

PUBLIC NOTICE

CITY OF BERKLEY, MICHIGAN REGULAR MEETING OF THE CITY PLANNING COMMISSION

Tuesday, January 24, 2023
7:00PM – City Hall Council Chambers
Information: 248-658-3320

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
APPROVAL OF AGENDA
APPROVAL OF MINUTES – *Meeting minutes of December 20, 2022*
COMMUNICATIONS
CITIZEN COMMENTS

OLD BUSINESS

1. **PUBLIC HEARING** An ordinance of the City Council of the City of Berkley, Michigan to amend Section 138-32, Section 138-387, Section 138-394, Section 138-419, Section 138-427, Section 138-457, Section 138-487 and Section 138-529 of Chapter 138 - Zoning in order to regulate vape shops.
2. **PUBLIC HEARING** An ordinance of the City Council of the City of Berkley, Michigan to amend Section 138-458 of Chapter 138 – Zoning in order to add nursery schools, day nurseries and child care centers to the Twelve Mile District as a special use.
3. **Outdoor Seating:** Discussion of ordinance language to regulate outdoor seating

NEW BUSINESS

1. **Planning Commission Bylaws and Rules of Procedure:** Consideration of updates to the Planning Commission bylaws and rules of procedure

LIAISON REPORTS
COMMISSIONER / STAFF COMMENTS
ADJOURN

Notice: Official Minutes of the City Planning Commission are stored and available for review at the office of the City Clerk. 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: City Clerk, ADA Contact, Berkley City Hall, 3338 Coolidge, Berkley, Michigan 48072, (248) 658-3300.

You can watch the meeting on Channel 10 for both Comcast and WOW, at <http://www.youtube.com/CityofBerkley> or <http://www.berkleymich.org/livestream>.

THE REGULAR MEETING OF THE BERKLEY CITY PLANNING COMMISSION WAS CALLED TO ORDER AT 7:00 PM, DECEMBER 20, 2022 AT BERKLEY CITY HALL BY CHAIR LISA KEMPNER.

The minutes from this meeting are in summary form capturing the actions taken on each agenda item. To view the meeting discussions in their entirety, this meeting is broadcasted on the city's government access channel, WBRK, every day at 9AM and 9PM. The video can also be seen, on-demand, on the city's YouTube channel: <https://www.youtube.com/user/cityofberkeley>

PRESENT: Michael Woods Greg Patterson
 Shiloh Dahlin
 Lisa Kempner

ABSENT: Joe Bartus
 Matteo Passalacqua
 Lisa Hamameh

ALSO, PRESENT: Kristen Kapelanski, Community Development Director
 Megan Masson-Minock, Carlisle Wortman & Associates
 Ross Gavin, City Council

Motion by Commissioner Patterson to excuse the absences of Commissioners Bartus, Passalacqua and Hamameh. Motion supported by Commissioner Woods.

Voice Vote to approve the absences of Commissioners Bartus, Passalacqua and Hamameh.

AYES: 4
NAYS: 0
ABSENT: Bartus, Passalacqua and Hamameh

MOTION CARRIED

APPROVAL OF AGENDA

Motion by Commissioner Patterson to approve the agenda and supported by Commissioner Woods.

Voice vote to approve the agenda

AYES: 4
NAYS: 0
ABSENT: Bartus, Passalacqua and Hamameh

MOTION CARRIED

APPROVAL OF THE MINUTES

Motion by Commissioner Patterson to approve the minutes of regular Planning Commission meeting on October 25, 2022 and supported by Commissioner Woods.

Voice vote to approve the meeting minutes of October 25, 2022.

AYES: 4
NAYS: 0
ABSENT: Bartus, Passalacqua and Hamameh

MOTION CARRIED

COMMUNICATIONS

NONE

CITIZEN COMMENTS

NONE

OLD BUSINESS

- 1. **Outdoor Seating:** Discussion of ordinance language to allow outdoor seating accessory to a permitted use as a permitted use

Community Development Director Kapelanski briefly described the staff memo by Planning Consultant Megan Masson-Minock. Following a description of the memo, Director Kapelanski noted an issue that was raised by several businesses with regard to the draft ordinance language. Portions of the sidewalks in Berkley, particularly along Twelve Mile, have obstructions, such as bike racks, trash cans, etc. that prevent business owners wishing to do outdoor seating from maintaining a five foot clear path for walking, as the ordinance language requires. The Planning Commission should discuss whether they might be willing to go down to a lesser passing distance or require five feet, which may prohibit outdoor seating in some areas. The Americans with Disability Act requires a minimum passing distance of three feet every two hundred feet.

The Commission generally agreed their previous comments were captured in the updated ordinance and moved on to discussing the need for a five-foot clear path and alternative options.

The Commission asked Planning Consultant Masson-Minock to do an analysis of which areas of the City would be most affected by a required five-foot travel path, excluding Woodward. This will be provided at the next meeting.

- 2. **Vape Shops:** Discussion of an ordinance amendment to regulate the location of vape shops

Planning Consultant Megan Masson-Minock went over her staff memo discussing potential ordinance amendment items based on the Commission’s previous discussion.

The Planning Commission had no additional comments on the ordinance and agreed it was ready for a public hearing at the next meeting.

NEW BUSINESS

- 1. **Child Care Centers - Twelve Mile District**

Community Development Director Kapelanski stated staff had a request from an existing non-conforming child care center in the Twelve Mile District to expand. Since child care centers are not a principal permitted or special land use in the Twelve Mile District, they would have to be added in order to allow an expansion. Staff has provided suggested text matching that recently added to the Local Business District.

The Planning Commission agreed that child care centers should be added to the Twelve Mile District as a special land use with the suggested language. This can proceed to a public hearing at the next Planning Commission meeting.

- 2. **2023 Meeting Dates**

Motion by Commissioner Patterson to approve the 2023 Meeting Dates and supported by Commissioner Woods.

Voice vote to approve the 2023 Meeting Dates.

AYES: 4
NAYS: 0
ABSENT: Bartus, Passalacqua and Hamameh

MOTION CARRIED

LIAISON REPORT

Commissioner Dahlin noted the Environmental Committee continued their discussion of EV charging stations.

Chair Kempner noted Berkley will be 100 years old in 2023. The Tree Board presented their tree canopy study to the City Council. The City Council extended their outdoor seating resolution until April 2023. Michael Dooley was appointed to the City Council and Mayor Terbrack has retired, opening up an additional seat.

COMMISSIONER COMMENTS

NONE

STAFF COMMENTS

Community Development Director Kapelanski stated the Downtown Design Guidelines ordinance will be effective next month.

ADJOURNMENT

Motion to adjourn by Commissioner Patterson supported by Commissioner Woods.

Voice vote for adjournment

AYES: 4
NAYS: 0
ABSENT: Bartus, Passalacqua and Hamameh

With no further business, the meeting was adjourned at 7:47 at p.m.



CITY OF BERKLEY COMMUNITY DEVELOPMENT

3338 COOLIDGE HWY, BERKLEY, MICHIGAN 48072

MEMORANDUM

To: Planning Commission

From: Kristen Kapelanski, Community Development Director

Subject: **Vape Shop Regulations**

Date: January 20, 2023

Over the past several months, the Planning Commission has been discussing ordinance amendments to regulate vape shops throughout the City. Included for the Planning Commission's consideration is the proposed amendment incorporating past discussions.

