and drained in accordance with Chapter 26 of the City of Berkley Code of Ordinances and City Engineering Standards. No surface water from such parking area may be permitted to drain onto adjoining parcels, except through a public drain. The use of bumper blocks in lieu of concrete curbing is prohibited. All spaces must be striped.
4. Where parking abuts a curbed landscaped area at least five feet in width or a raised sidewalk having a minimum width of at least seven feet, the minimum parking stall depth of twenty feet may be decreased by up to two feet in depth in order to allow for a vehicle to overhang such landscaped area or such sidewalk. In no case may the parking stall depth be decreased to allow a vehicle to overhang a required parking setback or parcels line. Parallel parking or a maneuvering lane that abuts a building must be separated from the building by a sidewalk a minimum of five feet wide.
5. Where a parking lot abuts a side or rear lot line, the face of the curb must be located at least four feet from the parcel line. All setback areas must be graded and finished with ground cover and landscaping. No setback is required if an irrevocable shared parking agreement with the abutting neighboring parcel is approved and recorded by the City.
6. Illumination of parking areas must meet the standards set forth in Article 13, Exterior Lighting Standards.
7. Ingress and egress to the parking lot must be provided by clearly limited and defined access drives that are a minimum of thirty feet in width and at least thirty feet from any adjacent parcel line. Access drives may cross the front setback area but must not be located with the front yard to run parallel to the street. Driveway access must cross the front yard in as close to a ninety degree angle as possible, but in no case may the drive cross at an angle of seventy-five degrees or less.

8. Parking lot landscaping and screening must meet the standards set forth in Article 12, Landscaping and Screening.
9. The Planning Commission may require an access easement to provide for vehicle access to adjacent parking lots for purposes of public safety, reduction in access drives and the convenient flow of traffic.
10. Parking standards as established by the Michigan Department of Transportation and the Americans with Disabilities Act will apply.
11. Compact car spaces meeting the dimensions in Table 14.04-2 may account for no more than thirty percent of the total parking requirement. Those spaces must be clearly signed for “small cars only” and have a minimum width of eight feet and a minimum length of six feet. Where compact parking abuts a curbed landscaped area at least five feet in width or a raised sidewalk having a minimum width of at least seven feet, the minimum parking stall depth of sixteen feet may be decreased by up to two feet in depth in order to allow for a vehicle to overhang such landscaped area or such sidewalk.
12. Plans for the layout of off-street parking facilities must be in accordance with the following minimum requirements:

Table 14.04 -2				
Off-Street Parking Layout				
Parking Pattern	Maneuvering Lane Width (ft)		Parking Space Width (ft)	Parking Space Length (ft)
	One-way	Two-Way		
0° (parallel parking)	20 feet	24 feet	9 feet	24 feet
30°	20 feet	24 feet	9 feet	24 feet
45°	20 feet	24 feet	9 feet	24 feet
60°	20 feet	24 feet	9 feet	20 feet
90°	20 feet	24 feet	9 feet	20 feet



## SECTION 14.05 EXEMPTIONS

- A. All non-residential uses in non-residential zoning districts are exempt from the provisions of this Section if said use is located within five hundred feet of municipal parking facilities. The distance is measured in a straight line from the edge of a municipal parking lot to the nearest building line of said use.
- B. *Payment In-lieu Fees.* After using on-street, public parking, or municipal lot parking spaces towards the required parking, the Planning Commission may waive some of the remaining required parking for developments requiring a site plan, subject to the applicant's election to contribute a one-time fee to the City's Public Parking Fund in an amount established by resolution of City Council, in lieu of the number of spaces waived.

## SECTION 14.06 BICYCLE PARKING REQUIREMENTS

- A. *Bicycle Parking Requirements.*
  - 1. Bicycle parking is required for all multiple family, commercial, retail, office, and industrial buildings.
  - 2. One bicycle hoop must be provided for every twenty parking spaces, or portion thereof.
  - 3. *Location.* Bicycle parking must be visible from the main entrance of the structure or facility. Bicycle racks must be securely anchored to the ground and must allow the bicycle wheel and frame to be locked to the bicycle rack. If space is not available, the Community Development Director or their designee may permit an alternate location.
  - 4. *Size.* Each bicycle parking space must be sufficient to accommodate a bicycle at least six feet in length and two feet wide. Bicycle racks must be installed no closer than two feet from a wall or parked vehicle. The bicycle rack must be located where access is not restricted by legally parked vehicles.
  - 5. *Maintenance.* The surfacing of bicycle parking facilities must be designed and maintained to be clear of mud and snow.

6. *Design.* Required bicycle parking must consist of a fixed bicycle rack, such as a hoop style rack or another type of rack that meets these standards.

B. *Site Design Based District Requirements.*

1. In the site design based districts, bicycle parking must be in the locations prescribed in the general design standards and guidelines and also those for each site design based district.

## SECTION 14.07 PLUG-IN ELECTRIC VEHICLE PARKING REQUIREMENTS

A. *Class Standards.*

1. *EV-C (Electric Vehicle Capable)* EV-C are Parking Spaces having a capped cable/raceway connecting the Parking Space to an installed electric panel with a dedicated branch circuit(s) to easily install the infrastructure and equipment needed for a future Electric Vehicle Charging Station (EVCS). The dedicated branch circuit panel space must be stenciled or marked legibly with the following text: Future Electric Vehicle Charging Circuit.
2. *EV-R (Electric Vehicle Ready)* EV-R are Parking Spaces that are ready for installation of an Electric Vehicle Charging Station except for the EVCS itself. EV-R Parking Spaces must have a junction box, terminated in an approved method, for a direct-buried cable or raceway to an electrical panel with a dedicated branch circuit(s) to power a Charging Station. The junction box must be clearly marked and labeled with the following text: EV Ready Circuit.
3. *EV-I (Electric Vehicle Installed)* EV-I are Parking Spaces with an operational Electric Vehicle Charging Station.

B. *General.*

1. EV-I Parking Spaces must have signage indicating it is to be used exclusively for Electric Vehicles. Free-standing Electric Vehicle Charging Stations must have bollards, bumper blocks, or raised curbs to protect the system.



2. Electric Vehicle Charging Stations must be wall-mounted or located to accommodate the charging of more than one Parking Stall.
3. Electric Vehicle Charging Stations must not create a trip hazard or violation of the accessible path of travel when the cord is connected to an Electric Vehicle.
4. Where Parking Lots are separated into distinct areas or when Parking Structures have more than one level, the Electric Vehicle parking facilities should be evenly distributed among the separate areas or levels.

*C. Placement of Electric Vehicle Charging Stations.*

1. Electric Vehicle Charging Stations may not reduce the required stall dimensions provided in Table 14.04-2 and must maintain compliance with state barrier-free design requirements.
2. Electric Vehicle Charging Stations in any walkways must maintain at least four feet of walkway width for pedestrians.
3. Electric Vehicle Charging Stations may not be located in any required interior landscape island, right-of-way screening, or conflicting land use buffer.

