

PUBLIC NOTICE

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

Tuesday, October 22, 2019
7:00 PM - City Hall
Information: (248) 658-3320

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
APPROVAL OF AGENDA
APPROVAL OF MINUTES -- *Meeting of September 24, 2019*
COMMUNICATIONS
CITIZEN COMMENTS
ORDER OF BUSINESS

1. **PUBLIC HEARING:** Matter of Coducting a Public Hearing to review application SU-01-19 for special land use for daycare center to be located at 1695 Twelve Mile Rd, within the Office District.
2. **SPECIAL LAND USE: PSU-01-19** 814 LLC, 1695 Twelve Mile Rd, north side of Twelve Mile Rd west of Brookline St, is requesting special land use approval for a daycare facility in the Office District.
3. **SITE PLAN: PSP-07-19** 814 LLC, 1695 Twelve Mile Rd, north side of Twelve Mile Rd, west of Brookline St, is requesting site plan approval for site improvements.
4. **DISCUSSION:** Review and discussion of permitting marihuana businesses within the City.
5. **DISCUSSION:** Discussion for volunteers for Master Plan Steering Committee.

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.

THE REGULAR MEETING OF THE BERKLEY CITY PLANNING COMMISSION WAS CALLED TO ORDER AT 7:00 PM, SEPTEMBER 24, 2019 AT CITY HALL BY CHAIR KRISTEN KAPELANSKI.

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/cityofberkley>.

PRESENT: Martin Smith Mark Richardson
Lisa Kempner Greg Patterson Matt Trotto
Tim Murad Michele Buckler Kristen Kapelanski

ABSENT: Jeffrey Campbell

ALSO PRESENT: Matthew Baumgarten, City Manager
Erin Schlutow, Community Development Director
Ross Gavin, City Council Liaison
Several members of the public

APPROVAL OF AGENDA

It was moved by Commissioner Patterson to approve the Agenda supported by Commissioner Trotto.

AYES: Murad, Richardson, Kempner, Smith, Patterson, Trotto, Buckler, Kapelanski

NAYS: None

ABSENT: Campbell

APPROVAL OF MINUTES

It was moved by Commissioner Patterson to approve the minutes from August 27, 2019 and supported by Commissioner Kempner.

AYES: Richardson, Kempner, Smith, Patterson, Trotto, Buckler, Murad, Kapelanski

NAYS: None

ABSENT: Campbell

COMMUNICATIONS

There were several items provided to the Planning Commission relating to permitting marihuana businesses in Berkley and parking regulations.

CITIZEN COMMENTS

None.

1. **PUBLIC HEARING:** Matter of Conducting a Public Hearing to amend the Zoning Ordinance to convert misdemeanors to municipal civil infractions.

Community Development Director Schlutow summarized the September 19, 2019 memo addressing proposed amendment.

Chairperson Kapelanski opened the public hearing at 7:05pm. No public comment was received. Chairperson Kapelanski closed the public hearing at 7:05pm.

Commissioner Buckler motioned to recommend to City Council to amend the Zoning Ordinance. Supported by Commissioner Kempner.

AYES: Kempner, Smith, Patterson, Trotto, Buckler, Murad, Richardson, Kapelanski

NAYS: None

ABSENT: Campbell

2. **PUBLIC HEARING:** Matter Of Conducting A Public Hearing to permit marihuana businesses in the City of Berkley as principal permitted uses in the Coolidge, Downtown, Eleven Mile, Gateway, Industrial, Local Business, Office, Twelve Mile, and Woodward Districts.

Community Development Director Schlutow summarized the September 19, 2019 memo addressing the proposed amendment, including the reasons for allowing such uses as principal permitted uses rather than special land uses, the 1,000 ft. separation from parochial or public k-12 schools, and the 500 ft. buffer from major intersections entering into the city limits.

Chairperson Kapelanski opened the public hearing at 7:10pm. Public written comments were received prior to the meeting date and were provided to the Planning Commission. No additional public comment was given.

Chairperson Kapelanski closed the public hearing at 7:11pm.

The Planning Commission reviewed and discussed the proposed amendment, inquiring as to why the proposed zoning ordinance amendment was written to permit marihuana businesses as principal permitted uses rather than special land uses, as discussed at the August 27, 2019 meeting.

Community Development Director Schlutow and City Manager Baumgarten addressed questions from the Planning Commission related to special land use v. principal permitted use, the administrative function for first review through the merit system, and the requirement for site plan approval by the Planning Commission prior to the issuance of any marihuana business license.

The Planning Commission further discussed their preference for special land use for all marihuana businesses, as well as whether there is a need for the 500 ft. intersection buffer.

Commissioner Smith motioned to recommend to City Council to amend the Zoning Ordinance to permit marihuana businesses in the Coolidge, Downtown, Eleven Mile, Gateway, Industrial, Local Business, Office, Twelve Mile, and Woodward Districts by special land use.

Supported by Commissioner Murad.

AYES: Smith, Trotto, Buckler, Murad, Richardson, Kempner, Kapelanski

NAYS: Patterson

ABSENT: Campbell

3. **PUBLIC HEARING:** Matter of Conducting a Public Hearing to adopt the Downtown Master Plan.

Community Development Director Schlutow summarized the September 18, 2019 memo addressing the Downtown Master Plan and steps for adoption.

Chairperson Kapelanski opened the public hearing at 8:19pm.

Several members of the public provided comments about the Downtown Master Plan, including residents and business owners.

Chairperson Kapelanski closed the public hearing at 8:32pm.

The Planning Commission addressed questions from the public related to the design guidelines, the conceptual renderings in the plan, and how the Downtown Master Plan would be integrated into the community Master Plan.

Commissioner Patterson motioned to adopt the Downtown Master Plan. Supported by Commissioner Trotto.

AYES: Patterson, Trotto, Buckler, Murad, Richardson, Kempner, Smith, Kapelanski

NAYS: None

ABSENT: Campbell

4. **DISCUSSION:** Matter of discussing numerical parking requirements and regulations within the City.

Community Development Director Schlutow summarized the September 18, 2019 memo addressing the parking requirements for marihuana businesses, authority of Planning Commission to modify parking requirements during site plan review, and updates to the numerical parking requirements in Article IV of the Zoning Ordinance.

The Planning Commission expressed interest in reviewing any possible amendments for Article IV of the Zoning Ordinance in its entirety, rather than in stages. It is agreed that parking is something that should be reviewed, but not in segments.

LIAISON REPORTS

Commissioner Murad noted that the State of the City address would take place in October and the Chamber of Commerce would welcome any members of the public who would be interested in volunteer opportunities.

Commissioner Richardson noted the City Council approved the Berkley Environmental Plan.

Commissioner Trotto did not attend the September DDA meeting.

Chairperson Kapelanski attended the City Council meeting and noted that Carlisle Wortman had been selected as the vendor to assist Berkley with the community Master Plan. The Downtown Master Plan was well received and City Council approved the amendment to the Zoning Ordinance to permit daycare facilities in the Local Business and Office Districts.

STAFF/COMMISSIONER COMMENTS

Community Development Director Schlutow mentioned that she would be attending the annual Michigan Association of Planning conference in Kalamazoo.

Commissioner Kempner asked to receive the meeting packets as early as possible in order to review all materials.

Commissioner Smith asked about the status of projects and properties of interest in Berkley.

With no further business, the meeting was adjourned at 9:29pm.



[Print Form](#)

Building & Planning
3338 Coolidge Hwy
Berkley, MI 48072
248-658-3320
Fax: 248-658-3301
www.berkleymich.org

CITY OF BERKLEY, MICHIGAN

APPLICATION FOR SPECIAL USE APPROVAL

Instructions: This application and fee of \$400.00 must be submitted with 18 copies of your proposal. If plans are required then 18 sets of **signed, sealed folded plans** should be submitted. If an application is withdrawn more than 3 weeks prior to the meeting date, 90% of the fee will be refunded. If the application is withdrawn less than 3 weeks prior to the meeting, no refund will be given.

The Planning Commission meets the fourth Tuesday of every month. The meetings are held at 7:30 p.m. The City Council generally meets the first and third Mondays of every month. The meetings are held at 7 PM. All meetings take place in the Council Chambers at the City Hall, 3338 Coolidge, Berkley, Michigan 48072.

Applicant:

Name: Mark Kellenberger Phone: 248-929-9603
Complete Address: 3221 W. Big Beaver Road, Suite 111, Troy, MI 48084

Property Owner: (If different than above)

Name: 814 LLC Phone: 248-845-4678
Complete Address: 3221 W. Big Beaver Road, Suite 111, Troy, MI 48084

Description of Property:

Street Address: 1695 W. 12 Mile Road, Berkley, MI
Zoning District: Office District
Lot Number: 6-31
Subdivision: STEPHENSON - BARBERS ROSELAND
Sidwell Number: 25-17-127-001

Description of Proposed Operation: Conversion of a portion of the first floor
of the existing office building to provide as a Child Day Care Center.

Mark K

Signature of Applicant

9.19.19

Date

Office use only Account Number 1019

Date Application received 9-20-19 Fee \$350 Receipt Number _____
Hearing Date 10/22/19 Case Number PSU-01-19

City Council Disposition: _____



Community Development
3338 Coolidge Hwy
Berkley, MI 48072
(248) 658-3320

MEMORANDUM

To: Berkley Planning Commission
From: Erin Schlutow, Community Development Director
Subject: **SU-01-19; 1695 Twelve Mile Rd – Child Care Facility in Office District**
Date: October 14, 2019

Dear Planning Commissioners:

The applicant, EIG14T LLC, is proposing to occupy a portion of the first floor of the existing office building at 1695 Twelve Mile Rd, at the southwest corner of Twelve Mile and Brookline. The proposed use is KinderCare, a child care facility which will provide daytime care up to 124 children, ranging from infants to pre-kindergarten age groups.

The proposed redevelopment of the existing structure includes renovation of the first floor to accommodate KinderCare and EIGH14T Development Office, which will be relocating from Troy. The special land use application pertains only to the child care facility. The remaining first floor area is proposed to be occupied by EIGH14T Development Office, a principal permitted use in the Office District, and the entire second floor will remain medical office, also a principal permitted use in the Office District.

KinderCare is proposing to develop the first floor to include the entrance lobby, office area and staff rooms, a gymnasium, laundry facilities, a warming pantry, three infant rooms, three toddler rooms, two discover preschool rooms, one preschool room, and one pre-kindergarten room. There are three play areas, separated by age group that will include shade structures and playscapes. The outdoor play area and the occupancy levels for each room are mandated by the State of Michigan and KinderCare will adhere to those requirements.

The subject site is zoned Office District. Daycare facilities are permitted as special land uses in the Office District. Our review of the site plan application is in a separate letter.

Review Procedures

The proposed daycare facility is a special land use in the Office District and must be reviewed in accordance with the applicable procedures for Special Land Uses in Division 6 of Article VI in the Berkley



BERKLEY
where you want to be

Zoning Ordinance. The Planning Commission must hold a public hearing on the special land use and make a recommendation to the City Council. The City Council has the authority to grant final approval on the special land use.

The five (5) standards for granting special land use approval are set forth in Section 138-653 of the Zoning Ordinance. We have reviewed the proposal for KinderCare with respect to these standards and offer the following findings:

- 1. *The proposed use will promote the use of land in a socially and economically desirable manner.***
The proposed use will occupy an existing structure on Twelve Mile Rd. The facility was used exclusively for medical offices, but the new owner has proposed using approximately 9,500 sq. ft. as a child care facility. The proposed child care facility will service the need of the community by providing a valuable service to residents and adjacent communities.
- 2. *The proposed use is necessary for the public convenience at that location.***
The proposed use is a valuable and needed service in the community. Currently, there is one (1) child care facility and five (5) in home day care facilities located within the City of Berkley. Several facilities and in home care centers both in the City and in surrounding communities have reported significant waiting lists, projecting to June 2020.