The Planning Commission is asked to hold the public hearing and forward a recommendation to the City Council on the proposed amendment.

AN
ORDINANCE

of the City Council of the City of Berkley, Michigan to Amend Sec. 138-32, Section 138-387, Sec. 138-394, Sec. 138-419, Sec. 138-427, Sec. 138-457, Sec. 138-487, and Sec. 138-529 of Chapter 138 – Zoning in order to regulate vape shops.

THE CITY OF BERKLEY
ORDAINS:

SECTION 1: Section 138-32 of Chapter 138 of the Berkley City Code is amended, as follows:

Tobacco and vape shop. ~~Any establishment having more than 30 percent of shelf space devoted to selling of tobacco, cigarette, cigars, or smoking paraphernalia.~~ Any establishment dedicated to the retail sale of tobacco, tobacco products, alternative nicotine products, nicotine products, vapor products, vapor devices or tobacco paraphernalia as its primary source of income, with the prohibition of onsite smoking and/or lounge. Any grocery store or similar retail use that sells cigars, cigarettes, vapor products or tobacco as an ancillary sale is not included in this definition. The following definitions are provided:

- (1) Alternative nicotine product: A noncombustible product containing nicotine that is intended for human consumption whether chewed, absorbed, dissolved, inhaled or ingested by any other means.
- (2) E-liquid: A liquid that is converted into an aerosol by an e-cigarette or vapor device. It is typically a mixture of water, food grade flavoring, a range of nicotine levels, cannabis, propylene glycol (PG) or vegetable glycerin (VG)
- (3) Nicotine product: A product that does not contain tobacco, but delivers nicotine, including vapor products, and other nicotine delivery methods and devices.
- (4) Tobacco paraphernalia: Any equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in Section 2 of the Tobacco Products Tax Act, 1993 PA 327, MCL 205.422. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bong, water bong, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches are excluded from the definition of tobacco paraphernalia.
- (5) Tobacco product: A product that contains tobacco and is intended for human consumption including, but not limited to, cigarettes, cigars, non-cigarette smoking tobacco, chewing tobacco, tobacco snuff or smokeless tobacco as those terms are defined in Section 2 of the Tobacco Products Tax Act, 1993 PA 327, MCL 205.422.
- (6) Vapor device: A device that employs a heating element, power source, electronic circuit, or other electric, chemical, or mechanical means regardless of shape or size that can be used to

produce vapor from substances, including nicotine, cannabidiol and synthetic cannabinoids, in a solution or other form. Vapor devices include, but are not limited to a disposable electronic cigarette (E cigarette), an e-cigarette with a prefilled or refillable cartridge, a modifiable device allowing the user to customize the substances uses (mod), a prefilled or refillable pod cartridge with a modifiable system (pod-mod), an electronic pipe, an electronic hookah, a vaporizer, or similar product or device

- (7) Vapor product: A noncombustible product containing nicotine, cannabidiol and synthetic cannabinoids, in a solution or other form. Vapor products include, but are not limited to e-liquid, nicotine salt, a prefilled or refillable vapor cartridge, sub-ohm tanks, or other container of nicotine in a solution or other form that is intended to be used with or in a vapor device.
- (8) Vaporizer. An inhalation device used to release the active substances of organic or inorganic materials in the form of an aerosol through the application of non-combusting heat.

SECTION 2: Section 138-387 of Chapter 138 of the Berkley City Code is amended, as follows:

Sec. 138-387. – Principal Uses permitted.

Principal uses permitted in the LB district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, pharmaceutical, apothecary items, flowers, dry goods, furnishings, jewelry, clothing millinery, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, radios, televisions, small appliances, vacuum and sewing machines, etc.), beauty salons, hair salons, barber shops, manicuring studios, tanning salons, massage facilities, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, seamstress/dressmaker, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
- (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, loan companies, insurance offices, travel services, and real estate offices. Bank, savings and loan associations and credit

unions may include drive-up facilities only as an accessory use subject to the required provisions for stacking or waiting space, apart from required off street parking areas, at the rate of 4 car spaces for each service window or pedestal, in addition to providing a full car length space at the window or pedestal.

- (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales, subject to the limitations contained in section 138-390.
- (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions subject to the limitations contained in section 138-390.
- (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions, subject to the limitations contained in section 138-390.
- (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (11) Places of worship.
- (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
- (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in, drive-through or outdoor service-eating establishments.
- (14) Single-family, two-family and multiple-family dwellings when located on the second floor or above a first floor permitted or special use. Single-family detached dwellings and first floor dwelling units are prohibited.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.
- (16) Marihuana retailers and medical marihuana provisioning centers.
- (17) [Tobacco and vape shops.](#)

SECTION 3: Section 138-394 of Chapter 138 of the Berkley City Code is amended, as follows:

Sec. 138-394. – Principal uses permitted.

Principal uses permitted in the Greenfield district are as follows:

- (1) Single family homes, townhouses, and apartments.
- (2) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, and other similar or allied professions.

- (3) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, insurance, travel services, drafting and real estate sales.
- (4) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions.
- (5) Places of worship.
- (6) Assembly halls.
- (7) Senior housing facilities, including assisted living and nursing homes.
- (8) Day care centers.
- (9) Dwellings when located above a business or office use.
- (10) [Tobacco and vape shops.](#)

SECTION 4: Section 138-419 of Chapter 138 of the Berkley City Code is amended, as follows:

Sec. 138-419. Prohibited uses.

The following uses shall be prohibited within the downtown district:

- (1) Gas stations.
- (2) Auto repair shops.
- (3) Drive through uses.
- (4) Tattoo, body piercing studios.
- (5) Tobacco [and vape](#) shops.
- (6) Stores selling live animals.
- (7) Parking lots, as a principal use.
- (8) First floor residences.

SECTION 5: Section 138-427 of Chapter 138 of the Berkley City Code is amended, as follows:

Sec. 138-427. Principal uses permitted.

Principal uses permitted in the Gateway district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, pharmaceutical, apothecary items, flowers, dry goods, furnishings, jewelry, clothing millinery, shoes, books and periodicals, stationery and office supplies and hardware.

- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, radios, televisions, small appliances, vacuum and sewing machines, etc.), beauty salons, hair salons, barber shops, manicuring studios, tanning salons, massage facilities, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, seamstress/dressmaker, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
- (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, loan companies, insurance offices, travel services, and real estate offices. Bank, savings and loan associations and credit unions may include drive-up facilities only as an accessory use subject to the required provisions for stacking or waiting space, apart from required off street parking areas, at the rate of 4 car spaces for each service window or pedestal, in addition to providing a full car length space at the window or pedestal.
- (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales, subject to the limitations contained in section 138-410.
- (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions subject to the limitations contained in section 138-410.
- (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions, subject to the limitations contained in section 138-410.
- (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (11) Places of worship.
- (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
- (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in, drive-through or outdoor service-eating establishments.
- (14) Single-family, two-family and multiple-family dwellings when located on the second floor or above a first floor permitted or special use. Single-family detached dwellings and first floor dwelling units are prohibited.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.

- (16) Marihuana retailers and medical marihuana provisioning centers.
- (17) [Tobacco and vape shops.](#)

SECTION 6: Section 138-457 of Chapter 138 of the Berkley City Code is amended, as follows:

Sec. 138-457. Principal uses permitted.