## SECTION 14.08 DRIVE-THROUGH FACILITIES

In addition to meeting off-street parking requirements, all uses which provide drive-through facilities for serving customers within their automobile must meet the following requirements:

- A. No more than two drive-through lanes servicing a pickup window are permitted for each individual building, regardless of the number of uses.
- B. Ingress and egress to drive-through facilities must be part of the internal circulation of the site and integrated with the overall site design. Clear identification and delineation between the drive-through facility and parking lot must be provided. Drive-through facilities must be designed in a manner that promotes pedestrian and vehicular safety. Where necessary, protective fencing or landscaping must be used to separate vehicular and pedestrian

- traffic. Exits from drive-throughs must be designed to ensure clear visibility of other vehicular traffic.
- C. Any speaker at drive-throughs must not be audible from adjacent residential uses.
  - D. Single-lane drive-throughs may be located at the side of a building. Multiple-lane drive-throughs must be located to be the least visible from a public thoroughfare. Canopy design must be compatible with the design of the principal building and incorporate similar materials and architectural elements.
  - E. Each drive-through facility must provide adequate stacking space meeting the following standards:
    - 1. Each stacking lane must be one way, and each stacking lane space must be a minimum of twelve feet in width and twenty feet in length.
    - 2. Each drive-through facility must have an escape lane a minimum of twelve feet in width to allow other vehicles to pass those waiting to be served.
    - 3. For car wash uses, a sufficient additional lane must be provided for the active or passive drying of the vehicle after the wash. Where the drying process is to be passive, greater lane space may be required at the discretion of the Planning Commission, applying accepted principles.
    - 4. When a use is not specifically mentioned, the requirements for off-street stacking space for the use with similar needs, as determined in the discretion of the Planning Commission, must apply.
  - F. *Off-Street Waiting Space.* Uses such as day care centers, schools, hospitals, nursing homes, and places of assembly must provide safe and efficient means for passengers to be dropped off and picked up. Such off-street waiting spaces must be clearly delineated to ensure the safety of pedestrians and motorists.

## SECTION 14.09 OFF-STREET LOADING REQUIREMENTS

- A. On the same premises with every building, structure, or part thereof, erected and occupied with uses involving the receipt or distribution of vehicles,

materials, or merchandise, there must be provided and maintained on the lot, adequate space for standing, loading, and unloading services in order to avoid undue interference with public use of the streets, alleys, or any required access for off-street parking area. The approving body may waive this requirement with conditions that limit the time or location of loading and unloading.

- B. Such loading and unloading space, unless adequately provided within a building, must be an area nine feet by fifty feet, with a fifteen-foot height clearance.

# ARTICLE 15

## SITE PLAN REVIEW PROCEDURES AND REQUIREMENTS

### SECTION 15.01 INTENT

The Site Plan Review requirements in this Article are intended to provide a consistent and uniform method of review of proposed development plans, to ensure full compliance with the regulations in this Ordinance, other applicable ordinances, and state and federal laws, to achieve efficient use of the land, to encourage innovative design solutions, to protect natural resources, to ensure safety for both internal and external vehicular and pedestrian users, to achieve innovative stormwater management solutions, and to prevent adverse impact on adjoining or nearby properties. It is the intent of these provisions to encourage cooperation and consultation between the City and the applicant to facilitate development in accordance with the City's land use objectives.

### SECTION 15.02 BUILDING, STRUCTURES, AND USES REQUIRING SITE PLAN REVIEW

A Site Plan Review is required for any of the following activities.

- A. All proposed or permitted uses and related buildings, except single family dwellings, two family dwellings, accessory dwelling units, and accessory structures or buildings;
- B. Any proposed special uses and related buildings or building types subject to special approval, including any alteration, addition, or expansion or an existing building subject to special land use approval;
- C. Any alteration, addition, or expansion of an existing permitted or special use or related building
- D. Façade alterations where fifty percent or more of the exterior surface materials of any single façade of a building is proposed to change;
- E. Façade alterations that reduce the size or the number of windows; and

- F. Any parking lot or additions to existing parking lots, except for resurfacing or repair of existing parking lots.

## SECTION 15.03 SITE PLAN REVIEW PROCEDURES

- A. *Sketch Plan.* Except as otherwise required by this Ordinance, an applicant has the option of submitting a sketch plan to the Zoning Administrator for informal review. All applications for special land uses must be accompanied by a sketch plan. A sketch plan drawn to a reasonable scale must have the following information.
  - 1. Applicant's name, address, and telephone number.
  - 2. Common description of the parcels and complete legal description.
  - 3. Dimensions of land, including width, length, acreage, and frontage.
  - 4. Existing zoning and current land use of the parcels under consideration and zoning and current land use of all adjacent properties.
  - 5. General location of all existing structures, roadways, and natural features.
  - 6. The general location and size of all proposed buildings, roadways, parking areas, and any other changes proposed to be made on the subject parcels.
- B. *Pre-Application Meeting (Optional).* Prior to the submission of an application for site plan approval, the applicant, with appropriate experts, may meet with the directors of the community development, building, and DPW departments of the City or their designees, together with any consultants such directors deem appropriate. The applicant must present at such conference(s) at least a sketch plan of the proposed site plan, as specific in Section 15.03(A).
- C. *Preliminary Site Plan Procedures.*
  - 1. A petitioner seeking Site Plan Approval as required under Section 15.02 must submit an application to the Zoning Administrator for preliminary site plan approval, together with the appropriate fees.

2. The Zoning Administrator will transmit the application and preliminary site plan to the relevant City staff for review. Any application that fails to provide the information and materials regulated by this Article must be held in abeyance until the petitioner rectifies all deficiencies.
3. Complete applications will be reviewed interdepartmentally and by City consultants, as needed. Any necessary revisions or corrections must be made by the applicant prior to submission to the Planning Commission for Preliminary Site Plan Approval consideration. If the application is complete, the Zoning Administrator must schedule the site plan for consideration at a regular or special Planning Commission meeting. Notice must be sent to the applicant stating the time and place of review of the site plan by the Planning Commission.
4. After review of the site plan and a public hearing, if required, the Planning Commission must either postpone, approve, with or without conditions, or deny the site plan. If the Planning Commission denies the site plan, the minutes of the meeting must include the reasons for denial. If the site plan is approved with conditions, the minutes must include a statement of the conditions.
5. Preliminary Site Plan Approval is effective for a period of two years. Within that two year period, the petitioner must submit a complete application for Final Site Plan Approval to the Community Development Department in accordance with Section 15.03.C of this Ordinance. If the petitioner does not receive Final Site Plan Approval within two years, Preliminary Site Plan Approval will expire. Extensions may be granted in one year increments by administrative approval, provided no changes have been made to the approved plan.
6. *Variance requests.* When the applicant intends to seek a variance from the Zoning Board of Appeals for the subject request, the applicant must first receive tentative approval of the preliminary site plan from the Planning Commission. Tentative approval of the preliminary site plan by the Planning Commission must be conditioned upon the granting of any necessary variances by the Zoning Board of Appeals.