The proposed location on Twelve Mile Rd near Woodward Ave would conveniently serve the public in their need for child care in close proximity to work and home.
- 3. *The proposed use is compatible with adjacent land uses.***
The proposed use is located in the Office District, adjacent to other similar office uses, restaurants, and single family housing. The proposed use is compatible with adjacent land uses and will not pose a safety or hazard to existing businesses or property owners. The location of the child care facility near Twelve Mile and Woodward will provide ease of access to parents during morning drop-off and afternoon pick-up.
- 4. *The proposed use is designed so that the public health, safety and welfare shall be protected.***
The proposed child care facility will not have a negative impact on the public health, safety and welfare of the community.
- 5. *The proposed use will not cause injury to other property in the neighborhood.***
The proposed use will occupy an existing building located on Twelve Mile Rd. The applicant has proposed minor site improvements that will include the relocation of the dumpster and outdoor play area. The proposed use will not cause injury to other property in the neighborhood. The existing brick wall, located on the south property line of the subject site, separates the property from adjacent single family residential properties. The 6 ft. brick wall will remain intact as a use and noise buffer between the



BERKLEY
where you want to be

properties. The applicant has noted that there are no plans to remove such barrier and will make improvements, as needed.

Summary and Recommendation

Based on the characteristics of the community and the growing need for daytime child care, a child care facility would be a welcome addition to the City of Berkley. We believe the re-occupancy of 1695 Twelve Mile Rd with a day care facility is appropriate in scope for the area, and meets the standards of special land use review.

Therefore, we recommend the Planning Commission recommend approval of the special land use application to the City Council, subject to the results of the public hearing and approval of the site plan.

Sincerely,

Erin Schlutow
Community Development Director

c: Matthew Baumgarten, City Manager
Victoria Mitchell, City Clerk
John Staran, City Attorney
Derrick Schueller, DPW Director
Pete Kelly, Fire Marshal
Matt Koehn, DPS Director/Chief
Mark Kellenberger, mark@814cre.com



Building & Planning
3338 Coolidge Hwy
Berkley, MI 48072
248-658-3320
Fax: 248-658-3301
www.berkleymich.org

CITY OF BERKLEY, MICHIGAN

APPLICATION FOR SITE PLAN REVIEW

A complete application, a check payable to the 'City of Berkley', and 18 copies of a complete set of *signed, sealed and folded* plans must be submitted to the City of Berkley one month prior to the date of the Planning Commission meeting. If engineering review is required, an additional fee must be submitted. Should the review fees be greater than the required minimum, sufficient additional charges will be imposed to satisfy the additional review fees. All fee obligations must be satisfied prior to permit approval.

The Planning Commission meets the fourth Tuesday of every month. The meetings are held at 7:30 p.m. in the Council Chambers at the City Hall, 3338 Coolidge

Applicant:

Name: Mark Kellenberger Phone: 248-929-9603
Complete Address: 3221 W. Big Beaver Road, Suite 111, Troy, MI 48084

Property Owner (if different than above):

Name: 814 LLC Phone: 248-845-4678
Complete Address: 3221 W. Big Beaver Road, Suite 111, Troy, MI 48084

Representative:

Name: MARK KELLENBERGER Title: SENIOR DEVELOPMENT MANAGER

Description of Property for Review:

Lot Number 6-31 Subdivision STEPHENSON - BARBERS ROSELAND
Street Address: 1695 W. 12 Mile Rd, Berkley, MI

Reason for Review by Planning Commission: SPECIAL APPROVAL

I understand that Planning Commissioners may need to access my property to better understand my case.

Mark K
Signature of Applicant

9-19-19
Date

Fees: Site Plan Review: \$350.00 Façade Change: \$200.00 Revision: \$100.00

Engineering (Multiple Family): \$1,100 Engineering (Non Residential): \$800

If an application is withdrawn more than 2 weeks prior to the meeting date, 90% of the fee will be refunded. If the application is withdrawn less than 2 weeks prior to the meeting, no refund will be given. Engineering review fees are not refundable.

Office use only Account Number: 1019

Received 9-20-19 Receipt # _____ Hearing Date 10/22/19 Case # PSP-07-19

City Planning Commission Disposition: _____



Community Development
3338 Coolidge Hwy
Berkley, MI 48072
(248) 658-3320

MEMORANDUM

To: Berkley Planning Commission
From: Erin Schlutow, Community Development Director
Subject: **PSP-07-19; 1695 Twelve Mile Rd – Site Improvements**
Date: October 14, 2019

Dear Planning Commissioners:

The applicant, EIG14T LLC, is proposing to occupy a portion of the first floor of the existing office building at 1695 Twelve Mile Rd, at the southwest corner of Twelve Mile and Brookline. The proposed use is KinderCare, a child care facility that will provide daytime care for up to 124 children, ranging from infants to pre-kindergarten age groups.

The proposed redevelopment of the existing structure includes renovation of the first floor to accommodate KinderCare and EIGH14T Development Office, which will be relocating from Troy. The special land use application has been reviewed under a separate cover letter. The remaining first floor area is proposed to be occupied by EIGH14T Development Office, a principal permitted use in the Office District, and the entire second floor will remain medical office, also a principal permitted use in the Office District.

KinderCare is proposing to develop the first floor to include the entrance lobby, office area and staff rooms, a gymnasium, laundry facilities, a warming pantry, three infant rooms, three toddler rooms, two discovery preschool rooms, one preschool room, and one pre-kindergarten room. There are three play areas, separated by age group that will include shade structures and playscapes. The outdoor play area and the occupancy levels for each room are mandated by the State of Michigan and KinderCare will adhere to those requirements.

The subject site is zoned Office District. Daycare facilities are permitted as special land uses in the Office District. Our review of the site plan application is in a separate letter.

Review Procedures

The proposed site improvements at 1695 Twelve Mile Rd for a child care facility require review and approval of the site plan by the Planning Commission.



BERKLEY
where you want to be

The six (6) standards for granting site plan approval are set forth in Section 138-679 of the Zoning Ordinance. We have reviewed the proposal for KinderCare with respect to these standards and offer the following findings:

1. *The site meets the requirements of this Code.*

The proposed site is located within the Office District, which permits child care facilities through special land use. Our special land use review letter is provided under separate cover.

The proposed child care facility will occupy an existing structure, located on Twelve Mile west of Brookline St. The facility will provide care for up to 124 children with up to 20 employees. The site plan includes:

Infant Room (3)	Maximum 8 children
Toddler Room (3)	Maximum 8 children
Discovery Preschool Room (2)	Maximum 16 children
Preschool Room (1)	Maximum 20 children
Pre-Kindergarten Room (1)	Maximum 24 children

The existing facility meets all setback, lot coverage and height requirements of the Office District.

The subject property has 121 parking spaces on site. The applicant has provided a Reciprocal Easement Agreement with the adjacent property owner at 1949 Twelve Mile Rd, which will provide use of additional 67 parking spaces. The available 188 parking spaces will provide sufficient parking for the three uses within the existing facility.

Use	Parking Requirement	
Child care facility 5,595 sq. ft. UFA 20 employees	1 space per 300 square feet of usable floor area, plus 1 per employee	39 spaces
Medical office 12,600 sq. ft. UFA	1 space per 100 square feet of usable floor area	126 spaces
Office 4,480 sq. ft. UFA	1 space per 225 square feet of usable floor area	20 spaces
TOTAL		185 parking spaces

2. *The proposed development does not create adverse effects on public utilities, roads, or sidewalks.*



BERKLEY
where you want to be

The existing structure will not create negative impact on public utilities, roads, or sidewalks. Any and all site improvements will not create adverse effects and any changes are limited to the subject site.

3. ***Pedestrian and vehicular areas are designed for safety, convenience, and compliment adjacent site design.***

The pedestrian and vehicular areas will remain in existing condition. The front entry port-cochere (covered entrance) will remain in existing condition but we recommend the entry area to be signed accordingly so as to prevent visitors from parking cars under the covered area at morning drop-off and afternoon pick-up.

The site plan includes angled parking spaces that will require one-way vehicular driving aisles. We recommend the revised site plan to include dimensions of parking spaces and maneuvering and driving aisles, as well as the driving and maneuvering lanes to be signed and/or painted so as to prevent confusion during peak hours.

Due to the condition of the impervious surface, the parking area should be reviewed for improvement or replacement. We also recommend additional landscaping beds within the parking areas to provide shade and contribute to the aesthetic character of adjacent properties. There are two striped end or row areas, located at the far west of the subject site which could be redesigned to include green areas with trees, flowers or other vegetation.

4. ***Site design, architecture, signs, orientation, and materials are consistent with the city's master plan objectives and the design of the neighboring sites and buildings.***

The applicant is not proposing architecture or façade alterations and intends to maintain the facility in its current condition. The façade of the existing structure is entirely brick with glass and decorative architectural features, including a front entry port-cochere.

The subject site has a ground sign on Twelve Mile Rd. The applicant has not indicated if new signage will be proposed. If the applicant proposes additional or change of signage, separate permits must be issued by the Berkley Building Department.

5. ***Landscaping, lighting, dumpster enclosures, and other site amenities are provided where appropriate and in a complementary fashion.***

The site plan does not provide additional landscaping or site lighting proposed to service the existing facility. A photometric plan should be included in revised plans to show the existing lighting of the subject site to ensure there is sufficient lighting throughout the parking area, due to morning drop-off and evening pick-up.

As noted above, we recommend additional landscaping beds to be located within parking areas in order to provide shade and contribute to the aesthetic character of adjacent properties. We also



BERKLEY
where you want to be

recommend additional landscaping to be included in the site plan in the grass areas along Twelve Mile Rd and Brookline St.

The dumpster enclosure is proposed to be relocated to the southeast entrance to the site near Brookline St. The enclosure will be constructed of face brick to match the principal building and the gates will be vinyl vertical slats. We also recommend additional landscaping to surround the dumpster enclosure to provide screening from Brookline St. and the outdoor play area.

The site plan includes an indoor play area (1,210 sq. ft.) and outdoor play area (5,975 sq. ft.), totaling 6,742 sq. ft. The outdoor play area includes three (3) separate and fenced play areas for each age group with shade structures and playscapes. The designs of the playscapes are not final and are subject to change, however, the area and security shall not be altered without approval.

6. ***Site engineering has been provided to ensure that existing utilities will not be adversely affected.***

DPW has reviewed the site plan for compliance with all existing utilities to ensure the proposed use will not be adversely affected. We defer to their October 11, 2019 review letter.

Summary and Recommendation

Based on the characteristics of the community and the growing need for daytime child care, a child care facility would be a welcome addition to the City of Berkley. We believe the re-occupancy of 1695 Twelve Mile Rd with a day care facility is appropriate in scope for the area.

Therefore, based on findings of fact, we recommend the Planning Commission approve the site plan with the following conditions:

1. Entrance signage to be included on site to prevent temporary parking under the port-cochere during morning drop-off and afternoon pick-up.
2. Signed and/or painted direction arrows to signal one-way maneuvering and driving parking aisles.
3. Improved conditions of parking area for users of the property.
4. Additional landscaping in the parking area and in the green space along Twelve Mile and Brookline St., where appropriate.
5. Submission of photometric plan to ensure compliance with lighting requirements in the Zoning Ordinance.
6. Final site plans to be reviewed and approved by DPW and Fire Marshal.

Sincerely,



BERKLEY
where you want to be

Erin Schlutow

Erin Schlutow
Community Development Director

c: Matthew Baumgarten, City Manager
Victoria Mitchell, City Clerk
John Staran, City Attorney
Derrick Schueller, DPW Director
Pete Kelly, Fire Marshal
Matt Koehn, DPS Director/Chief
Mark Kellenberger, mark@814cre.com

Transmittal Memo

To: Erin Schlutow, Community Development Director (via email)

Cc: Shawn Young, DPW Foreman (via email)

From: Derrick Schueller, DPW Director

DSS

Date: October 11, 2019

Subject: Proposed Kinder Care Child Facility
Plan Review #1
1695 12 Mile Road

We have visited the site and reviewed the plans provided by the Community Development Department and prepared by Orman Engineering, LLC dated September 19, 2019. Please find below our initial comments:

1. We recommend future plan submittals be made electronically to expedite the review process and assist with record retention.
2. A Design MISS DIG request shall be made by the applicant so all utilities can be shown on the plans. If one has already been initiated, please indicate ticket number. Existing public water and combined sewer are on-site but are not completely shown on the current plan (see attached GIS map).
3. Easements shall be shown for public water main and combined sewer on-site. If easements have not been formally dedicated, such documents shall be prepared and granted at this time for future access/maintenance. Please reference title documents.
4. A hydrant relocation is proposed along the south side of the building. It is not clear how the hydrant will be moved. Live taps are required as to not disrupt service to existing residents and/or businesses.
5. The applicant shall indicate all private storm lines on the drawings and where they connect to the public system. The condition of both the existing catch basins and existing storm lines shall be evaluated by the applicant for condition and adequacy of future use.
6. Restricted catch basin covers shall be added at all basins to moderate flows into the combined sewer system (see attached samples). Note roof drains shall also splash on-grade and not directly connected to the underground system.
7. The existing asphalt parking lot is in poor condition. The applicant shall clarify if the lot will be resurfaced or improved. Note the Community Development Department may need to review the new striping plan for verification of number of stalls required, sizing, handicap considerations and general site circulation.
8. The total site impervious is not changing significantly with this proposed project.