Principal uses permitted in the twelve mile district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, pharmaceuticals, apothecary items, flowers, dry goods, furnishings, jewelry, clothing, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, small appliances, etc.), hair salons, barber shops, manicuring studios, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments shall be prohibited.
- (6) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales.
- (7) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions.
- (8) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions.
- (9) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (10) Places of worship.
- (11) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.

- (12) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in, drive-through or outdoor service eating establishments.
- (13) Apartments or townhouses,
- (14) Dwellings above a business use.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.
- (16) Marihuana retailers and medical marihuana provisioning centers.
- (17) [Tobacco and vape shops.](#)

SECTION 7: Section 138-487 of Chapter 138 of the Berkley City Code is amended, as follows:

Sec. 138-487. Principal uses permitted.

Principal uses permitted in the eleven mile district are as follows:

- (1) Warehousing and wholesale establishments, and storage (other than accessory to a permitted retail use).
- (2) Communications and information businesses.
- (3) The design, manufacture, and testing of such technology as electronics, robotics, medical devices and instruments.
- (4) Establishments involved in chemistry, biotechnology and nanotechnology.
- (5) The design, manufacture, and testing of alternative energy and power generation.
- (6) 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 from the following previously prepared materials: 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.
- (7) Welding or metal fabrication.
- (8) The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay, and kilns fired only by electricity or gas.
- (9) Manufacture of musical instruments, toys, novelties and metal or rubber stamps, or other small molded rubber products.
- (10) Manufacture or assembly of electrical appliances, electronic instruments and devices, radios and phonographs (excluding large stampings).
- (11) Laboratories, experimental, film or testing.
- (12) Manufacture and repair of electric or neon signs, light sheet metal products, including heating and ventilating equipment, cornices, eaves and the like.
- (13) Building material sales.

- (14) 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.
- (15) Automobile service or repair establishments.
- (16) Carwashes.
- (17) Artist studios or florists, where retail sales are accessory to the primary use.
- (18) Reserved.
- (19) Professional offices for lawyers, architects, landscape architects, urban planners, engineers or other similar or allied professions.
- (20) Accessory uses.
- (21) Other uses of a similar and no more objectionable character.
- (22) Marihuana retailers and medical marihuana provisioning centers.
- (23) [Tobacco and vape shops.](#)

SECTION 8: Section 138-529 is added to Division 6 of Chapter 138 of the Berkley City Code, as follows:

Sec. 138-529. - Tobacco and vape shop regulations.

The City of Berkley finds it necessary to regulate tobacco and vape shops as a matter to preserve the public health, safety and welfare of the community. The City has enacted these regulations in order to limit the concentration of tobacco and vape shops resulting in undesirable impacts to the community. Among these impacts are increased potential for tobacco sales to minors, greater opportunity for the sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses. These regulations are consistent with zoning and planning practices to address such negative impacts of tobacco and vape shops while providing a reasonable number of locations and zonings for such uses to locate within the City of Berkley.

All tobacco and vape shops must comply with the following regulations:

- (a) The property where a tobacco and vape shop will be located must not be within 1,000 feet of another tobacco and vape shop within the boundaries of the City of Berkley.

THE CITY OF BERKLEY
Community Development Department
3338 Coolidge Hwy. Berkley, Michigan 48072
(248) 658-3320

NOTICE OF PUBLIC MEETING
BERKELY PLANNING COMMISSION

NOTICE IS HEREBY GIVEN, in accordance with the Berkley City Code, Section 138-584 and Section 138-522, that there will be a meeting of the Berkley Planning Commission to be held at the City of Berkley in the Council Chambers, 3338 Coolidge Hwy., Berkley, Michigan on **Tuesday, January 24, 2022** at 7:00 PM.

AN ORDINANCE of the City Council of the City of Berkley, Michigan to Amend Sec. 138-32, Section 138-387, Sec. 138-394, Sec. 138-419, Sec. 138-427, Sec. 138-457, Sec. 138-487, and Sec. 138-529 of Chapter 138 – Zoning. The City of Berkley finds it necessary to regulate tobacco and vape shops as a matter to preserve the public health, safety and welfare of the community. The City has enacted this ordinance in order to limit the concentration of tobacco and vape shops resulting in undesirable impacts to the community. Among these impacts are increased potential for tobacco sales to minors, greater opportunity for the sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses. This ordinance contains amendments consistent with zoning and planning practices to address such negative impacts of tobacco and vape shops while providing a reasonable number of locations and zonings for such uses to locate within the City of Berkley.

The draft ordinance is available for review at: www.berkleymich.org/urbanplanning.

Comments regarding the amendment may be made in person on the night of the meeting or may be made in writing. All written comments must be submitted to the Community Development Department or emailed to kkapelanski@berkleymich.net before 4:30 pm on the date of the Planning Commission meeting.

KRISTEN KAPELANSKI
COMMUNITY DEVELOPMENT DIRECTOR

Publish Once:
Royal Oak Tribune
Friday, January 6, 2022



CITY OF BERKLEY
COMMUNITY DEVELOPMENT
3338 COOLIDGE HWY, BERKLEY, MICHIGAN 48072

MEMORANDUM

To: Planning Commission
From: Kristen Kapelanski, Community Development Director
Subject: **Child Care Centers in the Twelve Mile District**
Date: January 20, 2023

City staff was recently approached by an area business owner who is interested in expanding their child care business to a location in the Twelve Mile District. Child care centers are not currently permitted in the Twelve Mile District. However, instructional centers for recreation uses, such as martial arts, dance, etc., are permitted. The Planning Commission discussed a proposed amendment at the previous meeting and agreed child care centers as a special land use in the Twelve Mile District would make sense.

Below is the text permitting child care centers in the Local Business District. This was recently reviewed and added to Local Business District by the Planning Commission and staff has proposed the same text be added to the Twelve Mile District.

Nursery schools, day nurseries and child care centers, provided:

1. Applicants are licensed through the Michigan Department of Licensing and Regulatory Affairs (LARA). Proof of licensing shall be provided to the city when submitting an application for a business license.
2. Facilities meet the minimum requirements established by the Michigan Department of Licensing and Regulatory Affairs (LARA) and meet the minimum standards of [section 138-391](#) Area and bulk requirements and [section 138-392](#) Building design requirements.
3. Facilities meet screening requirements as deemed reasonable by the planning commission, including masonry walls up to six feet in height, decorative fencing or landscaping.
4. Applicants, staff, and facilities meet the minimum standards established by the Michigan Child Care Organizations, MCL 722.111 et seq., as amended.

The Planning Commission is asked to hold the public hearing and forward a recommendation to the City Council on the proposed amendment.

AN
ORDINANCE

of the City Council of the City of Berkley, Michigan to Amend Sec. 138-458 of Chapter 138 – Zoning in order to add nursery schools, day nurseries and child care centers to the Twelve Mile District as a special use.