D. *Final Site Plan Procedures.*

1. Prior to requesting any building permits, the petitioner must seek Final Site Plan approval. This final site plan submittal must include those items specified under Section 15.06. Applications for Final Condominium Approval must also include four copies of the recorded Condominium Master Deed and Condominium Bylaws. It is the responsibility of the petitioner to secure all necessary approvals and authorizations related to the items required under Section 15.06.
2. The Zoning Administrator must review the submittal for Final Site Plan Approval to ascertain that all the requirements of Section 15.06 have been satisfied. Any submittal that fails to include the required modifications, information, or documents must be deemed incomplete and held in abeyance until the petitioner rectifies all deficiencies.
3. In the event that the Final Site Plan has been substantially revised from the Preliminary Site Plan Approval, as determined by the Zoning Administrator, the applicant must be directed to reapply for a new Preliminary Site Plan approval or to revise the Final Site Plan to bring it into conformance with the approved Preliminary Site Plan.
4. The Zoning Administrator must determine if the final site plan includes the required information set forth in Section 15.06 and other information requested by the Planning Commission during the preliminary Site Plan Review.
5. The Community Development Director or their designee must review the site plan and must approve, or deny the final site plan.
6. Upon approval of a final site plan, the applicant must file sealed copies of the plan with the Community Development Department reflecting all changes and conditions, if any, attached to the Planning Commission's approval. If the site plan is denied by the Planning Commission, an explanation and notification of such denial must be given to the applicant(s).
7. Upon review for compliance with any conditions of approval, the Zoning Administrator, or their designee, must stamp and sign the plans certifying that the site plan conforms to all of the provisions of this article and the Zoning Ordinance.

8. Final Site Plan approval is effective for a period of two years, during which the petitioner must obtain the required permits and commence construction of the approved project. Extensions may be granted, following the provisions of Section 15.08.
- E. *Engineering Plan Approval.* Upon certification of the approved final site plan by the Zoning Administrator, the applicant may apply for engineering plan approval, which may include but is not limited to, soil erosion control permits, storm water permits, utility permits, and all other required County and State permits (*insert reference to new Engineering Standards*).

#### SECTION 15.04 ADMINISTRATIVE PLAN REVIEW

- A. The Community Development Director or their designee will have the authority to waive the requirement for a site plan if it is determined that a project does not affect compliance with the standards of this Ordinance or other regulations.
- B. The Community Development Director or their designee is also authorized to conduct an administrative review of a site plan, provided all other standards of this Ordinance are met. The Community Development Director or their designee may conduct an administrative review of a site plan for the following projects or under the following circumstances:
1. Façade changes that bring a structure closer to compliance with the Zoning Ordinance, where less than fifty percent of the exterior surface materials of any single façade of a building is proposed to change.
  2. An increase in the percentage of the windows on a single façade.
  3. Minor changes required by an outside governmental agency.
  4. Expansion of a structure by one thousand square feet or five percent of the gross floor area, whichever is less.
  5. Changes to the landscape plan that are in compliance with the Zoning Ordinance.
  6. Parking lot changes that comply with the Zoning Ordinance.



7. Changes to the lighting plan that are in compliance with the Zoning Ordinance.
- C. The Community Development Director or their designee has the discretion to request Planning Commission review and approval.

## SECTION 15.05 SITE PLAN REVIEW STANDARDS

In reviewing all applications for site plan approval, the Planning Commission must consider the plan in relation to the following standards:

- A. *General.*
1. The proposed development must be consistent with the general principles and objectives of the adopted City of Berkeley Master Plan, the intent of any applicable corridor or sub-area plans, including the Downtown Master Plan, Downtown Design Guidelines, and all applicable building codes.
  2. All elements of the site plan must be designed to take into account the site's topography, existing historical and architectural features, the size and type of lot, the character of adjoining parcels, and the traffic operations of adjacent streets. The site must be developed so as not to impede the normal and orderly development or improvement of surrounding parcels for uses permitted in this Ordinance.
  3. The site plan must be consistent with the requirements and guidelines of any applicable site design based zoning district.
- B. *Transitions between uses.* Development must ensure compatibility with existing commercial districts and provide a transition between land uses through the application of the following requirements:
1. Building design must enhance the character of the surrounding area in relation to building and parking placement, landscape and streetscape features, and architectural design.
  2. Street fronts must provide a variety of architectural expressions that is appropriate in their context and prevent monotony.

3. Building design must achieve a compatible transition between areas with different heights, massing, scales, and architectural styles.
  4. District-specific requirements and guidelines apply for site plans within the site design based zoning districts.
- C. *Design Standards.* Development must incorporate the following recognized best architectural building design practices:
1. Foster a lasting impact on the community through the provision of high-quality design, construction, and detailing.
  2. Provide high-quality, durable materials, such as but not limited to stone, brick, glass, and metal. E.I.F.S. or material equivalent may only be used as an accent material.
  3. Develop buildings with creativity that include balanced compositions and forms.
  4. Design roofs that are appropriate to the architectural style of the building and create an appropriate visual exterior mass of the building given the context of the site.
  5. For commercial buildings, incorporate clearly defined, highly visible customer entrances using features such as canopies, porticos, arcades, arches, wing walls, ground plane elements, landscape planters, or any combination of these features.
  6. Where called for in the Master Plan or the Downtown Master Plan, include community amenities that add value to the development such as patio or seating areas, water features, artwork, sculpture, clock towers, pedestrian plazas with park benches, or other features located in areas accessible to the public.
- D. *Vehicular Access and Circulation.*
1. The location and design of driveways providing vehicular access to the site must be arranged to promote the safety and convenience of vehicles and pedestrians and to provide access in a manner that promotes proper internal circulation, taking into consideration such issues as proper driveway alignment, driveway spacing and internal connectivity between sites.

2. The Planning Commission must require public streets adjacent or through a proposed development when it is necessary for the public health, safety, and welfare, or to provide continuity to the public road system.
  3. On-site circulation must be clearly indicated on the plan. Access lanes, maneuvering lanes, parking stalls, stacking lanes, loading, and unloading bays, and doors, must be designed in a manner that promotes the general safety, convenience, and interaction of both vehicles and pedestrians. The relationship to and the impacts upon adjacent properties must also be considered.
- E. *Sidewalks, Pedestrian, and Bicycle Circulation.*
1. The arrangement of public or common ways for vehicular and pedestrian circulation must be connected to existing or planned streets and sidewalks or pedestrian or bicycle pathways in the area.
  2. A pedestrian circulation system must be separated from vehicular circulation systems.
  3. To ensure public safety, special pedestrian measures, such as crosswalks and crossing signals, and other such facilities may be required in the vicinity of primary and secondary schools, playgrounds, local shopping areas, restaurants, and other high-traffic areas of pedestrians or bicycles.
- F. *Relationship to Surrounding Parcels.* All site development features must be arranged to minimize the potential for negatively impacting surrounding parcels. In making this determination, the Planning Commission must review the plan for negative conditions, such as, but not limited to:
1. Channeling excessive traffic onto local residential streets.
  2. The lack of adequate screening of parking, maneuvering, or service areas.
  3. Excessive visual pollution from lighting and debris.
  4. The impediments to the access of emergency vehicles.

- G. *Emergency Vehicle Access.* All buildings or groups of buildings must be arranged to permit necessary emergency vehicle access as required by the Public Safety Department.
  
- H. *Stormwater and Green Infrastructure.* All buildings, driveways, parking lots, and site improvements must be designed to be compatible with all natural features on-site. The site's buildings and improvements must not encroach into the physical characteristics of the site.
  
- I. *Adequacy of Infrastructure.* The Planning Commission must consider the City Engineer's evaluation of the adequacy of public or private utilities proposed to serve the site, including water, sanitary sewers, and stormwater retention.