Feel free to call with any questions or concerns. Thank you.





1040C Cover



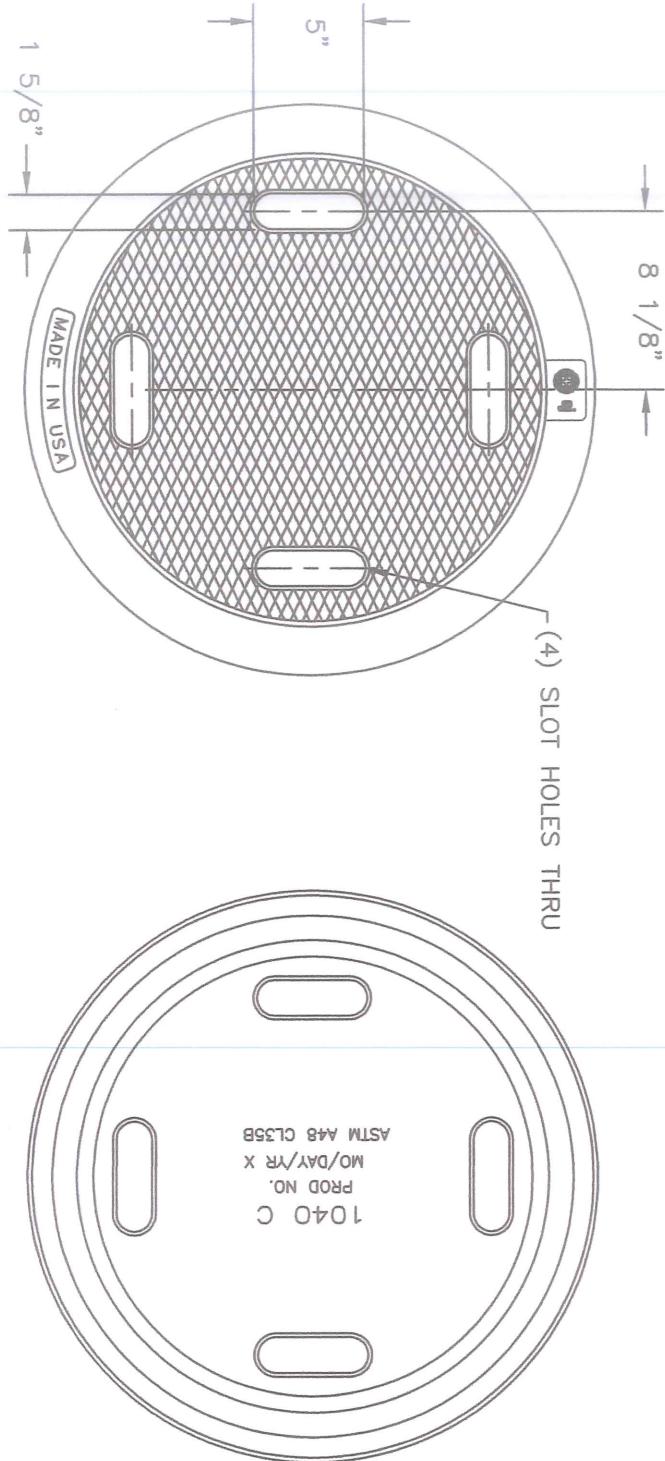
Product Number

00104399

Design Features

- Materials
Gray Iron (CL35B)
- Design Load
Heavy Duty
- Open Area
n/a
- Coating
Dipped
- ✓ Designates Machined Surface

BOTTOM VIEW



Certification

- ASTM A48
-
- Country of Origin: USA

Drawing Revision

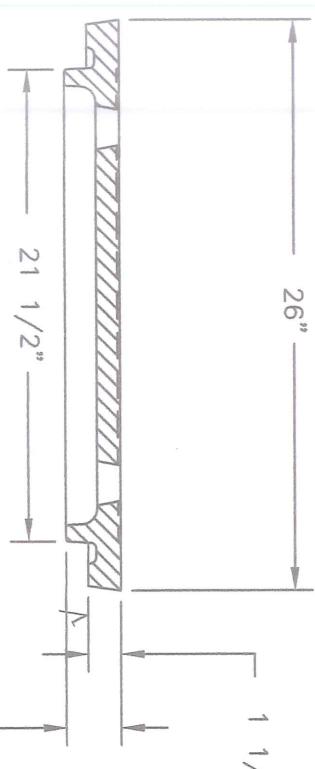
6/22/2007 Designer: DEW
6/10/2013 Revised By: DAE

Disclaimer

Weights (lbs./kg) dimensions (inches/mm) and drawings provided for your guidance. We reserve the right to modify specifications without prior notice.

CONFIDENTIAL: This drawing is the property of EJ GROUP, Inc., and embodies confidential information, registered marks, patents, trade secret information, and/or know how that is the property of EJ GROUP, Inc. Copyright © 2012 EJ GROUP, Inc. All rights reserved.

COVER SECTION



Contact
800 626 4653
ejco.com

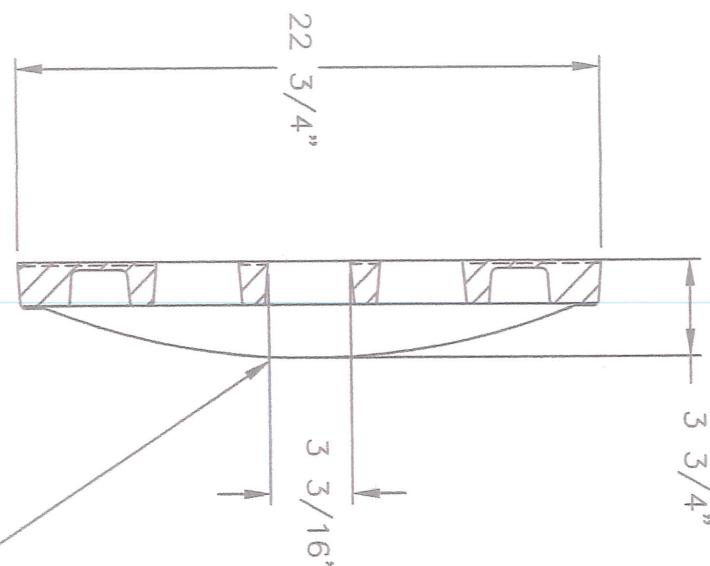
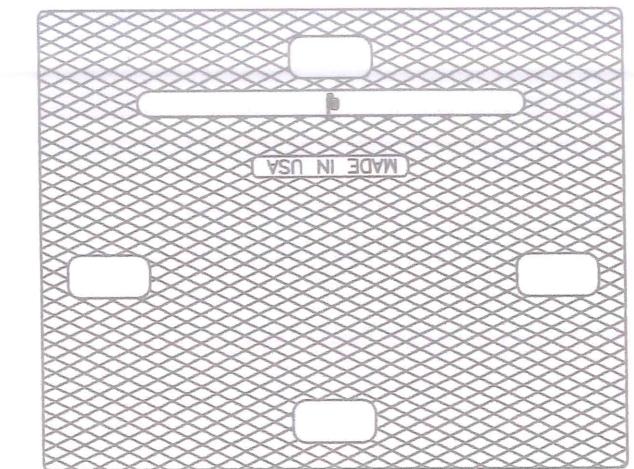
5000M3 Grate



Product Number
00500042

Design Features

- Materials
Gray Iron (CI35B)
- Design Load
Heavy Duty
- Open Area
20 sq in
- Coating
Dipped
- Designates Machined Surface



GRATE SECTION

EJ
5000M3

MO/DY/YR X
PROD NO

ASTM A48 CL35B

Certification

- ASTM A48
- Country of Origin: USA

Drawing Revision
7/22/1996 Designer: DEW
9/30/2016 Revised By: MAH

Disclaimer

Weights (lbs./kg) dimensions (inches/mm) We and drawings provided for your guidance. We reserve the right to modify specifications without prior notice.

CONFIDENTIAL: This drawing is the property of EJ GROUP, Inc., and embodies confidential information, registered marks, patents, trade secret information, and/or know how that is the property of EJ GROUP, Inc. Copyright © 2015 EJ GROUP, Inc. All rights reserved.

SECTION

Contact
800 623 4653
ejco.com

City of Berkley

3338 Coolidge Highway, Berkley, MI 48072



"We Care"

Fire Inspector
Office: 248-658-3326
Fax: 248-658-3301
Email: pkelly@berkleymich.net

**To: Erin Schlutow, Community Development Dir.
Orman Engineering, Architect
Reed Fenton, 814 Berkley LLC, Applicant**

RE: Plan Review #19-17, Kinder Care Facility, 1695 W 12 Mi.

Dear Interested Parties:

10-7-2019

I have received and reviewed plans for the above project and tentatively approved them subject to the following:

- 1) Panic hardware required for gates in exterior walkway, also clarification on direction of swing for each.
- 2) Electric powered exit signage required in exterior walkway.
- 3) East gate in walkway must swing clear of dumpster enclosure.
- 4) Coordinate hydrant removal/replacement with DPW, also will hydrant be moved slightly northwest?

Please contact me with any questions regarding this communication.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Kelly".

Pete Kelly
Fire Inspector



3221 W. Big Beaver Road, Suite 111
Troy, Michigan 48084

September 19, 2019

Planning Commission
City of Berkley
3338 Coolidge Highway
Berkley, MI 48072

RE: Proposed Childcare Use at 1695 W. 12 Mile Road

Dear Commissioners:

We appreciate the City of Berkley including childcare uses in the Office and Local Business Districts (as Special Uses) and are excited at the opportunity to bring a much needed amenity to the community. According to our records there are only a few larger childcare providers in the area (Childtime in Lathrup Village, Toddler Time in Southfield, and Sunny Skies in Huntington Woods and Clawson) accompanied by a handful of smaller, independent providers. We feel that this location will provide necessary services for residents of Berkley, and nearby citizens, while at the same time providing revitalization to the existing building and area.

Just to provide some additional background, we approached the City in February of this year to discuss the potential to place childcare uses in the Office District, specifically at 1695 W. 12 Mile Road. The former Community Development Director was very receptive and actually suggested that it be included into the Local Business District as well. In March, we submitted a formal request to ask the Planning Commission to consider the Zoning Text Amendment. With the City Council approving the second reading of the Ordinance amendment, we are now able to present our plans to incorporate KinderCare into the property at 1695 W. 12 Mile Road in the City of Berkley.

EIG14T is a preferred developer for KinderCare locations in markets across the U.S. We have been working with KinderCare on a design that will fit into the existing building and provide adequate outdoor recreation opportunities. As we have indicated above, we believe this area is underserved for childcare opportunities for parents and young families. The existing building is approximately 36,000 sq. ft. of medical office suites. As part of the revitalization of this property we are proposing to maintain medical office uses on the second floor. On the first floor we will convert the medical office suites into the KinderCare floorplan and the general office space which will house the EIG14T Development Office, which we will be relocating from Troy.

With respect to the Special Approval criteria we believe that the proposed occupation of the existing building by KinderCare will revitalize the property in both a social and economical manner; that the use is warranted in the area; that it will be compatible with the adjacent land uses; that there will be no danger to public health safety and welfare; and that the use will not be injurious to other properties in the neighborhood.