THE CITY OF BERKLEY
ORDAINS:

SECTION 1: Section 138-458 of Chapter 138 of the Berkley City Code is amended, as follows:

The following special uses shall be permitted in the twelve mile district, subject to the regulations in article VI, division 6, special uses of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-409.
- (2) Drive-in and drive-through eating establishments.
- (3) Open air business uses when developed as uses accessory to primary uses and structures in the twelve mile district as follows:
 - a. Outdoor seating areas for restaurants or other food serving establishments.
 - b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
 - c. Businesses in the character of open store fronts.
- (4) Nursery schools, day nurseries and child care centers, provided:
 - a. Applicants are licensed through the Michigan Department of Licensing and Regulatory Affairs (LARA). Proof of licensing shall be provided to the city when submitting an application for a business license.
 - b. Facilities meet the minimum requirements established by the Michigan Department of Licensing and Regulatory Affairs (LARA) and meeting the minimum standards of section 138-461 Area and bulk requirements and section 138-462 Building design requirements.
 - c. Facilities meet screening requirements as deemed reasonable by the planning commission, including masonry walls up to six feet in height, decorative fencing or landscaping.
 - d. Applications, staff and facilities meet the minimum standards established by the Michigan Child Care Organizations, MCL 722.111 et. Seq., as amended.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Penalty

All violations of this ordinance shall be municipal civil infractions and upon determination of responsibility therefore shall be punishable by a civil fine of not more than \$500, and/or such other sanctions and remedies as prescribed in Article IX of Chapter 82 of the Code of Ordinances.

SECTION 4: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 5: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on _____ .

Adopted on the Second Reading at the Regular City Council Meeting on _____ .

Bridget Dean, Mayor

Attest:

Victoria E. Mitchell, City Clerk

THE CITY OF BERKLEY
Community Development Department
3338 Coolidge Hwy. Berkley, Michigan 48072
(248) 658-3320

NOTICE OF PUBLIC MEETING
BERKELY PLANNING COMMISSION

NOTICE IS HEREBY GIVEN, in accordance with the Berkley City Code, Section 138-584 and Section 138-522, that there will be a meeting of the Berkley Planning Commission to be held at the City of Berkley in the Council Chambers, 3338 Coolidge Hwy., Berkley, Michigan on **Tuesday, January 24, 2022** at 7:00 PM.

AN ORDINANCE of the City Council of the City of Berkley, Michigan to Amend Sec. 138-458 of Chapter 138 – Zoning in order to add nursery schools, day nurseries and child care centers to the Twelve Mile District as a special use.

The draft ordinance is available for review at: www.berkleymich.org/urbanplanning.

Comments regarding the amendment may be made in person on the night of the meeting or may be made in writing. All written comments must be submitted to the Community Development Department or emailed to kkapelanski@berkleymich.net before 4:30 pm on the date of the Planning Commission meeting.

KRISTEN KAPELANSKI
COMMUNITY DEVELOPMENT DIRECTOR

Publish Once:
Royal Oak Tribune
Friday, January 6, 2022



Carlisle | Wortman
ASSOCIATES, INC.

117 NORTH FIRST STREET SUITE 70 ANN ARBOR, MI 48104 734.662.2200 734.662.1935 FAX

TO: City of Berkley Planning Commission

FROM: Megan Masson-Minock, AICP

DATE: January 20, 2023

RE: Analysis of viability of sidewalks to host outdoor seating

In December 2022, the Planning Commission reviewed Zoning Ordinance amendments to allow outdoor service area for restaurants and other food service establishments as an accessory use with an annual temporary use permit with specific regulations. The draft amendment would permit seated dining and beverage service on porches, patios, decks, sidewalks, parking lots, parking spaces, or other public or private land. For outdoor dining to occur on sidewalks, however, the dining area must be placed in a manner that allows for a minimum five (5) feet wide clearance as well as ingress/egress to the principal use that hosts the outdoor seating area. Additional clearance – seven (7) feet – is required for overhead objects such as umbrellas or other coverings.

This memorandum presents the results of a sidewalk analysis conducted on the sidewalks along Coolidge Highway (Eleven Mile to Twelve Mile), Twelve Mile Road (Greenfield to Coolidge), and Eleven Mile Road (Greenfield to Coolidge). We used aerial photographs through a service called Nearmap to measure the widths of sidewalks in block-level segments of these three major roadways and assess for potential obstacles to outdoor seating. Sidewalk segments that are suitable for outdoor seating are identified and described. These measurements are approximate. For outdoor seating permits to be issued, sketch plans would with measurements verified in the field would still be required.

Sidewalk Analysis

The narrowest possible outdoor seating area requires at least five (5) feet of width. Therefore, for a sidewalk segment to be suitable to host outdoor seating, either the minimum width can be ten (10) feet or adjacent parking or patio areas that support outdoor furnishings may be present. Wider sidewalks will be able to host additional seating or outdoor furnishings.

The accompanying spreadsheet details the dimensions and obstacles of each individual, block-level sidewalk segment along Coolidge Highway, Twelve Mile Road, and Eleven Mile Road.

The table below summarizes the findings of the sidewalk analysis, and identifies the segments along Coolidge Highway, Twelve Mile Road, and Eleven Mile Road that are both suitable and unsuitable for outdoor seating.

	Description
Suitable Segments	<p>Thirteen (13) segments along 11 Mile Road between Greenfield Road and Coolidge Highway host sidewalks that are ten (10) feet wide or greater.</p> <p>Twenty-eight (28) segments along 12 Mile Road, roughly split among north and south sides of the road, host sidewalks that are ten (10) feet wide or greater. The widest segment is on the north side between Gardner and Griffith (see Figure 1).</p> <p>Every segment along Coolidge between 11 Mile and 12 Mile Roads hosts sidewalks that are ten (10) feet wide or greater. Most of these segments are twelve (12) or thirteen (13) feet wide.</p> <p>Segments with either widths of ten (10) feet or greater or with adjacent parking to support outdoor seating that will minimize sidewalk encroachment have been highlighted on the corresponding spreadsheet.</p> <p>Segments with either widths of ten (10) feet or greater or with adjacent parking to support outdoor furnishings that will minimize sidewalk encroachment have been highlighted on the corresponding spreadsheet.</p>
Unsuitable segments	<p>Only one segment of 11 Mile Road, between Elwood and Thomas, hosts a sidewalk width under ten (10) feet.</p> <p>Four segments along 12 Mile Road host sidewalk widths less than ten (10) feet. These segments are:</p> <ul style="list-style-type: none"> • Bacon to Cummings, South • Thomas to Cummings, North • Ellwood to Greenfield, South • Oakshire to Phillips, South

Some of these segments include parking directly adjacent to the sidewalk. In that case, the parking area may host street furnishings to minimize the encroachment onto the adjacent sidewalk, ensuring the minimum five (5) feet pedestrian clearance. An example of an adjacent parking area configuration is illustrated on the following page.