## SECTION 15.06 DATA REQUIRED FOR PRELIMINARY AND FINAL SITE PLANS

Plan Data	Preliminary Site Plan	Final Site Plan
<b>A. Application Form</b>		
Name and address of the applicant and parcels owner	X	X
Address and common description of parcels and complete legal description	X	X
Dimensions of land and total acreage	X	X
Zoning on the site and all adjacent properties	X	X
Description of proposed project or use, type of building or structures, and name of proposed development, if applicable	X	X
Name and address of firm or individual who prepared the site plan	X	X
Proof of parcels ownership	X	X
<b>B. Site Plan - General</b>		
24" x 36" Sheet	X	X
Engineering scale 1" = 10-ft, 20-ft, or 30-ft [Overall plan, if necessary, at 1" = 50-ft or 100-ft]	X	X
North arrow, date, and revision date(s)	X	X
Sealed by Registered engineer, architect, or planner	X	X

<b>C. Site and Zoning Data</b>		
Existing lot lines, building lines, structures, parking areas, and other improvements on the site and within 100 feet of the site	X	X
Proposed lot lines, lot dimensions, parcels lines, setback dimensions, structures, and other improvements to the site and within 100 feet of the site	X	X
All existing and proposed easements, including type	X	X
Zoning district of site and all adjacent properties	X	X
Land use of site and all adjacent properties	X	X
Proposed use of site	X	X
Gross and net lot area in acres and square feet, net lot area excluding all existing street rights-of-way as well as that in proposed rights-of-way, required access easements and portions covered by wetlands, bodies of water, and 90% of the area of all existing drainage easements	X	X
Ground floor and total floor area to be constructed	X	X
Lot coverage (ground floor area divided by net lot area)	X	
Impervious surface (total impervious area and percentage of impervious area to total net lot area)		X
Floor area ratio (total floor area divided by net lot area)	X	X
Number and type of dwelling units and density for residential properties	X	X
Building height, in feet and number of floors	X	X
Required yards	X	X
<b>D. Natural Features</b>		
Location, sizes, types, and condition of existing trees 6 inches DBH, heritage trees	X	X
Topography on the site and within 100 feet of the site a 2-foot contour intervals, referenced to a USGS benchmark	X	X
Location of any existing drainage courses, floodplains, lakes and streams, and wetlands with elevations	X	X
Wetlands delineated both in the field and on the plan. The existing area must be shown for each wetland. All impacted areas and mitigation areas must be shown with calculations provided.	X	X
Soils information, location, and extent of soils that are unbuildable in their natural state because of organic content or water table level, based on the Oakland County Soil Survey or equivalent information	X	X

Groundwater information on the site, with supporting evidence, including but not limited to site-specific soils information	X	X
<b>E. Access and circulation</b>		
Dimensions, curve radii, and center lines of existing and proposed access points, streets, and street rights-of-way or access easements		X
Driveways and intersections within 250 feet of the site	X	X
Location of proposed streets, driveways, parking lots, sidewalks, and nonmotorized pathways	X	X
Cross-section details of proposed streets, driveways, parking lots, sidewalks, and nonmotorized paths illustrating materials and thickness		X
Dimensions of acceleration, deceleration, and passing lanes		X
Calculations for required number of parking and loading spaces, location, and layout	X	X
Dimensions of parking spaces, islands, circulation aisles, and loading zones	X	X
Fire protection plan	X	X
Traffic regulatory signs and pavement markings		X
<b>F. Landscape Plans</b>		
Landscaping Plan. Refer to the landscaping requirements	X	X
Existing live plant material to remain	X	X
Planting list for proposed landscape materials, with caliper size or height of material, root ball type, method of installation (planting/staking details), botanical and common names, spacing, and quantity	X	X
Irrigation system plan for landscape areas, if applicable		X
Sections, elevations, plans, and details of landscape elements, such as berms and rain gardens	X	X
Proposed means of protecting existing plant material during construction		X
Landscape maintenance schedule		X
<b>G. Building, Structure, and Miscellaneous Site Information</b>		
Building floor plans and total floor area	X	X
Building facade elevations for all sides, drawn at an appropriate scale (indicating height, windows percentage, etc.)	X	X

Description of exterior building materials and colors (samples may be required)	X	X
Location, size, height, and lighting of all proposed site and wall signs	X	X
Details on accessory structures and any screening	X	X
Location of exterior lighting (site and building lighting)	X	X
Lighting details, including size, height, type of lamp, method of shielding, type of lens, color temperature, and depiction of lighting pattern for all site and building lighting	X	X
Lighting photometric grid overlaid on proposed site plan showing light intensity (in footcandles) on site and 10 feet beyond parcel lines	X	X
Location of any outdoor sales or display area	X	X
Assessments of potential impacts from the use, processing, or movement of hazardous materials or chemicals that will be used on-site, if applicable	X	X
<b>H. Additional Information Required for Multiple-Family Residential Development</b>		
The number and location of each type of residential unit (one-bedroom units, two-bedroom units, etc.)	X	X
Density calculations by type of residential unit (dwelling units per acre)	X	X
Garage and/or carport locations and details, if proposed	X	X
Mailbox clusters, if applicable	X	X
Location, dimensions, floor plans, and elevations of common building(s) (e.g., recreation, laundry, etc.), if applicable	X	X
Swimming pool fencing detail, including height and type of fence, if applicable	X	X
Location and size of recreation and open space areas	X	X
Indication of type of recreation facilities proposed for recreation area	X	X
<b>I. Additional Study (as required by the Community Developer Director)</b>		
Traffic study	X	X
Environmental assessment		X
Noise study	X	X
Additional study as required by the Community Development Director	X	X

## SECTION 15.07 AMENDMENTS

An applicant for site plan approval may wish to amend a previously approved site plan. A site plan outlining the differences between the original approved site plan and the requested changes must be submitted to the Community Development Department. If the revised site plan is denied, the applicant may develop the site plan as originally approved or appeal the matter as outlined below.

If a change is deemed to be minor in scope or intensity, the revised site plan may be approved administratively. Such minor revisions include:

- A. Additions or alterations to the landscape plan or landscape materials.
- B. Relocation or additional screening of trash enclosure.
- C. Alterations to the internal parking layout of the off-street parking lot, restriping, etc.

Any major revisions to the site plan, as determined by the Zoning Administrator or Community Development Director, must be subject to review and approval by the Planning Commission.

## SECTION 15.08 EXTENSION, REVOCATION, AND ABANDONMENT OF SITE PLAN APPROVAL

- A. *Extension.* Final site plan approval is valid for a period of two years from the date of final action by the Planning Commission within which time all necessary building or construction permits must be secured, and substantial construction begun. No single extension will be granted for a period of more than one year, and multiple extensions are allowed. All requests for extensions must be made in writing and include a statement of why the extension is necessary, and confirmation of the ability to complete construction in conformity with the final site plan as approved.
- B. *Revocation.* The Planning Commission may, upon review, revoke approval of a site plan if the Commission determines that any information on the approved site plan is in error. Upon revocation, work on the affected part of the development, or on the entire development, as determined by the Planning Commission, must cease. The Planning Commission may direct the Zoning Administrator to issue a stop-work order to enforce its determination. Upon revocation, the Planning Commission may require the



applicant to amend the site plan in a manner appropriate to reflect the corrected information. Any work so suspended must not be resumed until an amended site plan is approved by the Planning Commission.