Further the criteria identified and approved in the Ordinance amendment will not present any issue for the proposed use. The property is currently screened from the adjacent residential property by a 6 ft. tall masonry wall. We will work with KinderCare to ensure that all State requirements are met and licenses secured prior to occupancy.

Our initial conversations with the City indicated that we would not run into any issue with parking. Since the existing building is currently used for medical offices, the conversion of the first floor to childcare and professional office would represent a lesser parking demand than the medical office uses. Our more recent conversations have indicated that we may need to seek a variance due to the overall parking requirement being greater than what will exist on the property.

We offer the following information in an effort to justify our proposed uses and believe this opportunity will be an overall benefit for the city of Berkley and the surrounding area. The existing building has been and is currently being used for medical office uses. The parking requirement for this building is currently 288 spaces. With our proposed restructuring of uses on the first floor we will lessen the parking demand to 206 spaces. An overall reduction of 82 parking spaces. Our property provides 121 spaces on site, however, there is a shared parking agreement with the adjacent property to the west for an additional 101 parking spaces.

By Code, our proposal will require that we provide 206 parking spaces: 144 spaces for medical offices; 39 spaces for the childcare; and 23 spaces for general office. We believe that the childcare and office uses can be further reduced to 20 spaces for childcare and 16 for general office. The 20 parking spaces for the childcare use would represent what is needed for staff parking. Kindergarten's peak drop off hours are before 9 am and after 5 pm (when the office uses parking would be minimum). These are quick stops and the parents are not parking for an extended time, therefore we believe this parking requirement can be lowered and accommodated on site. The general office space will be for the EIG14T Office. We currently have 16 employees, several of which are project managers and are out of the office travelling to project sites every week. Included in the 16 employee count are 4 new professional positions which will cap new employment for the immediate future. These factors would create an actual parking demand of 180 parking spaces (144 medical, 20 childcare, 16 office) which we believe will be easily accommodated on site. The 180 parking spaces would be able to be accommodated by the presence of 121 parking spaces on site and a reasonable expectation of 67 spaces of the 101 shared spaces (for a total of 188 spaces).

We hope the Planning Commission agrees with our conclusion that the location of KinderCare use is appropriate and that the revitalization of this property will be a welcomed improvement to the City of Berkley.

Please contact me with any questions.

Respectfully,



Mark Kellenberger, AICP
Senior Development Manager
EIG14T Development

LIB# 22233 PG 706

15-1
LIBER 22233 PAGE 706
\$29.00 MISC RECORDING
\$2.00 REMONUMENTATION
01/19/2001 02:59:04 P.M. RECEIPTN 4103
PAID RECORDED - OAKLAND COUNTY
G. WILLIAM CADDELL, CLERK/REGISTER OF DEEDS

AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT

THIS AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT ("Agreement") is entered into this 18th day of January, 2001, by **BERKLEY TWELVE ASSOCIATES, L.L.C.**, a Michigan limited liability company, whose address is 28400 Northwestern Highway, Fourth Floor, Southfield, Michigan 48034 ("Berkley Twelve LLC"), and **BERKLEY TWELVE ASSOCIATES II, L.L.C.**, a Michigan limited liability company, whose address is 28400 Northwestern Highway, Fourth Floor, Southfield, Michigan 48034 ("Berkley Twelve II").

R E C I T A L S :

A. Berkley Twelve LLC owns certain real property and improvements thereon located in the City of Berkley, County of Oakland, State of Michigan, commonly known as 1695 West Twelve Mile Road, which is more particularly described on Exhibit A attached hereto ("Berkley Twelve LLC Property").

B. Berkley Twelve II owns certain real property and improvements thereon located in the City of Berkley, County of Oakland, State of Michigan, commonly known as 1949 West Twelve Mile Road, which is more particularly described on Exhibit B attached hereto ("Berkley Twelve II Property").

C. On June 14, 1989, Griswold Holding Company, Berkley Twelve Associates, a Michigan co-partnership ("Berkley Twelve Associates"), and Carpenters Union Local 998 ("Carpenters Union") entered into a Reciprocal Easement Agreement ("REA"), concerning certain real property located at 1695 West Twelve Mile Road, Berkley, Oakland County, Michigan, more particularly described on attached Exhibit "A" ("Parcel I"), and certain real property located at 1949 West Twelve Mile Road in Berkley, Oakland County, Michigan, more particularly described on attached Exhibit "B" ("Parcel II"). The REA was recorded in Liber 10944, Page 508, Oakland County Records on June 16, 1989.

D. Berkley Twelve LLC is Successor-in-Interest (pursuant to a Warranty Deed dated June 14, 1989, and also pursuant to a Quit Claim Deed dated June 19, 1990, and recorded in Liber 11429, Page 749 on June 20, 1990, and Articles of Organization and Certificate of Conversion dated December 2, 1998 and filed with the Michigan Department of Consumer and Industry Services - Corporation, Securities and Land Development Bureau on December 3, 1998) to Griswold Holding Company and Berkley Twelve Associates, to all rights under the REA.

O.K. - KB

E. Berkley Twelve II is Successor-in-Interest to Michigan Regional Council of Carpenters, as Successor-in-Interest to the Carpenters Union (pursuant to an Assignment And Assumption of Purchase Agreement dated May 17, 1999, whereby Berkley Twelve Associates assigned all rights, title, and interest in the Purchase Agreement to Berkley Twelve II, and a Warranty Deed dated May 18, 1999 (and recorded in Liber 20267, Page 570 on July 15, 1999), from Michigan Regional Council of Carpenters, Grantor, to Berkley Twelve II, Grantee), to all rights under the REA.

F. At this time, the parties desire to amend and restate the REA in order to grant each other the perpetual, non-exclusive reciprocal easements described herein, for the purpose of: (i) providing common vehicular and pedestrian ingress and egress to and from the Berkley Twelve LLC Property and the Berkley Twelve II Property, and (ii) providing Berkley Twelve, Berkley Twelve II and their respective invitees, licensees and guests, with a common parking facility on the Berkley Twelve LLC Property and the Berkley Twelve II Property.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements, and for other good and valuable consideration, the adequacy and receipt of which is acknowledged, and subject to the terms and conditions contained herein, the parties agree as follows:

1. **Reciprocal Access and Parking Easement.**

A. Berkley Twelve II acknowledges that there presently exists at least one hundred and one (101) vehicular parking spaces located on the Berkley Twelve II Property. Berkley Twelve II hereby conveys and grants to Berkley Twelve LLC, its agents, employees, tenants, invitees, and licensees, a non-exclusive, perpetual easement for access, ingress, egress, and parking over and across all areas which constitute the east parking area and the south parking area of the Berkley Twelve II Property, and all access ways serving both such parking areas, which are depicted on the site plan attached hereto as Exhibit "C" and made a part hereof. Berkley Twelve LLC shall not have the right to use the nine (9) parking spaces adjacent to the east face of the existing building located on the Berkley Twelve II Property, as depicted on Exhibit "C" attached hereto, nor shall Berkley Twelve LLC have the right to use any parking area west of the west face of the aforesaid building.

Notwithstanding anything to the contrary contained in this Agreement, Berkley Twelve II covenants and agrees that it shall not reduce the number of parking spaces located on the east parking area and the south parking area of the Berkley Twelve II Property specified hereinabove to less than one hundred one (101) vehicular parking spaces.

B. Berkley Twelve LLC acknowledges that there presently exists approximately one hundred five (105) vehicular parking spaces on the portion of the Berkley Twelve LLC Property which is located adjacent to the Berkley Twelve II Property. Berkley Twelve LLC hereby conveys and grants to Berkley Twelve II, and its agents, employees, tenants, invitees, and licensees, a non-exclusive, perpetual easement for access, ingress, egress, and parking over and across all vehicular parking areas, and vehicular exits and driveways which are located on the portion of the Berkley Twelve LLC Property which is adjacent to the Berkley Twelve II Property, as depicted on Exhibit "C" attached hereto.

2. **Maintenance.** Berkley Twelve LLC and Berkley Twelve II, shall, at their own cost and expense, each keep and maintain the entire parking area located on their respective properties as herein described.

3. **Term.** The term of this Agreement shall be perpetual. Notwithstanding anything to the contrary contained in this Agreement, the Easements referenced in Paragraphs 1.A and 1.B shall survive the termination of this Agreement.

4. **Rights of Berkley Twelve LLC and Berkley Twelve II.** Each party reserves the following rights with respect to the easements granted to the other party under this Agreement (collectively, the "Easements"):

- a. the right to locate and grant other non-exclusive easements and rights-of-way across, over, under and through the portion of such party's property that is subject to one or more of the Easements, provided that such action does not adversely affect the rights granted to the other party under this Agreement;
- b. the right to install across, over, under and through the portion of such party's property that is subject to one or more of the Easements, public and private utilities and all equipment and facilities related to such utilities, provided that such action does not adversely affect the rights granted to the other party under this Agreement; and,
- c. the right to construct or install landscaping, shrubbery, trees, irrigation improvements, signs, permanent fencing, berms, curbs, paving, driveways and sidewalks on, over and across the portion of such party's property that is subject to one or more of the Easements, provided that such action does not adversely affect the rights granted to the other party under this Agreement.

5. Insurance and Indemnifications.

- a. From and after the date hereof, each party shall, at its own cost and expense, keep in full force and effect with respect to the portion of the Easements located within such party's property, comprehensive, combined single limit public liability and property damage insurance, in the amount of Two Million and 00/100 Dollars (\$2,000,000.00). All policies of insurance that are required to be maintained by a party shall name the other party, its successors, and assigns, as loss payee and additional insureds, as appropriate, as their respective interests may appear, and shall contain a provision that the insurer will not cancel, change or fail to renew the insurance without first giving the other party thirty (30) days prior written notice. Each year, each party shall furnish the other party with such evidence as the other party may reasonably require that the insurance referred to above is in full force and effect and that the applicable premiums have been paid.
- b. To the extent not covered by Berkley Twelve LLC's insurance, Berkley Twelve II hereby indemnifies and holds harmless the Berkley Twelve LLC from and against any and all claims, costs, expenses (including reasonable attorneys fees), damages, liabilities or obligations arising out of any damage to property or harm to any person incurred as a consequence of any negligent or wrongful act or omission of Berkley Twelve II, any of its, managers, agents or employees, in connection with its use of the easement areas on the Berkley Twelve LLC Property granted to Berkley Twelve II.
- c. To the extent not covered by Berkley Twelve II's insurance, Berkley Twelve LLC hereby indemnifies and holds harmless Berkley Twelve II from and against any and all claims, costs, expenses (including reasonable attorneys' fees), damages, liabilities or obligations arising out of any damage to property or harm to any person incurred as a consequence of any negligent or wrongful act or omission of Berkley Twelve LLC, any of its, managers, agents or employees, in connection with its use of the easement areas on the Berkley Twelve II Property granted to Berkley Twelve LLC.

6. Enforcement. If any party fails to observe, fulfill or perform any covenant, term or condition of this Agreement, upon its part to be performed, then the aggrieved party may, upon fifteen (15) days advance written notice (or sooner in the event of exigent circumstances) undertake such obligation, but in no event shall it have the duty to undertake such obligations. The cost of curing such default shall be due from the defaulting party on demand, plus interest at the rate of two percent (2%) over the announced prime rate of the largest national bank in Metropolitan Detroit. As a consequence of such default, the aggrieved party may seek injunctive relief against the

defaulting party or to recover a money judgment against such defaulting party. The prevailing party in any action between the parties hereto shall be entitled to be reimbursed for its actual attorney fees and all out-of-pocket costs and expenses and such amount shall be included in any judgment rendered by the Court. The rights granted under this paragraph shall be in addition to all rights and remedies at law or equity.

7. **Successors and Assigns.** Every obligation, agreement and covenant in this Agreement shall run with the land and shall be binding upon the party making or assuming such obligation and such party's successors and assigns and shall inure to the benefit of all other parties hereto and their successors and assigns.

8. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable in any manner, the remaining provisions of this Agreement shall nonetheless continue in full force and effect without being impaired or invalidated in any way. In addition, if any provision of this Agreement may be modified by a court of competent jurisdiction such that it may be enforced, then said provision shall be so modified and as modified shall be fully enforce.