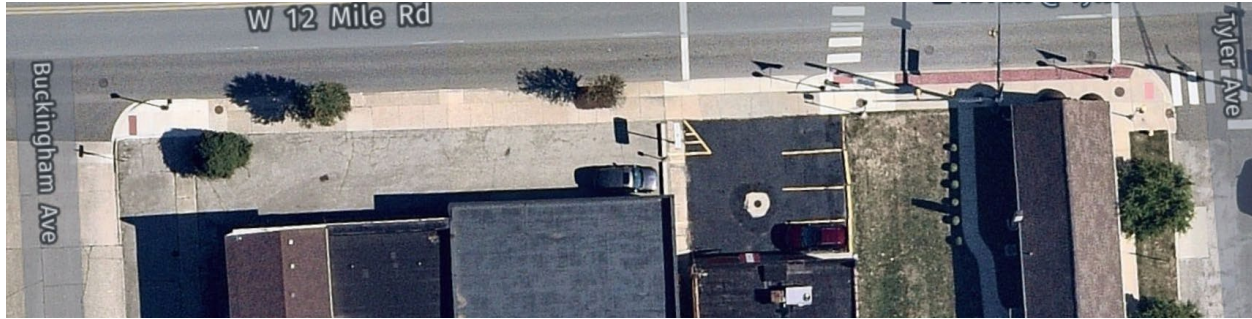


Figure 1 - South side of 12 Mile Road, between Buckingham and Tyler Avenues

Impact on Draft Outdoor Seating Amendments

The draft Outdoor Seating amendments required that any outdoor seating must be setback at least two (2) feet from adjacent vehicle traffic lanes, vehicle circulation aisles, or alleys and at least three (3) feet from adjacent parking spaces. For sidewalks directly adjacent to parallel parking spaces and car lanes, the minimum sidewalk width is pushed from ten (10) feet to twelve (12) or thirteen (13). This new requirement limits the number of segments that are suitable for outdoor seating for most of Eleven Mile Road, roughly half of Twelve Mile Road, and for roughly five (5) segments along Coolidge Highway.


Discussion Questions

Please come prepared to discuss the following question at your next meeting:

- Should the ordinance identify a specific minimum area width required to host outdoor seating, perhaps between ten to fifteen (10-15) feet, after accounting for the five (5) feet wide pedestrian access and any applicable setbacks?
- Should there be exceptions for the presence of street furnishings (street trees, benches, trash receptacles, etc.) in the sidewalks?
- On corner parcels, should the side street sidewalk and/or the adjacent crosswalk be taken into consideration?

Please let us know if you have any questions or concerns. We look forward to this discussion on January 24th!

Sincerely,


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

11 Mile from Coolidge to Greenfield
Sidewalk Analysis

Segment			Width (feet)		Other notes
From	To	Length (feet)	Min	Max	
Buckingham	Tyler	265	10	15	parking area adjacent to sidewalk
Kipling	Coolidge	805	5	13	multiple private drives along segment; planting strip with street trees on center portion of segment; parking area adjacent to sidewalk
Griffith	Robina	229	12	12	parking area adjacent to sidewalk
Greenfield	Ellwood	270	5	11	narrow section runs for 90 ft
Thomas	Cummings	286	11	11	2 private drives along segment
Cummings	Bacon	308	11	11	private drive along segmenet
Bacon	Phillips	284	11	11	
Phillips	Oakshire	282	11	11	parking area adjacent to sidewalk
Oakshire	Royal	282	11	11	landscaping strip along parking lot on east side of block
Royal	Buckingham	318	10	11	
Robina	Kipling	405	11	11	parking area adjacent to sidewalk
Tyler	Gardner	266	10	10	parking area adjacent to sidewalk
Gardner	Griffith	257	10	10	parking area adjacent to sidewalk
Ellwood	Thomas	291	5	5	private drive mid-way through segment; parking area adjacent to sidewalk

Coolidge Highway: 11 Mile to 12 Mile
Sidewalk Analysis

Segment				Width (feet)		Other notes
From	To	Side	Length (feet)	Min	Max	
Columbia	Harvard	W	540	6	23	several street trees; parking area adjacent to sidewalk
Wiltshire	Beverly	W	975	12	16	parking area adjacent to sidewalk
Oxford	Sunnyknoll	W	410	11	15	several street trees; parking area adjacent to sidewalk
12 Mile	Rosemont	E	285	11	14	several street trees
Dorothea	Catalpa	E	350	13	14	several street trees
Sunnyknoll	Oxford	E	413	12	14	several street trees
Columbia	Princeton	E	250	11	14	several street trees
Earlmont	Edgewood	E	295	13	13	several street trees
Edgewood	Wiltshire	E	290	12.5	13	several street trees
Wiltshire	Franklin	E	265	12.5	13	several street trees
Catalpa	Sunnyknoll	E	420	13	13	city-owned plaza at center of segment; street trees; parking area adjacent to sidewalk
Oxford	Harvard	E	530	13	13	several street trees
Harvard	Cambridge	E	275	13	13	several street trees
11 Mile	Princeton	W	270	12.5	13	several street trees
Princeton	Columbia	W	245	12	13	
12 mile	Beverly	W	620	12	13	several street trees; parking area adjacent to sidewalk
Franklin	Dorothea	E	258	12	12.5	several street trees and benches
Rosemont	Beverly	E	292	12	12	several street trees
Beverly	Earlmont	E	290	12	12	several street trees
Cambridge	Columbia	E	240	11	12	several street trees
Princeton	11 Mile	E	240	11	12	several street trees
Harvard	Oxford	W	530	11.5	12	several street trees
Sunnyknoll	Catalpa	W	413	11	12	several street trees
Catalpa	Wiltshire	W	925	12	12	parking area adjacent to sidewalk

12 Mile from Coolidge to Greenfield
Sidewalk Analysis

Segment				Width (feet)		Other notes
From	To	Side	Length (feet)	Min	Max	
Gardner	Griffith	N	264	12	26	street trees and benches on each end of segment
Wakefield	Robina	S	270	11	26	street trees and benches on each end of segment
Cumberland	Kenmore	N	260	11	22	bench in center of segment
Griffith	Robina	N	286	13.5	20	street trees and benches on each end of segment
Robina	Wakefield	N	285	13	20	street trees and benches on each end of segment; parking area adjacent to sidewalk
Wakefield	Kipling	N	260	12	20	street trees and benches on each end of segment
Kipling	Cumberland	N	260	13	20	street trees and benches on each end of segment
Cumberland	Kipling	S	250	12	20	street trees and benches on each end of segment
Kipling	Wakefield	S	245	13	19	street trees and benches on each end of segment
Kenmore	Cumberland	S	258	12	18	
Griffith	Gardner	S	250	10	17	street trees and benches on each end of segment
Robina	Griffith	S	245	11	16	street trees and benches on each end of segment
Kenmore	Coolidge	N	240	15	15	street trees along segment
Cummings	Prairie	N	240	9	13	several street trees
Buckingham	Royal	S	267	9	13	street tree in front of dairy queen; parking area adjacent to sidewalk
Cummings	Thomas	S	285	10	13	
Coolidge	Kenmore	S	235	12	12	several street trees
Prairie	Bacon	N	235	11	11	
Royal	Buckingham	N	242	10	11	several street trees
Buckingham	Tyler	N	242	9	11	several street trees; parking area adjacent to sidewalk
Gardner	Tyler	S	260	11	11	
Greenfield	Ellwood	N	229	6	10	parking area adjacent to sidewalk
Bacon	Phillips	N	234	10	10	several street trees
Oakshire	Royal	N	235	10	10	several street trees
Tyler	Gardner	N	230	7	10	
Tyler	Buckingham	S	260	10	10	several street trees
Royal	Oakshire	S	270	10	10	bench in center of segment; parking area adjacent to sidewalk
Thomas	Ellwood	S	285	9	10	several street trees; parking area adjacent to sidewalk
Bacon	Cummings	S	283	9	9.5	several street trees

12 Mile from Coolidge to Greenfield
Sidewalk Analysis

Segment				Width (feet)		Other notes
From	To	Side	Length (feet)	Min	Max	
Elwood	Thomas	N	244	9	9	several street trees; parking area adjacent to sidewalk
Thomas	Cummings	N	243	8	9	several street trees
Phillips	Bacon	S	270	8	9	several street trees; parking area adjacent to sidewalk
Ellwood	Greenfield	S	250	8	9	
Phillips	Oakshire	N	237	7.5	7.5	parking area adjacent to sidewalk
Oakshire	Phillips	S	275	7	7	

**AN
ORDINANCE**

of the City Council of the City of Berkley, Michigan to Add Sec. 138-199, and to Amend Sec. 138-32, Section 138-387, Sec. 138-388, Sec. 138-418, Sec. 138-427, Sec. 138-428, Sec. 138-442, Sec. 138-443, Sec. 138-457, and Sec. 138-458 of Chapter 138 – Zoning to allow outdoor service areas as a principal permitted use and allow rooftop outdoor eating areas for restaurants and other food serving establishments as a special use.