C. *Abandonment.*

1. *Abandonment of preliminary site plan.* An approved preliminary site plan for which a final site plan has not been submitted as required under Section 15.02 of this Ordinance within two years from the date of preliminary site plan approval must be considered abandoned.
2. *Abandonment of final site plan.* An approved final site plan, upon which construction does not commence and an extension of approval has not been requested within a two-year period from the date of a final site plan approval, must be considered abandoned, per Section 15.08(A).

# ARTICLE 16

## NONCONFORMING LOTS, USES, AND STRUCTURES

### SECTION 16.01 PURPOSE AND INTENT

- A. It is the purpose of this Article to provide regulations governing lots, buildings, structures, and uses which were lawful prior to the enactment of this Ordinance, or amendments thereto, but which are regulated under the provisions of this Ordinance.
- B. It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures, and uses of land and structures that were lawful before this Article was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Article that nonconformities must not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.
- C. The standards of this Article are intended to accomplish the following:
  - 1. Eliminate nonconforming uses which are incompatible with permitted uses.
  - 2. Permit legal nonconforming buildings, structures, or uses to remain until they are discontinued, destroyed, or damaged to the extent where repair is not permitted, or removed.
  - 3. Encourage investment in the City by bringing nonconforming structures into compliance with this Ordinance.
  - 4. Encourage upgrading of site elements such as site landscaping, parking, paving, signage, access, pedestrian circulation, or other features of a site to comply with current Ordinance standards.
  - 5. Encourage a combination of contiguous nonconforming lots of record to create lots that conform to current standards and are compatible with other lots in the appropriate zoning district.

- D. The authorization of nonconformities that were legally established prior to the enactment or amendment of this Ordinance to continue does not apply to buildings, structures, or uses that were not legally established prior to the enactment or amendment of this Ordinance. Those nonconforming uses or nonconforming structures that have not been legally established are declared illegal and must be discontinued immediately upon the effective date of this Ordinance.

## SECTION 16.02 GENERAL REQUIREMENTS: USES AND STRUCTURES

- A. Nonconformities that substantially and adversely affect the orderly development and market value of other parcels in the district must not be permitted to continue.
- B. If a nonconforming structure or a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repair and maintenance and is declared to be unsafe by the City and unlawful by reason of physical condition, it must not be restored, repaired, or rebuilt except in conformity with the regulations of the applicable zoning district.
- C. The City Council may acquire by purchase or condemnation private parcels to remove nonconforming structures or uses. The elimination of such nonconformity must be declared to be for public purposes and public use. The acquired parcels must not be used for public housing. The City Council may institute and prosecute proceedings for the condemnation of nonconformities under the power of eminent domain in accordance with the provisions of the city charter or in accordance with Michigan Act No. 149 of the Public Act of 1911, as amended, Article X, Section 2 of the Michigan Constitution of 1963 as amended, or any other applicable statutes.
- D. If a building permit has been obtained and work has commenced and carried on continuously prior to the adoption of this chapter, then the adoption of this chapter must not limit the construction of the building.
- E. When a building or portion thereof is moved from one district to another, or to another location within the same zoning district, it must be made to conform to all the regulations of said district.
- F. No nonconformity is permitted to continue if it was unlawful at the time it was established.

### SECTION 16.03 REQUIREMENTS FOR NONCONFORMING USES

- A. A nonconforming use may be continued and maintained provided there is no increase or enlargement of the area occupied by or devoted to such use. A nonconforming use must not be added to or enlarged unless said use is made to conform to all regulations of the zoning district.
- B. There may be a change of tenancy, ownership, or management of an existing nonconforming use provided there is no change in the nature of the nonconforming use.
- C. Once a nonconforming use has stopped and the buildings or structures that house the nonconforming use remain vacant for two years, it must constitute a rebuttable presumption that the use has been abandoned, and any subsequent use of the parcels must be conforming.

### SECTION 16.04 REQUIREMENTS FOR NONCONFORMING STRUCTURES

- A. A nonconforming building must be well maintained. Maintenance includes necessary repairs and incidental alterations. Alterations must not aggravate the nonconforming characteristic.
- B. A building may be added to or enlarged if such addition conforms to the regulations of the applicable zoning district.
- C. If a nonconforming building is damaged or partially destroyed by less than fifty percent of its market valuation (exclusive of foundations) as determined by a licensed assessor or appraiser, then the building may be restored, and its previous occupancy or use continued. If a nonconforming building is damaged or partially destroyed by fifty percent or more of its market valuation (exclusive of foundations), then any restoration or new construction must comply with all current building and zoning codes.

### SECTION 16.05 REQUIREMENTS FOR NONCONFORMING LOTS

- A. Previously lawful lots of record that could no longer be created under this Ordinance or an amendment to this Ordinance, also referred to as legally

nonconforming lots, may not be divided, sold, or modified in a manner that increases any nonconformity, except as allowed in this Section.

- B. Lot area requirements do not apply to lots existing prior to the adoption of the Ordinance from which this chapter is derived; all other regulations apply.
- C. A lot described above, may continue, subject to the standards outlined below:
  - 1. Legally nonconforming lots may be used for a permitted or special land use for the zoning district in which it is located, even if the lot area, lot width, and frontage standards are not met.
  - 2. Two or more lots of record on the effective date of this Ordinance or an amendment to this Ordinance with continuous frontage that are under single ownership or control are considered a single lot for the purposes of this Ordinance if any individual lot or lots do not meet the standards of this Ordinance, including, but not limited to, lot area, lot width, frontage, setbacks, and coverages.

# ARTICLE 17

## ZONING BOARD OF APPEALS

### SECTION 17.01 ESTABLISHMENT

A Zoning Board of Appeals has been established, which must perform its duties and exercise its powers as provided in this Article and by Public Act No. 110 of 2006 (MCL 125.3101 et seq.), as amended.

### SECTION 17.02 MEMBERSHIP

- A. The Zoning Board of Appeals must consist of seven members appointed by the City Council as follows:
  - 1. The members of the Board of Appeals must be selected from the electors of the City. The members selected must be representative of the population distribution and the various interests present in the City.
  - 2. Each member of the Zoning Board of Appeals is to be appointed for a term of three years
- B. The City Council may appoint two alternate members for the same term as regular members to the Zoning Board of Appeals. The alternate member may be called as specified in the Zoning Ordinance to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member is absent from or unable to attend one or more consecutive meetings of the Zoning Board of Appeals. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member, having been appointed, must serve in the case until a final decision has been made. The alternate member must have the same voting rights as a regular member of the Zoning Board of Appeals.
- C. Members of the Zoning Board of Appeals receive no compensation.

- D. Members of the Zoning Board of Appeals are subject to the minimum standards of ethical conduct for all city officers in Section 2-40. Ethics of the City Code.
- E. A member must disqualify themselves from a vote in which they have a conflict of interest. Failure of a member to disqualify themselves from a vote in which they have a conflict of interest constitutes misconduct in office.
- F. Members of the Zoning Board of Appeals may be removable by the City Council for nonperformance of duty, misconduct in office, misfeasance, malfeasance, or nonfeasance of office upon written charges and after a public hearing, as set forth in Section 2-177 of the City General Code of Ordinances.