9. **Amendments.** This Agreement shall not be modified or amended other than by written agreement of the parties hereto.

10. **Arbitration.** Any controversy or claim arising out of or related to this Agreement will be settled by binding arbitration before one arbitrator in accordance with the Commercial Arbitration rules of the American Arbitration Association. The arbitrator shall be reasonably qualified to hear matters which are the subject of this Agreement. The arbitration award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 USC 1 et seq., will apply to the construction and interpretation of this arbitration provisions.

In the event the arbitrator's decision shall be made in no event later than ten (10) calendar days after the commencement of the arbitration hearing. The award shall be final and judgment may be entered in any court having jurisdiction thereover.

The arbitrator may award specific performance of this Agreement. The arbitrator may also require remedial measures as part of any award. The arbitrator in his/her discretion may award reasonable attorneys' fees and costs to the more prevailing party. Notwithstanding anything to the contrary contained in this Agreement, the arbitrator shall not have the right or power to terminate this Agreement.

11. **Notices.** Unless specifically stated to the contrary in this Agreement, all notices, demands, requests, consents, approvals, or other communications which are required or desired to be given or made or sent, by either party hereto to the other, shall be in writing and may be hand delivered or may be delivered by depositing the same in an United States mail receptacle, via first class, certified, registered or equivalent, return

1PP22233P0711

receipt requested, postage prepaid, or by recognized overnight courier (provided that such service is able to provide evidence of receipt or refusal of delivery) addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, requests, consents, approvals, or other communications shall be deemed given when delivered (or refusal to receive) or three (3) days after mailing; provided, however, that if any such notice, demand, request, consent, approval, or other communication is sent by telecopy or fax machine, then such notice, demand, request, consent, approval, or other communication shall be deemed given at the time and on the date of the machine transmittal if the sending party receives a written send verification on its machine and forwards a copy thereof with its mailed, overnight, or courier delivered communication.

To Berkley Twelve LLC Manager:

Real Ventures-Berkley Associates
28400 Northwestern Highway
Fourth Floor
Southfield, Michigan 48034
Attention: Burton D. Farbman, Partner
Fax No.: (248) 353-0502

To Berkley Twelve II Member:

Real Ventures Berkley, L.L.C.
28400 Northwestern Highway
Fourth Floor
Southfield, Michigan 48034
Attention: Burton D. Farbman
Fax No.: (248) 353-0502

With a copy to:

Jeffrey L. Howard, Esq.
Seyburn, Kahn, Ginn, Bess and Serlin, P.C.
2000 Town Center, Suite 1500
Southfield, Michigan 48075-1195
Fax No.: (248) 353-3727

And

William Eisenberg
Grand Sakwa Properties, L.L.C.
32000 Northwestern Hwy., Suite 125
Farmington Hills, Michigan 48334
Fax No. (248) 855-0915

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nonetheless continue in full force and effect without being impaired or invalidated in any way.

13. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one Agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

14. **Entire Agreement.** This document together with all of the instruments herein described constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement, and any and all prior agreements, understandings or representations, written or oral, are hereby amended and restated in their entirety and are of no further force or effect.

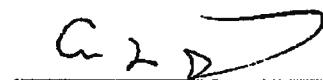
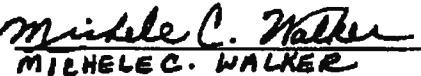
THIS AGREEMENT has been executed as of the date and year set forth above.

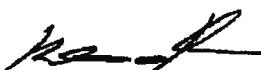
WITNESSES:

"Berkley Twelve LLC"

BERKLEY TWELVE ASSOCIATES, L.L.C.,
a Michigan limited liability company

By: **REAL VENTURES-BERKLEY ASSOCIATES,**
a Michigan co-partnership
Manager


ANDY GUTTMAN

MICHELE C. WALKER

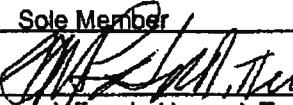
By: 
Burton D. Farbman, Managing Partner

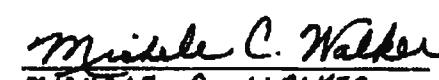
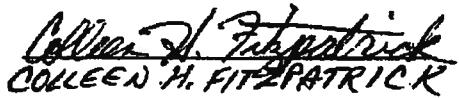
AND

METRO BERKLEY, LLC,
a Michigan limited liability company
Manager

By: **JEFFREY L. HOWARD REVOCABLE**
TRUST u/a/d September 25, 1999

Its: Sole Member

By: 
Jeffrey L. Howard, Trustee


MICHELE C. WALKER

COLLEEN M. FITZPATRICK

(Jurats on following page)

118P22233P0713

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 18th day of January, 2001,
by Burton D. Farbman, Managing Partner of Real Ventures-Berkley Associates, a Michigan co-
partnership, a Manager of Berkley Twelve Associates, L.L.C., a Michigan limited liability company,
on behalf of said company.

Notary Public Judith M. Smith
My Commission Expires: 6-23-05

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

JUDITH M. SMITH
NOTARY PUBLIC, OAKLAND CO., MI
MY COMMISSION EXPIRES JUN 23, 2005

The foregoing instrument was acknowledged before me this 18th day of January, 2001,
by Jeffrey L. Howard, Trustee of the Jeffrey L. Howard Revocable Trust u/a/d September 25, 1999,
Sole Member of Metro Berkley, LLC, a Michigan limited liability company, a Manager of Berkley
Twelve Associates, L.L.C., a Michigan limited liability company, on behalf of said company.

Notary Public Michele C. Walker
My Commission Expires: MICHELE C. WALKER
Notary Public, Oakland County, MI
My Commission Expires June 10, 2001

WITNESSES:

"Berkley Twelve II"

BERKLEY TWELVE ASSOCIATES II, L.L.C.,
a Michigan limited liability company

By: Real Ventures Berkley, L.L.C.,
 a Michigan limited liability company
 Member and Manager

Andy Gutman
ANDY GUTMAN

Michele C. Walker
MICHELE C. WALKER

By: Burton D. Farbman
Burton D. Farbman, Manager

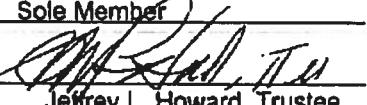
AND

100-2223316714

METRO BERKLEY, LLC,
a Michigan limited liability company
Manager

By: JEFFREY L. HOWARD REVOCABLE
TRUST u/a/d September 25, 1999

Its: Sole Member

By: 
Jeffrey L. Howard, Trustee

Michele C. Walker
MICHELE C. WALKER

Colleen H. Fitzpatrick
COLLEEN H. FITZPATRICK

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 18th day of January, 2001,
by Burton D. Farbman, Manager of Real Ventures Berkley, L.L.C., a Manager of Berkley Twelve
Associates II, L.L.C., a Michigan limited liability company, on behalf of said company.

Notary Public Judith M. Smith
My Commission Expires: 6-23-02

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

NOTARY PUBLIC STATE OF MICHIGAN, #100-16714
MY COMMISSION EXPIRES JUNE 10, 2005

The foregoing instrument was acknowledged before me this 18th day of January, 2001,
by Jeffrey L. Howard, Trustee of the Jeffrey L. Howard Revocable Trust u/a/d September 25, 1999,
Sole Member of Metro Berkley, LLC, a Michigan limited liability company, a Manager of Berkley
Twelve Associates, L.L.C., a Michigan limited liability company, on behalf of said company.

Notary Public Michele C. Walker
My Commission Expires: MICHELE C. WALKER
Notary Public, Oakland County, MI
My Commission Expires June 10, 2005

DRAFTED BY AND
WHEN RECORDED RETURN TO:

Jeffrey L. Howard, Esq.
Seyburn, Kahn, Ginn, Bess & Serlin, P.C.
2000 Town Center, Suite 1500
Southfield, Michigan 48075

Exhibit A

Legal Description of Berkley Twelve LLC Property

Land situated in the City of Berkley, Oakland County, State of Michigan, described as:

Lots 6 through 31, as platted, and Easterly 15 feet of vacated Mortenson Boulevard adjacent to and West of Lot 19, as plated and public alley abutting Lots 6 through 19 on the South thereof; Westerly 20 feet of vacated Mortenson Boulevard adjacent to and East of Lot 20 and Westerly 20 feet of Brookline Street adjacent to and East of Lot 6, as platted, Stephenson-Barber's Roseland Subdivision as recorded in Liber 31, Page 5 of Plats, Oakland County Records.

Tax Item No. 25-17-127-001 (Lots 6-19)
 25-17-126-004 (Lots 20-31)

Commonly Known as: 1695 West Twelve Mile Road

31005

181222330716

Exhibit B

Legal Description of Berkley Twelve II Property

Land situated in the City of Berkley, Oakland County, State of Michigan, described as:

Lots 32 to 43, inclusive, Lots 44 to 55 inclusive, Stephenson-Barbers Roseland Subdivision, as recorded in Liber 31, Page 5 of Plats, Oakland County Records

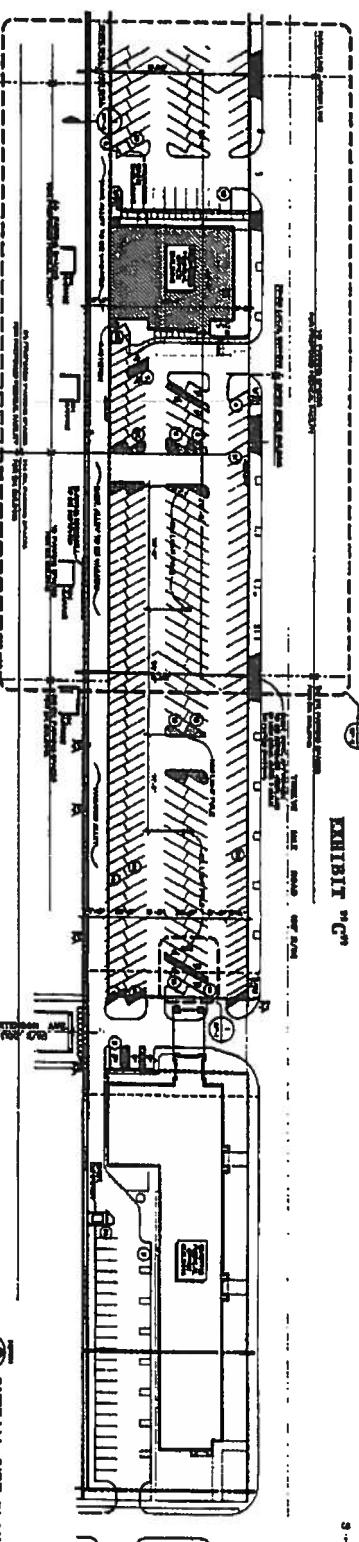
Tax Item No. **25-17-126-002 (Lots 44-55)**
25-17-126-003 (Lots 32-43)

Commonly Known as: **1949 West Twelve Mile Road**

IEEP.22233PG717

EXHIBIT "G"

EXHIBIT "G"



VANLINE CUTTING

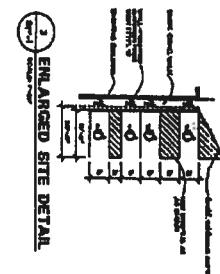
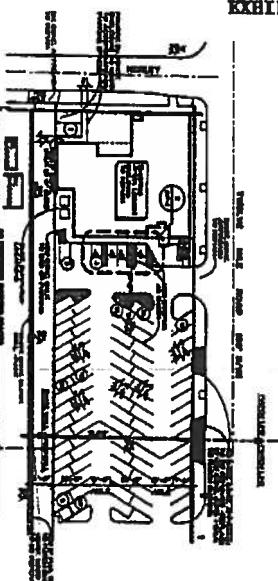
OVERALL SITE PLANS

BERKLEY MEDICAL
CENTER 2

卷之三



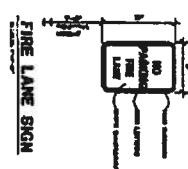
GENERAL SITE NOTES



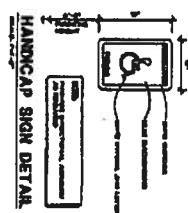
ESTATE PLANNING



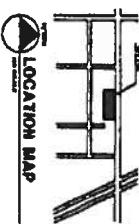
THE LANE SKETCHES



HANDICAP TICK DETAIL



LOWE'S



LEVEL ONE



SITE PLAN



Parcel "A"

Part of the Southwest 1/4 of Section 33, T.4N., R.11E., Oakland Township, Oakland County, Michigan is described as: Beginning at the South 1/4 Corner of Section 33; thence along the South line of Section 33 and centerline Dutton Road Due West, 610.49 feet; thence N.05°25'39"E., 291.70 feet; thence N.02°43'54"W., 318.18 feet; thence Due East, 560.80 feet to a point on the West line of "Skyline" subdivision as recorded in Liber 71, Page 26 of the Oakland County Records; thence along said line S.04°54'52"E. measured, (S.04°58'00"E. record), 99.91 feet; thence continuing S.03°13'48"E., 509.48 feet measured, (S.03°14'00"E., 509.77 feet record) to the Point of Beginning and containing 8.043 acres. Subject to the rights of the public for highway purposes along Dutton Road and to all easements both recorded and unrecorded.