**THE CITY OF BERKLEY
ORDAINS:**

SECTION 1: Section 138-32 of Chapter 138 of the Berkley City Code must be amended, as follows:

Outdoor service area: A porch, patio, deck, sidewalk, parking lot, parking space, or other public or private land area used for seated dining and beverage service, which is adjacent and accessory to, but not located within the interior building walls of food and/or beverage establishments. Rooftop outdoor eating areas are not considered outdoor service areas.

SECTION 2: Section 138-199 must be added to Division 6 of Chapter 138 of the Berkley City Code, as follows:

Sec. 138-199. – 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 in 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 (top-view drawing of the outdoor service area) 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, road, 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/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 property, a Certificate of Liability Insurance, in an amount acceptable to the City, and naming the City as an additionally insured.
- (5) For an outdoor service area in which alcohol is served, a liquor liability policy or certificate of insurance naming the City as an additionally 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 50 feet from the property line of any single-family or multiple-family zoning district.
 - (2) Outdoor service areas must be setback at least 2 feet from adjacent vehicle traffic lanes, vehicle circulation aisles, or alleys.
 - (3) Outdoor service areas must be at least 3 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 1st through October 31st.
- (d) *Temporary Shelters.* Outdoor service area permittees may be allowed to erect temporary shelters, such as tents, igloos, bubbles, garden sheds, or similar type 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 (10) feet from temporary shelters.
- (e) *Access.* All outdoor services areas, whether located on a sidewalk or accessed from a sidewalk, must allow a minimum of five (5) feet of unobstructed pedestrian access along the sidewalk, as well as ingress/egress to the principal use for which the outdoor service area is accessory.
- Outdoor service areas must comply with Michigan Barrier Free Code, including but not limited to the following:
- (1) Entrances must be a minimum of 48 inches wide.
 - (2) Connections between platforms, ramps, sidewalks, or parking spaces must be flush, and must not leave a horizontal gap greater than 1/2 inch, or a vertical separation greater than a quarter inch. 1:4 bevels are required for vertical differences that exceed a quarter inch.
 - (3) For outdoor service areas proposed on parking spaces with grades that exceed 5%, level platforms must be provided.
 - (4) Ramps must be provided for parking space outdoor service areas that are accessed from curbed sidewalks.

- (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 road or penetrating the surface of the road/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 Berkeley DPW.
 - (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, composite 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 36 inches and maximum height is 42 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 42 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.
- (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/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/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 7 feet.
- (4) All outdoor service area furniture/fixtures must be maintained in a state of good repair. Any outdoor service area furniture/fixtures having broken, peeling, or rusting features or are 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 services 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 Section 138-143(b).
- (k) Heating elements. Electric and non-electric heating elements may be permitted in outdoor services areas. Non-electric heating elements must be placed a minimum of 10 feet from all permanent or temporary structures. Electric heating elements must be secured in a manner to prevent tripping or electrical hazard.
- (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 property permitted to be used as an outdoor service area must be kept neat and clean at all times and free from any substance that may cause pedestrian injury or damage to the sidewalk or public property.

SECTION 4: Section 138-387 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-387. – Principal Uses permitted.

Principal uses permitted in the LB district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, pharmaceutical, apothecary items, flowers, dry goods, furnishings, jewelry, clothing millinery, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, radios,

- televisions, small appliances, vacuum and sewing machines, etc.), beauty salons, hair salons, barber shops, manicuring studios, tanning salons, massage facilities, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, seamstress/dressmaker, photography studios and similar service establishments that require a retail adjunct.
 - (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
 - (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, loan companies, insurance offices, travel services, and real estate offices. Bank, savings and loan associations and credit unions may include drive-up facilities only as an accessory use subject to the required provisions for stacking or waiting space, apart from required off street parking areas, at the rate of 4 car spaces for each service window or pedestal, in addition to providing a full car length space at the window or pedestal.
 - (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales, subject to the limitations contained in section 138-390.
 - (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions subject to the limitations contained in section 138-390.
 - (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions, subject to the limitations contained in section 138-390.
 - (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
 - (11) Places of worship.
 - (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
 - (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in or drive-through ~~or outdoor service~~ eating establishments.
 - (14) Single-family, two-family and multiple-family dwellings when located on the second floor or above a first floor permitted or special use. Single-family detached dwellings and first floor dwelling units are prohibited.
 - (15) Accessory structures and uses customarily incidental to the above permitted uses.

- (16) Marihuana retailers and medical marihuana provisioning centers.

SECTION 5: Section 138-388 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-388. Special uses.

The following special uses must be permitted in the LB local business district, subject to the regulations in article VI, division 6, Special Uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-389.
- (2) Drive-in and drive-through eating establishments.
- (3) Drive-through retail/service establishments.
- (4) Open air business uses when developed as uses accessory to primary uses and structures in the LB local business district as follows:
 - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.
 - b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
 - c. Businesses in the character of open store fronts.
- (5) Commercial amusement device centers.
- (6) Nursery schools, day nurseries and child care centers, provided:
 - a. Applicants are licensed through the Michigan Department of Licensing and Regulatory Affairs (LARA). Proof of licensing must be provided to the city when submitting an application for a business license.
 - b. Facilities meet the minimum requirements established by the Michigan Department of Licensing and Regulatory Affairs (LARA) and meet the minimum standards of section 138-391 Area and bulk requirements and section 138-392 Building design requirements.
 - c. Facilities meet screening requirements as deemed reasonable by the planning commission, including masonry walls up to six feet in height, decorative fencing or landscaping.
 - d. Applicants, staff, and facilities meet the minimum standards established by the Michigan Child Care Organizations, MCL 722.111 et seq., as amended.

SECTION 6: Section 138-418 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-418. Special uses.

The following special uses must be permitted in the downtown district, subject to the regulations in article VI administration and enforcement, division 6 special uses, of this chapter:

- (1) Offices or agencies, when located on the first floor.
- (2) Banks.
- (3) Convenience stores.
- (4) Outdoor sales or [rooftop outdoor](#) eating areas, when developed as accessory to primary uses and structures.
- (5) Repair shops or workshops such as, but not limited to, clothing, shoes, watches, televisions, small appliances, electrician, painter, and upholstery.
- (6) Resale shops.

SECTION 7: Section 138-427 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-427. Principal uses permitted.