### SECTION 17.03 RULES GOVERNING THE BOARD OF APPEALS

- A. *Rules.* The Zoning Board of Appeals must adopt Rules of Procedure to govern its procedures. The Zoning Board of Appeals must elect a Chairperson and Vice-Chairperson from its membership in accordance with adopted rules of procedure.
- B. *Votes.* A concurring vote of a majority, i.e., at least four of the members of the Zoning Board of Appeals, no matter the number of members in attendance, is necessary for any decision related to administrative review, interpretation, and dimensional variances. A concurring vote of two-thirds of the members of the Zoning Board of Appeals is necessary for any decision related to a use variance.
- C. *Representation.* Any applicant may appear on their own behalf at a hearing or may be represented by an agent or attorney.
- D. *Time Limit.* The Zoning Board of Appeals must hear and decide upon all matters properly before it within ninety days of the public hearing. The decision of the Zoning Board of Appeals must be in the form of a resolution containing a full record of its findings and determinations in each case. The time limit may be extended by written agreement between the applicant and the Zoning Board of Appeals.
- E. *Meetings and Record of Proceedings.* Meetings of the Zoning Board of Appeals must be held at the call of the Chairperson and at such times as the

Board in its rules and regulations might specify. The Zoning Board of Appeals may not conduct business unless a majority of the members of the Board are present. The Board must maintain a record of its proceedings and all its official actions. The vote of each member upon a question, or a member's absence or abstention, must be recorded into the minutes of the meeting. A copy of the minutes of all meetings must be filed with the City Clerk showing the date, time, place, members present, members absent, any decisions made, and all roll call votes taken at the meeting.

- F. *Public Hearing and Notification.* The Zoning Board of Appeals must hold a public hearing on all appeals, interpretations, and variance requests. Public hearing and notification requirements are set forth in Section 3.10.

#### SECTION 17.04 POWERS AND DUTIES OF ZONING BOARD OF APPEALS

- A. *General.* The Zoning Board of Appeals has the power to act on matters as provided in this Article and Act 110, of the Public Acts of 2006, as amended (MCL 125.3601 et. seq.). The specific powers of the Board are enumerated in the following Sections of this Article.
- B. *Delegated Duties.* The Zoning Board of Appeals must hear and decide upon the following:
1. Appeals of administrative decisions.
  2. Requests for interpretation of the Zoning Ordinance or Zoning Map.
  3. Requests for dimensional or use variances.
  4. All matters upon which it is required to pass under this Article.
- C. *Appeals of Administrative Decisions.* The Zoning Board of Appeals must hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision, or determination made by an administrative official or body in the enforcement of this Article.
1. Appeals must be filed in writing within thirty days of the written decision in question with the Zoning Administrator. The appellant must have a parcel interest and stand to be recognized under the law to challenge the decision. The appellant must submit a clear description of the order, requirement, decision, or determination for



which the appeal is made and the grounds of the appeal. The appellant may be required by the Zoning Board of Appeals to submit additional information to clarify the appeal.

2. Appeals may be taken by the person aggrieved or by any officer, department, board, agency, or bureau of the City or State governments. In addition, a variance in the Zoning Ordinance may be applied for and granted under Section 4 of the Uniform Condemnation Procedures Act, 1980 PA 87, MCL 213.54.
3. An appeal stays all proceedings in the furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals that a stay would cause imminent peril to life and property. In such a case, proceedings must not be stayed other than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken, and on due cause shown.
4. An administrative decision may be reversed, in whole or in part, or may be modified. To that end, the Zoning Board of Appeals must have all the powers of the Zoning Administrator from whom the appeal is taken. In reaching its decision, the Zoning Board of Appeals must only modify or reverse an administrative decision being appealed if one or more of the following requirements are met:
  - a. The administrative decision was arbitrary or capricious.
  - b. The administrative decision was based on an erroneous finding of material fact.
  - c. The administrative decision constituted an abuse of discretion.
  - d. The administrative decision was based on an erroneous interpretation of the Zoning Ordinance or zoning law.

D. *Interpretation.*

1. The Zoning Board of Appeals must hear and decide requests for interpretation of the Zoning Ordinance or the Zoning Map, taking into consideration the intent and purpose of the Zoning Ordinance and the Master Plan. In an interpretation of the Zoning Map, the Zoning Board of Appeals is governed by the Rules of Interpretation set forth in

Section 4.03, Interpretation of District Boundaries. The Zoning Board of Appeals does not have the power to alter or change zoning district boundaries, except where uncertainty exists as to the location of a boundary, land use classifications of any parcel, or Zoning Ordinance text.

2. A record must be kept by the Zoning Administrator of all decisions for interpretation of the Zoning Ordinance or Zoning Map. The Zoning Board of Appeals may request the Planning Commission to initiate an ordinance amendment that would correct or clarify the Ordinance.

E. *Dimensional and Other Non-Use Variances.*

1. Where literal enforcement of the provisions of the Zoning Ordinance would involve practical difficulties within the meaning of this Article, the Zoning Board of Appeals must have the power to authorize such variation of the provisions of this Article with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Article and so that public safety and welfare are secured, and substantial justice is done.
2. Dimensional or other non-use variances must not be granted by the Zoning Board of Appeals unless it can be determined that all of the following facts and conditions exist:
  - a. The need for the variance is due to unique circumstances or physical conditions of the parcel.
  - b. The need for the variance is not the result of actions of the parcel owner or previous parcel owners.
  - c. Strict compliance with the ordinance will unreasonably prevent the parcel owner from using the parcel for a permitted purpose or will render conformity with those regulations unnecessarily burdensome.
  - d. The requested variance is the minimum variance necessary to do substantial justice to applicant as well as other parcel owners
  - e. The requested variance will not adversely impact the surrounding properties.

F. *Use Variances.*

1. Where literal enforcement of the provisions of the Zoning Ordinance would involve practical difficulties within the meaning of this Article, the Zoning Board of Appeals must have the power to authorize such variation of the provisions of this Article with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Article and so that public safety and welfare are secured, and substantial justice is done.
2. Use variances must not be granted by the Zoning Board of Appeals unless it can be determined that all of the following facts and conditions exist:
  - a. The building or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the current zoning district.
  - b. The need for a variance is due to unique circumstances or physical conditions of the parcel.
  - c. The proposed use will not alter the essential character of the neighborhood.
  - d. The need for the variance is not the result of the actions of the parcel owner or previous parcel owners.

## SECTION 17.05 RULES AND PROCEDURES FOR VARIANCES

A. *General.*

1. An application for a variance must be filed by the record owner of the lot in question, or by an agent authorized in writing to act on the record owner's behalf, with the Zoning Administrator.
2. The application must be accompanied by an electronic copy and the number of hard copies specified by the Community Development Department of a site plan placed on an eleven by seventeen inch standard sheet, and must contain the following information unless otherwise waived by the Zoning Administrator:
  - a. Dimensional elements for which a variance is requested.