Parcel "B"

P#10 33-377-001

Part of the Southwest 1/4 of Section 33, T.4N., R.11E., Oakland Township, Oakland County, Michigan is described as: Commencing at the South 1/4 Corner of Section 33; thence along the South line of Section 33 and centerline Dutton Road Due West, 610.49 feet to the Point of Beginning; thence continuing along said line Due West, 347.10 feet to a point on the centerline of Lost Lane; thence along said line the following five courses N.00°47'29"E., 463.19 feet measured, (N.00°41'50"E., 463.14 record); thence along a curve concave to the East of radius 481.12 feet, a central angle of 23°23'59", whose chord bears N.12°31'58"E. measured, (N.12°26'19"E. record), 195.81 feet, an arc distance of 197.19 feet; thence N.24°16'29"E. measured, (N.24°10'50"E. record), 226.75 feet; thence along a curve concave to the West of radius 229.72 feet, a central angle of 24°33'29", whose chord bears N.11°59'45"E. measured, (N.11°54'06"E. record), 97.11 feet, an arc distance of 98.46 feet; thence N.00°13'16"W. measured, (N.00°22'40"W. record) 115.40 feet to a point on an intermediate traverse line said point being traverse point "A"; thence continuing N.00°18'16"W. measured, (N.00°22'40"W. record) 8.0 feet to a point on the centerline of Cobb Creek; thence Northeasterly along the centerline of Cobb Creek to a point on the West line of "Skyline" subdivision as recorded in Liber 71, Page 26 of the Oakland County Records, all witnessed by and described along a traverse line running from traverse point "A" the following five courses; thence S.76°36'30"E., 65.09 feet; thence N.82°24'00"E., 257.72 feet; thence N.88°09'51"E., 193.09 feet; thence N.68°59'01"E., 178.15 feet; thence N.38°12'44"E., 47.98 feet to traverse point "B" said point being S.05°26'58"E.. 10.4 feet measured, (S.05°32'00"E., 12.0 feet record) along the West line of said "Skyline" subdivision from the centerline of Cobb Creek; thence along said line S.04°54'52"E. measured, (S.04°58'00"E. record), 592.72 feet; thence Due West, 560.80 feet, thence S.02°43'54"E., 318.18 feet; S.05°25'39"W., 291.70 feet to the Point of Beginning and containing 14.543 acres.

Subject to the rights of the public for highway purposes along Dutton Road and Lost Lane and to all easements both recorded and unrecorded.

P#10 33-377-001

REV 1-03-01
REV 7-19-00PHONE 810 731-8030
FAX 810 731-2809URBAN
LAND
CONSULTANTS®CIVL ENGINEERS PLANNERS LAND SURVEYORS
8800 23 MILE ROAD SHELBY TWP, MI 48316-4816

LEGEND

- FIB = Found Iron Bar •
- FP = Found Iron Pipe •
- SB = Set Iron Bar/Cap O
- R = Record Distance
- M = Measured Distance
- C = Calculated

Ave C.
Supt.
Warren C. Avery
LICENCED LAND SURVEYOR
No. 30076

Date 6-16-00
Drawn C.N.R.
Check W.C.A.
Sheet 2 of 3
Fld. Blk.
Job No.
970945-5346

22230720

Witnesses:

S.W. Corner Section 33 f- 3/4" bar w/remon. cap
NE-33.69' to PK nail in brass disc #22445 in 6" Locust.
SE-61.41' to PK nail in brass disc #22445 in 16" Locust.
S-59.47' to PK nail in brass disc #22445 in U. Pole.
NNW-35.50' to PK nail in brass disc #22445 in U. Pole.

S.1/4 Corner Section 33 f- 5/8" bar w/remon. cap #22445
N05°W-15.16' to PK nail in brass disc #22445 in S. face of 10" Maple.
N20°W-29.82' to PK nail in brass disc #22445 in S.W. face of 20" Cherry.
S10°E-21.22' to PK nail in brass disc #22445 in W. face of 14" Maple.
S45°W-33.88' to PK nail in brass disc #22445 in S. face of 20" Maple.

Center Post Section 33 f- concrete monument
SW-30.11' to PK nail in washer tag #21563 in NW face 30" Oak.
WNW-17.00' to Mag nail in S. face 18" Cherry.
N-45.93' to Mag nail in W. face 14" Cherry.
E-32.11' to Mag nail in S. face 12" Oak.

REV 1-03-01
REV 7-19-00



URBAN
LAND
CONSULTANTS®

CIVL. ENGINEERS PLANNERS LAND SURVEYORS
8800 23 MILE ROAD SHOALC TWP., MI 48316-4818

PHONE 810 731-8030
FAX 810 731-2605

LEGEND

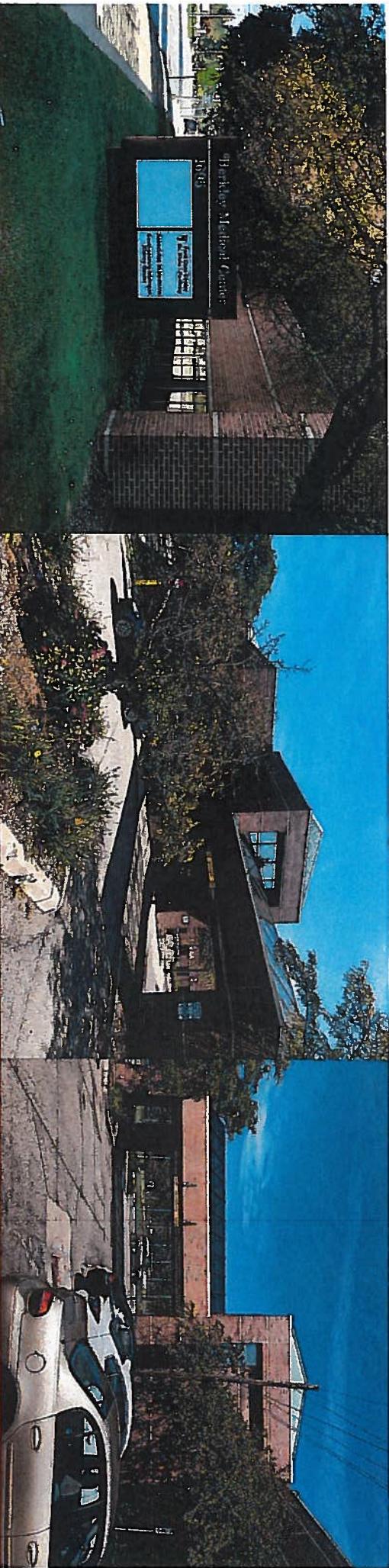
FIB = Found Iron Bar ◊
FIP = Found Iron Pipe ◊
SIC = Set Iron Bar/Cap ◊
R = Record Distance
M = Measured Distance
C = Calculated

PROFESSIONAL SURVEYOR
WARREN C. DAVIS
LICENSED LAND SURVEYOR
No. 30076

Date 6-16-00
Drawn C.N.R.
Check W.C.A.
Sheet 3 of 3
Fld. Bk.
Job No.
970945-5346

EIGHT 1695 W. 12 Mile Road – Currently Berkley Medical Center

EIGHT
DEVELOPMENT



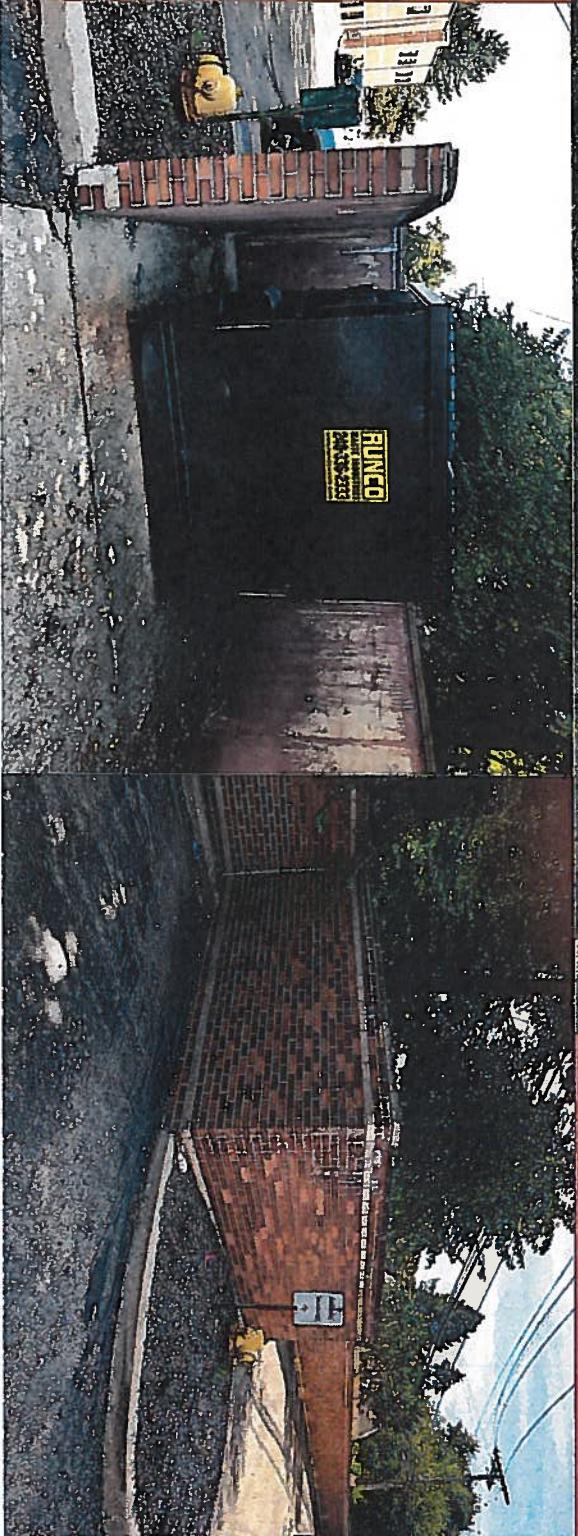


EIGHT
DEVELOPMENT

The existing Berkley Medical Center building is attractive. The elevations consists of brick and a considerable amount of glass with large architectural features along the facades.

EIGHT
DEVELOPMENT

The existing dumpster is adjacent to the residential property and does not have a gate. We will move this away from the residential property and include a obscuring gate with vinyl planks.



There is a masonry wall separating the office property from the residential property.