Principal uses permitted in the Gateway district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, pharmaceutical, apothecary items, flowers, dry goods, furnishings, jewelry, clothing millinery, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, radios, televisions, small appliances, vacuum and sewing machines, etc.), beauty salons, hair salons, barber shops, manicuring studios, tanning salons, massage facilities, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, seamstress/dressmaker, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
- (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, loan companies, insurance offices, travel services, and real estate offices. Bank, savings and loan associations and credit unions may include drive-up facilities only as an accessory use subject to the required provisions for

- stacking or waiting space, apart from required off street parking areas, at the rate of 4 car spaces for each service window or pedestal, in addition to providing a full car length space at the window or pedestal.
- (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales, subject to the limitations contained in section 138-410.
 - (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions subject to the limitations contained in section 138-410.
 - (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions, subject to the limitations contained in section 138-410.
 - (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
 - (11) Places of worship.
 - (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
 - (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in; ~~or~~ drive-through ~~or outdoor service~~ eating establishments.
 - (14) Single-family, two-family and multiple-family dwellings when located on the second floor or above a first floor permitted or special use. Single-family detached dwellings and first floor dwelling units are prohibited.
 - (15) Accessory structures and uses customarily incidental to the above permitted uses.
 - (16) Marihuana retailers and medical marihuana provisioning centers.

SECTION 8: Section 138-428 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-428. Special uses.

The following special uses must be permitted in the Gateway district, subject to the regulations in article IV, division 6, special uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-429.
- (2) Drive-in and drive-through eating establishments.
- (3) Drive-through retail/service establishments.
- (4) Commercial amusement device centers.
- (5) Open air business uses when developed as uses accessory to primary uses and structures in the Gateway district as follows:
 - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.

- b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
- c. Businesses in the character of open store fronts.

SECTION 9: Section 138-442 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-442. Principal uses permitted.

Principal uses permitted in the Coolidge Districts are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, apothecary items, flowers, dry goods, furnishings, jewelry, clothing, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, small appliances, etc.), hair salons, barber shops, manicuring studios, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
- (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, insurance offices, travel services and the like. Banks and other financial institutions may include drive-up facilities only as an accessory use subject to the required provisions for stacking spaces.
- (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales.
- (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions.
- (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions.
- (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (11) Places of worship.

- (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
- (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in, ~~or drive-through~~ ~~or outdoor service~~ eating establishments.
- (14) Dwellings above a business use.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.
- (16) Marihuana retailers and medical marihuana provisioning centers.

SECTION 10: Section 138-443 of Chapter 138 of the Berkley City Code must be amended, as follows:

The following special uses must be permitted in the Coolidge district, subject to the regulations in article VI, division 6, special uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-444.
- (2) Drive-in and drive-through eating establishments.
- (3) Drive-through retail/service establishments.
- (4) Open air business uses when developed as uses accessory to primary uses and structures in the Coolidge district as follows:
 - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.
 - b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
 - c. Businesses in the character of open store fronts.
- (5) Commercial amusement device centers.

SECTION 11: Section 138-457 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-457. Principal uses permitted.

Principal uses permitted in the twelve mile district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, pharmaceuticals, apothecary items, flowers, dry goods, furnishings, jewelry, clothing, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, small appliances, etc.), hair salons, barber shops, manicuring studios, spa service facilities, self-service

- laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, photography studios and similar service establishments that require a retail adjunct.
 - (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
 - (6) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales.
 - (7) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions.
 - (8) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions.
 - (9) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
 - (10) Places of worship.
 - (11) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
 - (12) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in, ~~or drive-through or outdoor service~~ eating establishments.
 - (13) Apartments or townhouses,
 - (14) Dwellings above a business use.
 - (15) Accessory structures and uses customarily incidental to the above permitted uses.
 - (16) Marihuana retailers and medical marihuana provisioning centers.

SECTION 12: Section 138-458 of Chapter 138 of the Berkley City Code must be amended, as follows:

Sec. 138-458. Special uses.

The following special uses must be permitted in the twelve mile district, subject to the regulations in article VI, division 6, special uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-409.
- (2) Drive-in and drive-through eating establishments.
- (3) Open air business uses when developed as uses accessory to primary uses and structures in the twelve mile district as follows:
 - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.

- b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
- c. Businesses in the character of open store fronts.

DRAFT



CITY OF BERKLEY COMMUNITY DEVELOPMENT

3338 COOLIDGE HWY, BERKLEY, MICHIGAN 48072

MEMORANDUM

To: Planning Commission

From: Kristen Kapelanski, Community Development Director

Subject: **Vape Shop Regulations**

Date: January 20, 2023

The Planning Commission is required to review and update (as needed) the Bylaws and Rules of Procedure at the beginning of each year. Staff has suggested several changes to reflect current practices and the recent change in the number of Planning Commissioners. The Commission is asked to review the proposed changes, proposed any necessary amendments, and adopt the updated Bylaws and Rules of Procedure.

SECTION ONE - AUTHORITY

The City of Berkley Planning Commission (hereinafter referred to as the Commission) adopts these rules of procedure pursuant to Public Act 33 of 2008 as amended, and the Open Meetings Act.

SECTION TWO – MEMBERSHIP

- (1) **Membership.** Members shall be appointed according to the procedure as established by Berkley ordinances. The Commission shall consist of ~~seven~~**nine** members to be appointed by City Council.
 - a. **New Appointee Training.** New members appointed to serve on the Commission shall complete a training program within six (6) months after appointment date. The training program shall be approved by the Community Development Director or City Manager to ensure the program provides information and training on roles, responsibilities and planning and zoning best practices.
 - b. **Continued Education.** Each commissioner shall commit to 5-6 hours of continued education within each fiscal year. New appointees to the Commission shall not be required to complete the hours of continued education within the first fiscal year of appointment.
 - c. **Reference Materials.** Upon taking office, each member shall ~~have access to the Orientation Guidebook stored online~~**be sent via email a package of materials to assist them in their role, including but not limited to: Hard copies of the materials shall be provided upon request. The Orientation Guidebook shall consist of reference materials, such as, but not limited to:-**
 - Planning Commission Rules of Procedure
 - Berkley Master Plan and sub-area plans
 - Berkley Zoning Map
 - The Michigan Planning Enabling Act
 - The Michigan Zoning Enabling Act
 - The Planning Commissioner's Handbook, published by the Michigan Municipal League
 - Other materials deemed necessary to familiarize a new member with the roles and responsibilities of the Commission.
- (2) **Duties.**
 - a. **Attendance.** Each member has a duty to attend all meetings.
 - b. **Absences.** Members who are unable to attend a regularly scheduled meeting must contact the Community Development Director prior to the meeting to alert to the cause of absence. The Commission shall determine if the absence is to be excused and approve the excused absence to be recorded in the meeting minutes. The Commission may postpone to excuse the absence of a member until the next scheduled meeting.
 - i. A vacancy shall occur when a member has missed four (4) consecutive regular meetings or twenty-five percent (25%) of regular meetings held during the fiscal year, unless such absences have been excused by the Commission.
 - c. **Preparation.** Members shall arrive prepared for the business at hand, having reviewed written materials and completed site visits, as necessary, to be educated on the agenda

items.

- d. **Ex Parte Contact.** Members shall avoid *Ex Parte* contact concerning questions or matters pending before the Commission.
 - i. *Ex Parte* contact shall include discussions among members, applicants, or the public outside of a Commission meeting, including emails, about matters pending before the Commission. Questions or concerns shall be directed to the Community Development Director.