- b. Dimensional relationships of the subject lot to the structures located on all adjacent properties.
3. The application must be accompanied by an affidavit executed by the applicant explaining the following:
  - a. Why compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, or density would unreasonably prevent the owner from using the parcel for a permitted purpose or how conformity with such restrictions would be unnecessarily burdensome, addressing all of the standards in Section 17.04(E)-2 or 17.07(F)-2.
  - b. How a grant of the variance applied for would do substantial justice to the applicant as well as to other parcel owners in the district.
  - c. Could a lesser relaxation than that applied for give substantial relief to the owner of the parcel involved and be more consistent with justice to other parcel owners.
  - d. How relief can be granted in such a fashion that the spirit of the Zoning Ordinance will be observed, and public safety and welfare secured.
4. After a public hearing and upon findings of fact based upon the applicable standards set forth in this Article, the Zoning Board of Appeals may approve the variance(s) as requested, approve variance(s) that better comply with the Ordinance than that requested, or deny the request.
5. The Zoning Board of Appeals may impose conditions with an affirmative decision. The conditions may include those necessary to promote the public health, safety, and welfare, ensure compatibility with surrounding land uses, and protect and preserve natural features. Any conditions imposed by the Zoning Board of Appeals must be related to the advance of a legitimate government interest and purposes which are affected by the proposed use or activity.
6. A variance runs with the parcel and any subsequent owners may legally continue the variance under its original or amended terms.
7. An application for a variance that has been denied wholly or in part by

the Zoning Board of Appeals must not be resubmitted for a period of twelve months from the date of denial, except on grounds of new evidence not previously discovered at the time the variance was denied, a reduction in the requested variance from the applicant, or changed conditions found by the Zoning Board of Appeals to be valid.

**B. *Decision of the Zoning Board of Appeals.***

1. The Zoning Board of Appeals may deem it appropriate in any given case to provide an opportunity for anyone presenting testimony or evidence to submit proposed findings of fact and conclusions.
2. At the conclusion of the hearing, the Zoning Board of Appeals may make its decision at that meeting, or it may postpone the hearing to a new date for the purpose of reviewing the testimony and evidence, and reviewing proposed findings and conclusions submitted by hearing participants, in preparation for making its decision. The Zoning Board of Appeals may also request the Zoning Administrator to prepare findings and conclusions.
3. If the Zoning Board of Appeals determines to grant variance relief, it must be the minimum relief required to allow reasonable use of the parcel, while maintaining the essential character of the area. Such relief may be in the form of one or more non-use variance or in the form of a use variance. The motion may include conditions that are authorized by law.

## **SECTION 17.06 ZONING BOARD OF APPEALS APPROVAL**

The Zoning Board of Appeals may require the applicant to submit all necessary surveys, plans, or other information necessary for the Zoning Board of Appeals to investigate thoroughly the matter before it. The Zoning Board of Appeals may impose such conditions or limitations in granting a variance as it may deem necessary to comply with the spirit and purposes of this Article.

## **SECTION 17.07 APPROVAL PERIODS**

- A. No order of the Zoning Board of Appeals permitting the erection or alteration of a building is valid for a period longer than twelve months, unless a building

permit for such erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

- B. No order of the Zoning Board of Appeals permitting a use of a building or premises is valid for a period longer than twelve months, unless such use is established within such period; provided, however, that such order must continue in force and effect if a building permit for said erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with such permit.
- C. In all cases where site plan approval is required in accordance with Article 14, any variance is valid for a period of two years from the date of final site plan approval subject to the requirements set forth in Section 17.07, subsection A and B.

# ARTICLE 18

## REZONING AND ZONING ORDINANCE TEXT AMENDMENTS

### SECTION 18.01 INITIATION OF ZONING ORDINANCE MAP AND TEXT AMENDMENTS

An amendment to the zoning district boundaries contained on the Official Zoning Map (rezoning), the regulating plans in Article 6 (site or street type change), and the text of this ordinance may be initiated by the City Council, the Planning Commission, or by a parcel owner or a person acting on behalf of a parcel owner. An amendment to the text of this ordinance may also be initiated by a protest petition in compliance with Section 125.3403 of the Michigan Zoning Enabling Act.

### SECTION 18.02 ZONING ORDINANCE TEXT AND MAP AMENDMENT APPLICATION PROCEDURE

- A. *Application Information for Amendments.* An amendment to the official Zoning Map, the regulating plans in Article 6, or this Zoning Ordinance, except those initiated by the City Council or Planning Commission, must be initiated by submission of a complete application on a form supplied by the City, including an application fee, which must be established from time to time by resolution of the City Council. Said application must explicitly describe the proposed amendment and must be signed by the applicant.
- B. *Application Information for Zoning Map or Regulating Plan Amendment.* In the case of an application for an amendment to the Official Zoning Map (rezoning) or the regulating plans in Article 6 (site or street type change), the following information must accompany the application:
  - 1. Information to indicate the dimensions, location, and size of the subject parcel such as a sketch plan, parcel identification number, a legal description, street address of the subject parcel, a map identifying the subject parcel in relation to surrounding properties, or other information required by the Planning Commission.

2. The name, signature, and address of the owner of the subject parcel, a statement of the applicant's interest in the subject parcel if not the owner in fee simple title, and proof of consent from the parcel owner.
3. For an amendment to the Official Zoning Map (rezoning), the following must be included in the application:
  - a. The existing and proposed zoning district designation of the subject parcel; and
  - b. A written description of how the requested rezoning meets Sec. 18.04 Criteria for Amendment of the Official Zoning Map (Rezoning).
4. For an amendment to a regulating plan in Article 6 (site or street type change), the following must be included in the application:
  - a. The existing and proposed site type designation; and
  - b. A written description of how the requested rezoning meets Sec. 18.06 Criteria for Amendment of a Regulating Plan in Article 6 (Site or street type change).

### SECTION 18.03 REZONING AND ZONING ORDINANCE AMENDMENT PROCESS

- A. *Public Hearing.* Upon initiation of a rezoning, Zoning Ordinance text amendment, Regulating Plan amendment, or Master Plan amendment, a public hearing on the proposed amendment must be scheduled before the Planning Commission. Notice of the hearing must be given in accordance with the provisions of Section 3.10, Public Notice Requirements.
- B. *Planning Commission Review and Recommendation.* Following the public hearing, the Planning Commission must identify and evaluate all factors relevant to the petition and report its findings and recommendations to the City Council. In the case of an amendment to the official Zoning Map (Rezoning), the Planning Commission must consider the criteria contained in Sec. 18.04 Criteria for Amendment of the Official Zoning Map (Rezoning), below, in making its findings and recommendation. In the case of an amendment to a regulating plan in Article 6 (site or street type change), the Planning Commission must consider the criteria contained in Sec. 18.05



Criteria for Amendment of a Regulating Plan in Article 6 (Site or street type change), below, in making its finding and recommendation.

- C. *City Council Review and Action.* Following receipt of the findings and recommendation of the Planning Commission, the City Council must consider the proposed Zoning Ordinance Map, Regulating Plan, or text amendment. In the case of an amendment to the text of this Zoning Ordinance, the City Council may modify or revise the proposed amendment as recommended by the Planning Commission. In the case of an amendment to the Official Zoning Map (rezoning) or a Regulating Plan in Article 6 (site or street type change), the City Council must approve or deny the amendment, which must be based on consideration of the criteria contained in Sec. 18.04 Criteria for Amendment of the Official Zoning Map (Rezoning), or in Sec. 18.05 Criteria for Amendment of a Regulating Plan in Article 6 (Site or street type change), respectively. Ordinances are enacted per the procedure described in Section 6.2 of the Charter of the City of Berkley.
- D. *Notice of Adoption.* Following the adoption of a zoning text, regulating plan or Official Zoning Map amendment by the City Council, a notice will be published in accordance with the Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, MCL 125.3101 *et seq.*, as amended.
- E. *Resubmittal.* No petition for a Zoning Ordinance text, regulating plan, or Official Zoning Map amendment that has been denied by the City Council can be resubmitted for a period of one year from the date of denial, except on the grounds of new evidence or proof of changed conditions.