**Kinder Care Child Care Facility
Berkley,
Oakland County, MI
CONSTRUCTION PACKAGE
Prepared For
814 Berkley LLC**

OWNER

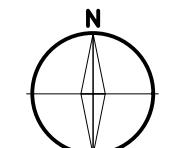
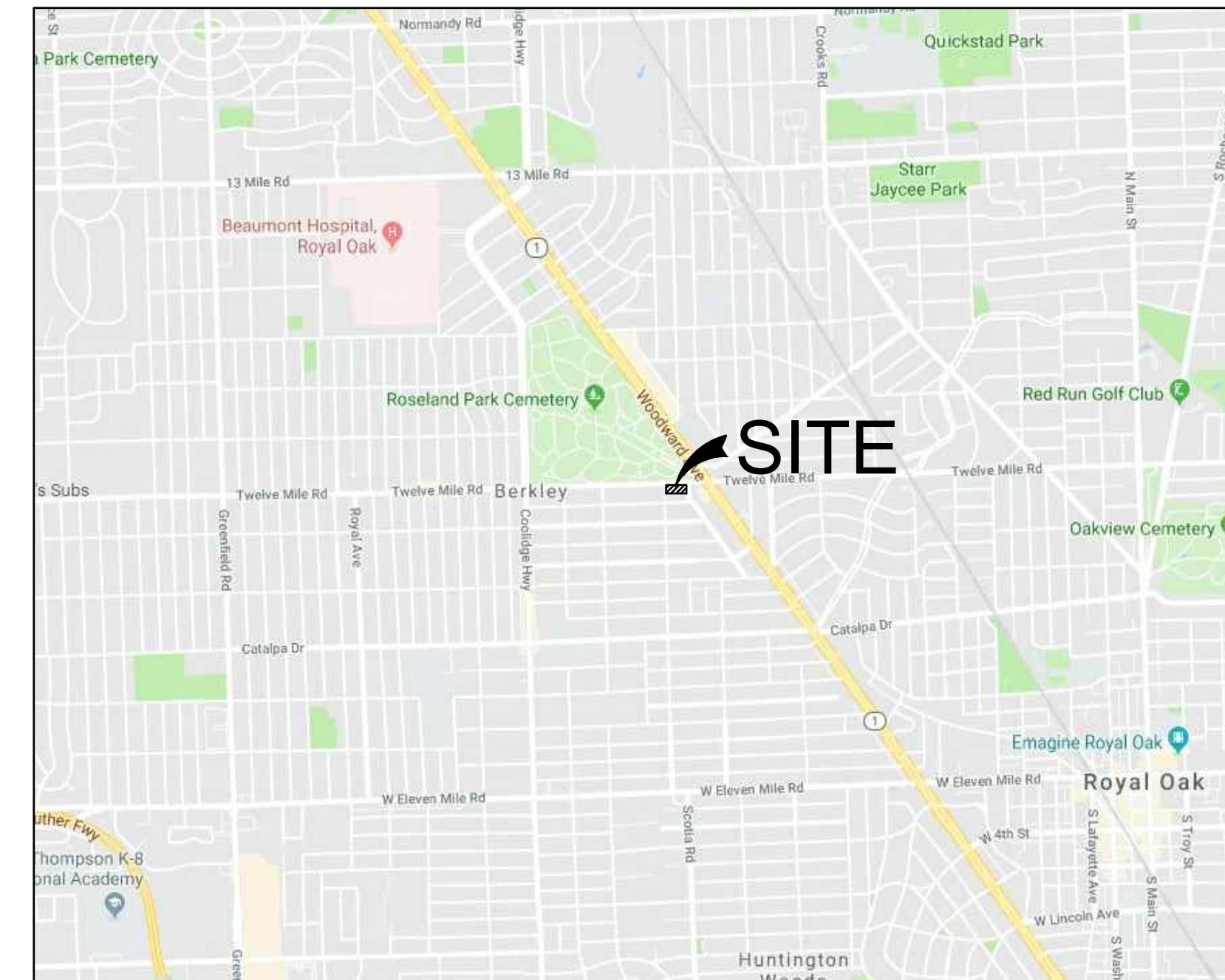
814 BERKLEY LLC
3221 W. Big Beaver Rd.
Ste. 111
Troy, Michigan 48084

Contact: Reed Fenton
phone: 248-817-1522

CIVIL ENGINEER

Orman Engineering, LLC
5476 Vivian Lane
Waterford, MI 48327
Phone (248) 682-6001
Email: alex@ormanengineering.com

Contact: Mr. Alexander Orman, P.E.



Location Map
N.T.S.

SHEET INDEX

NO.	SHEET NAME
SP-1	COVER SHEET
SP-2	OVERALL PLAN
SP-3	SITE PLAN
SP-4	DETAIL SHEET

ISSUANCE DATE:

DATE 09-19-2019 REVISION OR SUBMITTAL
SUBMITTAL FOR SITE PLAN REVIEW

LEGAL DESCRIPTION

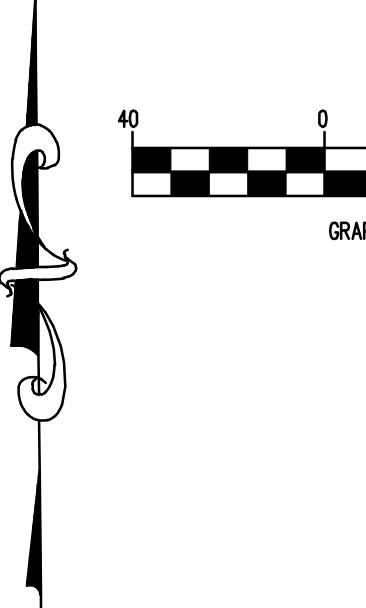
PARCEL #1
TAX ID# 25-17-127-001
T1N, R11E, SECTION 17 STEPHENSON-BARBERS ROSELAND SUBDIVISION LOTS 6 TO 19 INCLUDING & VACATED ALLEY ADJACENT THERETO, ALSO VACATED WEST 20.00 FT OF BROOKLINE BLVD ADJACENT TO SAID LOT 6, ALSO 1/2 OF VACATED MORTENSON BLVD ADJACENT TO SAID LOT 19.

PARCEL #2
TAX ID# 25-17-126-004
T1N, R11E, SECTION 17 STEPHENSON-BARBERS ROSELAND SUBDIVISION LOTS 20 TO 31 INCLUDING, ALSO VACATED ALLEY ADJACENT TO SAME, ALSO 1/2 VACATED MORTENSON BLVD ADJACENT TO LOT 20.



Civil Engineers • Land Planning
Land Surveying

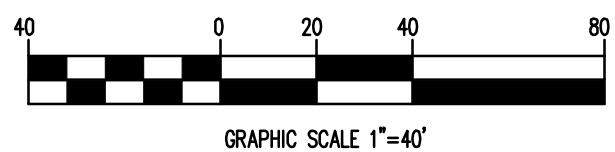
Orman Engineering, LLC
5476 Vivian Lane
Waterford, MI 48327
Phone: 248.682.6001
Email: alex@ormanengineering.com



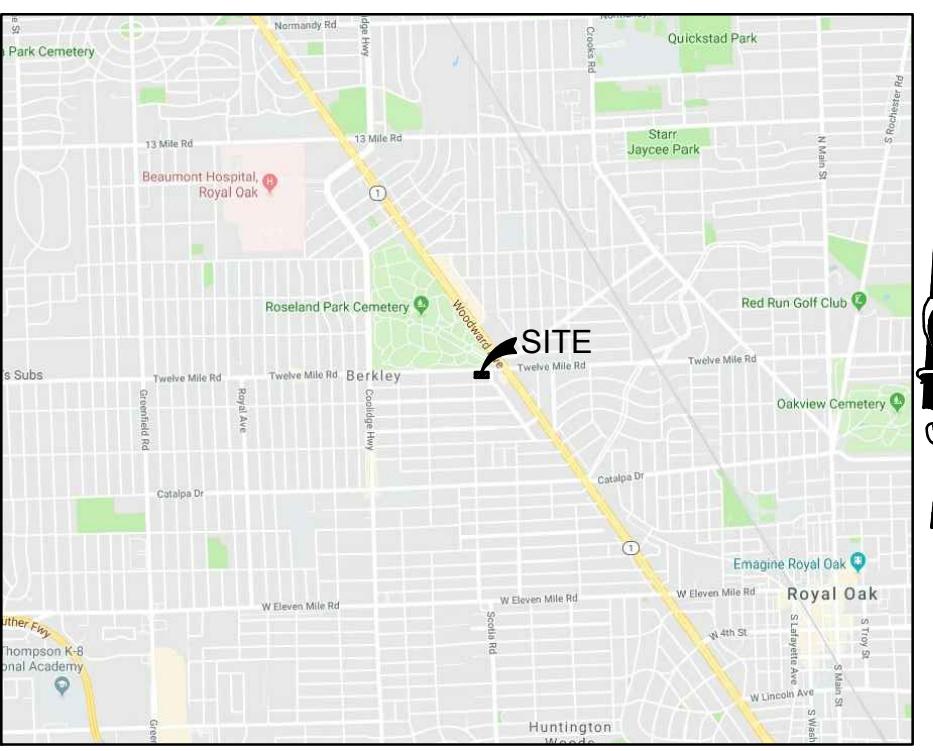
LEGAL DESCRIPTION:

PARCEL #1
TAX ID# 25-17-127-001
T1N, R11E, SECTION 17 STEPHENSON-BARBERS ROSELAND SUBDIVISION LOTS 6 TO 19 INCLUDING & VACATED ALLEY
ADJACENT THERETO, ALSO VACATED WEST 20.00 FT OF BROOKLINE BLVD ADJACENT TO SAID LOT 6, ALSO 1/2 OF
VACATED MORTENSON BLVD ADJACENT TO SAID LOT 19.

PARCEL #2
TAX ID# 25-17-126-004
T1N, R11E, SECTION 17 STEPHENSON-BARBERS ROSELAND SUBDIVISION LOTS 20 TO 31 INCLUDING, ALSO VACATED ALLEY ADJACENT TO SAME, ALSO 1/2 VACATED MORTENSON BLVD ADJACENT TO LOT 20.



GRAPHIC SCALE 1"=40



LOCATION MAP

N.T.S.

Orman Engineering, LLC
5476 Vivian Lane
Waterford, MI 48327
phone: 248.682.6001
mail: alex@ormanengineering.com

PROJECT Kinder Care Child Facility

CLIENT
814 BERKLEY LLC
3221 W. Big Beaver Rd.
Ste. 111
Troy, Michigan 48084

Contact: Reed Fenton
Phone: 248-817-1522

SEAL

SHEET OVERALL PLAN

PROJECT LOCATION



**Know what's below
Call before you dig.**

REVISED EDITION

09-19-2019 SUBMITTAL FOR SITE PLAN REVIEW

Date	Description
------	-------------

Designed by: Drawn by:

A.O. S.D.M.

Approved by: _____ Date: _____

A.O. 07-26-2019

Scale:

$$1'' = 40'$$

Job No.: Sheet:

1256 SP-1

1250 SI

1256 SP-2

N.W. CORNER
SECTION 17
T.1N., R.11.E.
OAKLAND CO., MI
L.17933 P. 007

N. 1/4 CORNER
SECTION 17
T.1N., R.11.E.
OAKLAND CO., MI
L.17933 P. 019

MON 670.09

FND IRON S. 0.08' E. 0.11'

12 MILE RD.
66' WIDE PUBLIC R.O.W.
(4-LANES ASPHALT ROADWAY)

S90°00'00"E(R) (EAST)
290.00'(R)

S90°00'00"E(R) (EAST)
342.67'

S90°00'00"E(R) (EAST)
135.00'(R) 35.01'(M)
NO 42'E(R)

S90°00'00"E(R) (EAST)
135.00'(R) 135.01'(M)
NO 36'E(R)

S90°00'00"E(R) (EAST)
365.66'(R) 365.67'(M)

S90°00'00"E(R) (EAST)
365.66'(R) 365.67'(M)

MORTENSON BLVD.
60' WIDE PUBLIC R.O.W.
(2-LANES CONC. ROADWAY)

BROOKLINE BLVD.
80 TO 120' WIDE PUBLIC R.O.W.
(2-LANES CONC. ROADWAY)