SECTION THREE - OFFICERS

- (1) **Selection.** At the July meeting, the commission shall select by a majority vote from its membership a chair, vice-chair, and secretary who shall serve for a twelve-month period and who shall be eligible for re-election. At the July meeting, if the selection of officers would be impracticable due to number of commissioners present or the length of the agenda, then the officers shall be elected no later than a September meeting.
- (2) **Duties.** A chair shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein. If the chair is not able to chair a meeting or portion of a meeting, the vice chair shall act in place of the chair for that meeting or portion of meeting. The vice-chair shall act in the capacity of the chair and shall succeed to the office of chair in the event of a vacancy in that office. If there is a vacancy in the office of vice-chair for whatever reason, the commission shall select a successor to the office of vice-chair at the earliest practicable time.

The Community Development Director or designee shall be responsible for the preparation of summary minutes, keeping of pertinent public records, delivering communications, petitions, reports, and related items of business of the commission, issuing notices of public hearings, and performing related administrative duties to assure efficient and informed commission operations.

~~In the event that the building department is unable to keep records at a meeting, the secretary shall keep the summary minutes.~~

- (3) **Tenure.** The officers shall take office at the next meeting after their election. They shall hold their office until their successors are elected and assume office.

SECTION FOUR - MEETINGS

- (1) **Notices.** All meetings shall be posted ~~at the Berkley city hall according to in accordance with the~~ the Open Meetings Act. ~~The notice shall include the date, time, and place of the meeting.~~
- (2) **Regular meetings.** Regular meetings of the commission shall be held monthly in the Ccity Hhall on the fourth Tuesday of every month at 7:00 p.m. The dates and times of the

meeting, or the cancellation, shall be posted at the Ceity Hhall. When a regular meeting date falls on or near a legal holiday, the Ceommission shall select suitable dates in the same month, in accordance with the Open Meetings Act.

- (3) **Work session meetings.** Work session meetings of the commission shall be held at the Ceity Hhall ~~on the second Tuesday of the month at 7:00 p.m. or other designated location~~ when the Ceommission determines that a work session is necessary.
- (4) **Other meetings.** A special meeting can be called by the ~~zoning officer~~Community Development Director, the chair of the Commission, or in the chair's absence, the vice-chair.
- (5) **Quorum.** In order for the Ceommission to conduct business or take any official action, a quorum consisting of ~~four~~five voting members of the Ceommission shall be present. When a quorum is not present, no official action, except for closing of the meeting may take place. All items scheduled to be heard, shall be scheduled for the next regular meeting. No additional public notice shall be required provided the date, time, and place are announced at the meeting.
- (6) **Hearings.** Hearings shall be scheduled and due notice given in accordance with the provisions of the acts and ordinance cited in Section One.

Public hearings conducted by the Ceommission shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure:

- Introduction of case by staff.
 - The chair confirms that the applicant is present and receives an opportunity to describe case.
 - The chair opens discussion. *The commission may ask the applicant or staff questions.*
 - The chair opens the public hearing. *Each person must state his/her name and city of residence for the record and may address the Ceommission regarding the case ~~for a reasonable period of time~~not to exceed three minutes. If the case is very controversial, the chairperson may invite people to speak row by row to eliminate lines at the microphone.*
 - The chair closes the public hearing.
 - Discussion. *The Ceommission may ask staff or the applicant questions*
 - The chair shall call for a motion.
 - After a motion has been made and supported, there may be additional discussion.
 - The chair will call for a roll call vote.
- (7) **Motions.** The chair shall restate motions before a vote is taken. The name of the maker and supporters shall be recorded. The motion shall state whether the item is approved, approved with conditions, or denied.
 - (8) **Voting.** An affirmative vote of a simple majority of the appointed Ceommission shall be

required for approval or to recommend approval. ~~Voting shall be by roll call.~~ All members of the Commission, including the chair shall vote on all matters. In the case of roll call votes, ~~t~~he order of the voting members shall be varied. No member shall abstain from voting on any matter except in the case of a conflict of interest as provided below in Section 3.11 of these rules.

- (9) **Conditions.** The Commission may modify a request or impose conditions in order to maintain the public health, safety and welfare, in accordance with the standards set forth in the zoning ordinance.
- (10) **Withdrawals.** In the event that an applicant withdraws an application after the notices have been sent and the meeting posted, the Commission shall introduce the case and motion to accept the withdrawal. In the event that an applicant withdraws an application before the notices have been sent and the meeting posted, the Commission shall receive a copy of the withdrawal, but no motion to accept the withdrawal shall be necessary.
- (11) **Conflict of Interest.** After the introduction of a case, a possible conflict of interest shall be declared by a Commissioner or a fellow Commissioner. The Commission shall discuss and determine if such a conflict exists. Fellow Commissioners shall make and support a motion to excuse the Commissioner from deliberating. Voting shall be in accordance with subsection 3.8 above. Upon approval, the excused Commissioner shall leave the meeting room during deliberation of the case. The Commissioner shall be called back prior to the introduction of the next case. A Commissioner may want to consider declaring a conflict of interest if he or she is the applicant; if the applicant is a close friend or relative; if the applicant is a business partner; or if there may be an appearance of impropriety.
- (12) **Order of Business.** A written agenda for all regular meetings shall be prepared as follows. The order of business shall be:
- Open the Meeting—*Call meeting to order*
 - Pledge of Allegiance
 - Roll Call
 - Approval of Agenda
 - Approval of Minutes—*Each set of minutes shall be approved individually*
 - Communications
 - Citizen Comments—*Comments regarding items not on the agenda*
 - Old Business—*Items that have been postponed or referred to staff*
 - New Business
 - Liaison Reports—*Reports from Commissioners attending the Zoning Board of Appeals, Chamber of Commerce, Environmental Committee, Downtown Development Authority and City Council meetings*
 - Commissioner/Staff Comments
 - Adjourn
- (13) **Rules of Order.** All meetings of the Commission shall be conducted in accordance with

generally accepted parliamentary procedure, as governed by "Robert's Rules of Orders."

- (14) Notice of Decision.** A written notice containing the decision of the commission shall be sent to petitioners of a request.

SECTION FIVE - MEETING MINUTES AND REPORTS

The Community Development Director or designee shall prepare Commission summary minutes. The minutes shall contain a brief synopsis of the meeting including a complete restatement of all motions and recording of votes; a complete statement of the conditions or recommendations made on any action; and recording attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the eCity Clerk.

In July, the Planning Commission shall submit an annual report to the City Council. The report shall contain a summary of the applications the Commission has heard and the actions taken.

SECTION SIX - OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

All meetings of the Commission shall be opened to the public and held in a place available to the general public.

All deliberations and decisions of the Commission shall be made at a meeting open to the public.

A person shall be permitted to address a hearing of the Commission under the rules established in subsection 3.6 and to address the Commission concerning non-hearing matters under the rules established under subsection 3.12 to the extent that they are applicable.

A person shall not be excluded from a meeting of the Commission except for breach of the peace, committed at the meeting.

All records, files, publications, correspondence, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

SECTION SEVEN - AMENDMENTS

The Commission may amend these rules by a concurring vote pursuant to subsection 3.8 during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three days prior to the meeting at which such amendments are to be considered.

SECTION EIGHT – ANNUAL REVIEW

These rules of procedures shall be reviewed annually, at the January meeting, or if there is no January meeting, no later than the February meeting.

Care shall be taken to ensure that these rules shall not conflict with any federal or state law or City of Berkley ordinance; however, if any such conflict exists, then the federal or state law or city ordinance

shall override these rules, but only to the extent of such conflict.