## SECTION 18.04 CRITERIA FOR AMENDMENT OF THE OFFICIAL ZONING MAP (REZONING)

In considering any petition for an amendment to the Official Zoning Map (rezoning), the Planning Commission and the City Council must consider the following criteria in making its findings, recommendations, and decision:

- A. Consistency with the goals, policies, and City of Berkley Master Plan, all applicable subarea and corridor studies, including the Downtown Master Plan. If conditions have changed since the Master Plan was adopted, the consistency with recent development trends in the area.

- B. Compatibility of the site's physical, geological, hydrological, and other environmental features with the potential uses allowed in the proposed zoning district.
- C. The compatibility of all the potential uses allowed in the proposed zoning district with surrounding uses and zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic impacts, aesthetics, infrastructure, and potential influence on parcel values.
- D. The capacity of City infrastructure and services to accommodate the uses permitted in the requested district and the City.
- E. The demonstrated need for the types of uses permitted in the requested zoning district in the city in relation to the amount of land in the City currently zoned to accommodate the demand.

## SECTION 18.05 CRITERIA FOR AMENDMENT OF THE OFFICIAL ZONING ORDINANCE TEXT

The Planning Commission and City Council must, at minimum, consider the following before taking action on any proposed amendment:

- A. Compatibility with the basic intent and purpose of the Zoning Ordinance.
- B. Consistency with the goals and objectives of the City's Master Plan and applicable sub-area or corridor studies, including the Downtown Master Plan.
- C. The requested amendment will correct an error in the current Zoning Ordinance.
- D. There is documentation from City staff, the Planning Commission, or the Zoning Board of Appeals indicating problems and conflicts in the implementation or interpretation of specific Sections of the Ordinance.
- E. The requested amendment will address changes in state legislation, other City ordinances, or federal regulations.

## SECTION 18.06 CONDITIONAL REZONING OF LAND

As an alternative to a map amendment, the City may allow conditional rezoning to help ensure the proper use of land and natural resources and to allow for a more flexible approach to the rezoning process in accordance with Public Act No. 110 of Public Acts of Michigan of 2006, as amended. It is recognized that, in certain instances, it would be an advantage to both the City and petitioners seeking rezoning of land if a site plan, along with conditions and limitations that may be relied upon by the City, could be proposed as part of a petition for rezoning. Conditional rezoning of land must follow the standards and procedures as noted below.

- A. The amendment procedure for a conditional rezoning must follow the same procedure as a traditional rezoning amendment pursuant to Section 18.03 above.
- B. In addition to the procedures as noted in Sections 18.04 and 18.05, the following specific procedures, standards, and requirements apply to all proposed conditional rezoning requests.
  1. A conditional rezoning request must be voluntarily offered by an owner of land within the City. All offers must be made in writing and must provide the specific conditions to be considered by the City as a part of the rezoning request. All offers must be in the form of a written agreement approvable by the City Council and parcel owner, incorporating the conditional rezoning site plan and setting forth any conditions and terms mutually agreed upon by the parties relative to the land for which the conditional rezoning is sought.
  2. Conditional rezoning must not allow a use or activity that would not otherwise be allowed in the proposed zoning district.
  3. Conditional rezoning must not alter any of the various zoning requirements for the use(s) in question, i.e., parking, landscaping, lot area, lot width, building height, setbacks, lot area coverage, etc. Conditional rezoning must not grant zoning variances of any kind. Any zoning variance must follow the provisions of Article 9, General Provisions.
  4. Conditional rezoning must not grant special land use approval. The process for review and approval of special land uses must follow the provisions of Article 10, Special Land Uses

5. All conditions offered by a landowner in relation to a rezoning request must have a direct relationship to the rezoning itself. The provisions to allow conditional rezoning must not be construed to allow rezoning by exaction.
  6. In addition to the informational requirements provided for in Section 18.02 of this ordinance, the applicant must provide a conditional rezoning site plan prepared by a licensed professional allowed to prepare such plans under this Ordinance, that may show the location, size, height, or other measures of buildings, structures, improvements and features, including natural features on, and in some cases adjacent to, the parcel that is the subject of the conditional rezoning of land. The details to be offered for inclusion in the conditional rezoning site plan must be determined by the applicant, subject to the approval of the City. A conditional rezoning site plan must not replace the requirement under this Ordinance for Site Plan Review and approval, or subdivision or site condominium approval.
- C. *Conditional Rezoning Agreement.* Upon approval of a conditional rezoning request, the applicant must submit a formal written statement of conditions as approved by the City Council which must be incorporated by attachment as an inseparable part of the ordinance adopted by the City Council. The statement of conditions must:
1. Be in a form recordable with the Oakland County Register of Deeds and include a statement acknowledging that it is recorded.
  2. Contain a legal description of the land to which it pertains.
  3. Acknowledge that upon the rezoning taking effect, the use and development of the land must conform thereafter to all the requirements regulating use and development within the new zoning district as modified by the statement of conditions.
  4. Contain a provision acknowledging that the statement of conditions runs with the land and is binding upon successor owners of the land. Any person who establishes a development or commences a use upon such land must continuously operate and maintain the development or use in compliance with the conditions set forth in the statement of conditions.

5. Incorporate by attachment or reference any diagram, plans, or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the statement of conditions. If any such documents are incorporated by reference, the reference must specify where the document may be examined.
6. Specify that failure to comply with any of the conditions set forth in the statement of conditions must constitute a violation of this zoning ordinance and is punishable accordingly.
7. Contain the notarized signatures of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the document.

D. *Time Limits and Reversion of Land to Previous District.*

1. If the proposed conditions of rezoning are acceptable to the City, the City may establish a time period during which the conditions apply to the parcel and must be met. If the conditions are not satisfied within the time specified under this Section, the parcel must revert to its former zoning classification unless an extension is granted as noted below. Reversion of a parcel back to its former classification must follow the rezoning amendment provisions as provided in Section 18.03 of this Ordinance.
2. Unless a reversion of the zoning takes place as described in the Section above, the approved conditional rezoning must be binding upon the subject parcel owner, their heirs, successors, assigns, and transferees.
3. Upon approval of a conditional rezoning, a copy of the written agreement between the parcel owner and the City must be filed with the Oakland County Register of Deeds, which must act to provide notice to all subsequent owners of the parcel of the conditions approved and agreed to by the City.
4. The City may not add to or alter any conditions approved as a part of a rezoning during the time period specified above.
5. The time limits specified and approved by the City may be extended upon the application of the landowner and approval of the City.

E. *Review Procedures.* The factors found in Section 18.04 of this Ordinance must be considered in any conditional rezoning request.

**SECTION 18.07 AMENDMENTS REQUIRED TO CONFORM TO COURT DECREE**

Any amendment for the purpose of conforming to a decree of a court of competent jurisdiction must be adopted by the City Council and published, without the necessity of a public hearing.