SHARED PARKING

67 SHARED

110 SPACES

12

13

14

15

24

3

25

8

10' FRONT BLDG. SETBACK

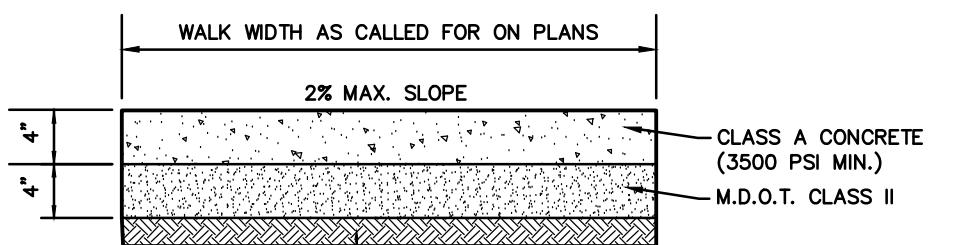
10' REAR BLDG. SETBACK

ELECTRIC METER

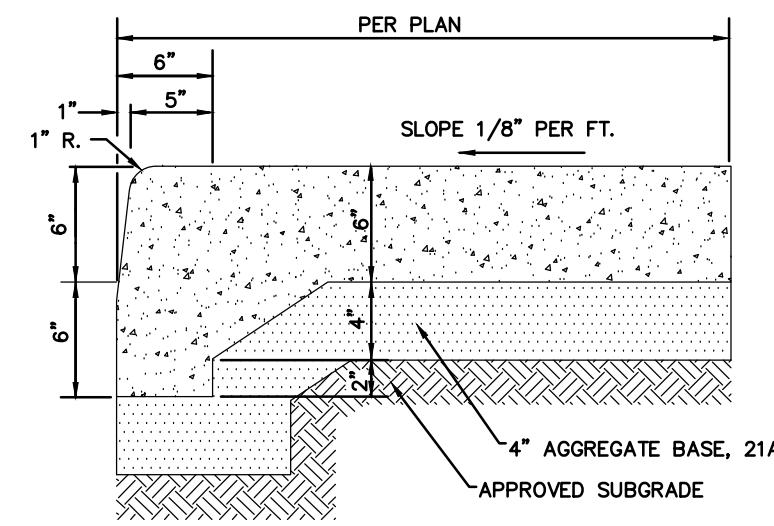
GAS METER

SHADE STRUCTURE

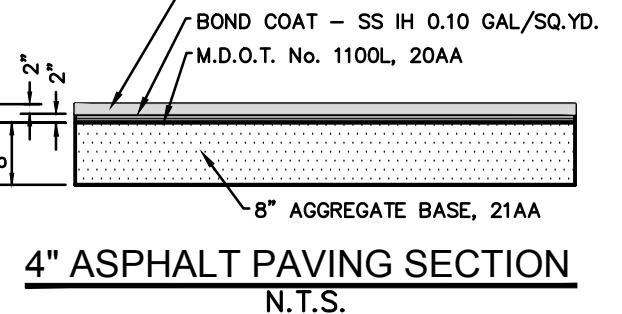
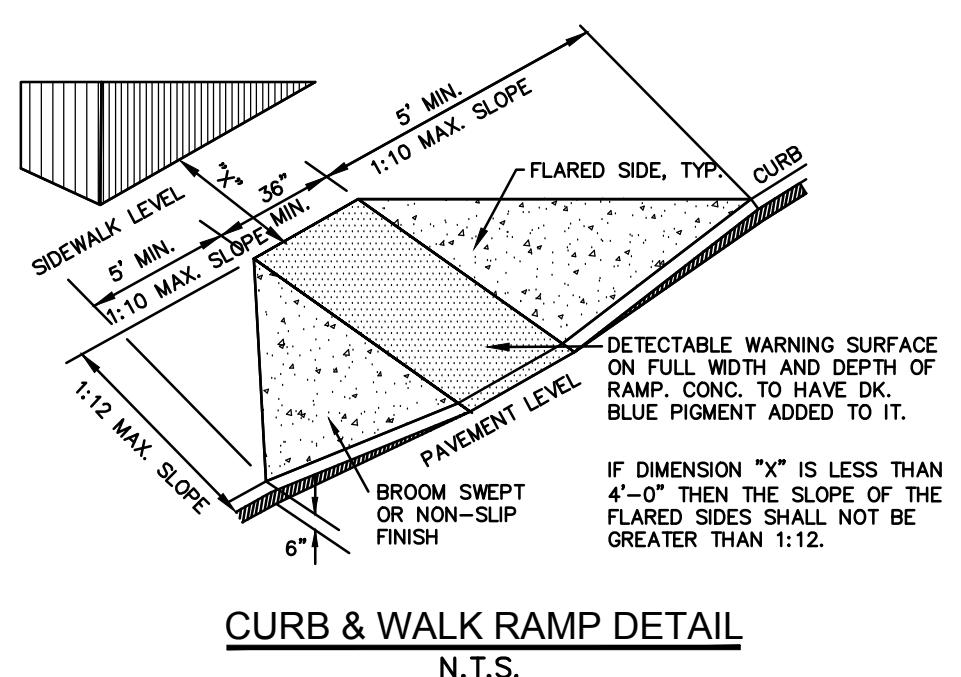
EX. 6 FT. HIGH BRICK SCREEN WALL



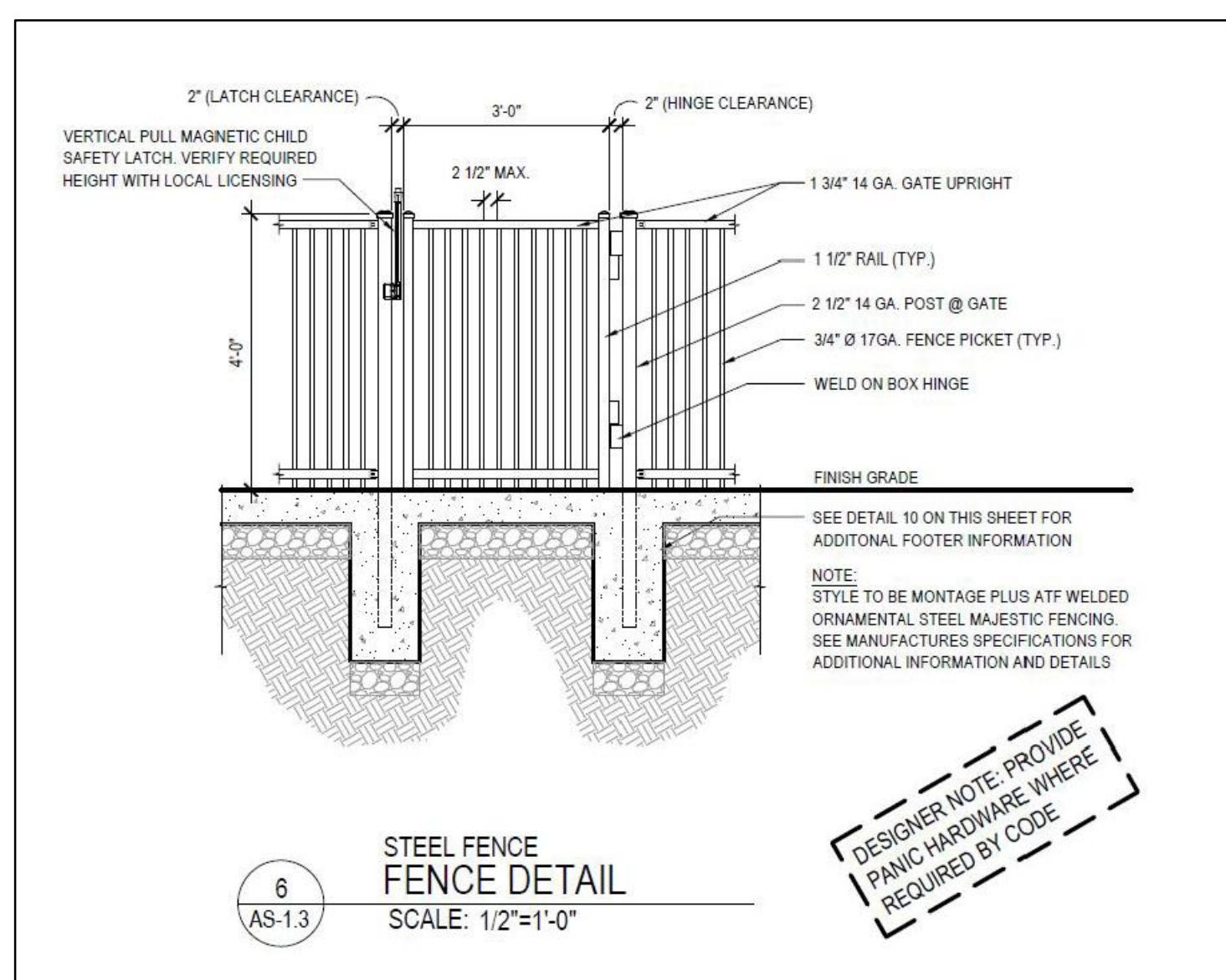
CONCRETE SIDEWALK SECTION
N.T.S.



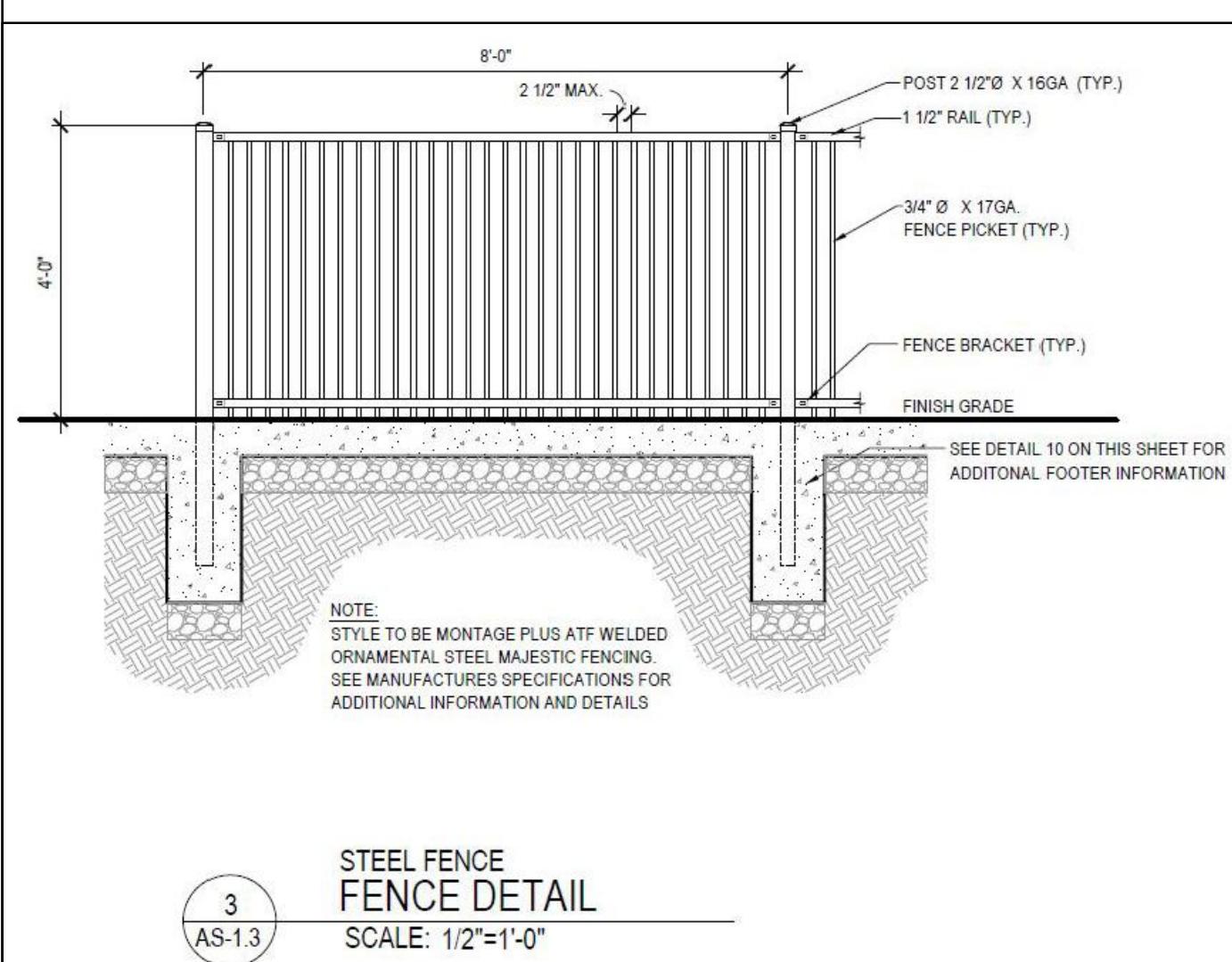
6" MONOLITHIC CURB AND WALK
N.T.S.



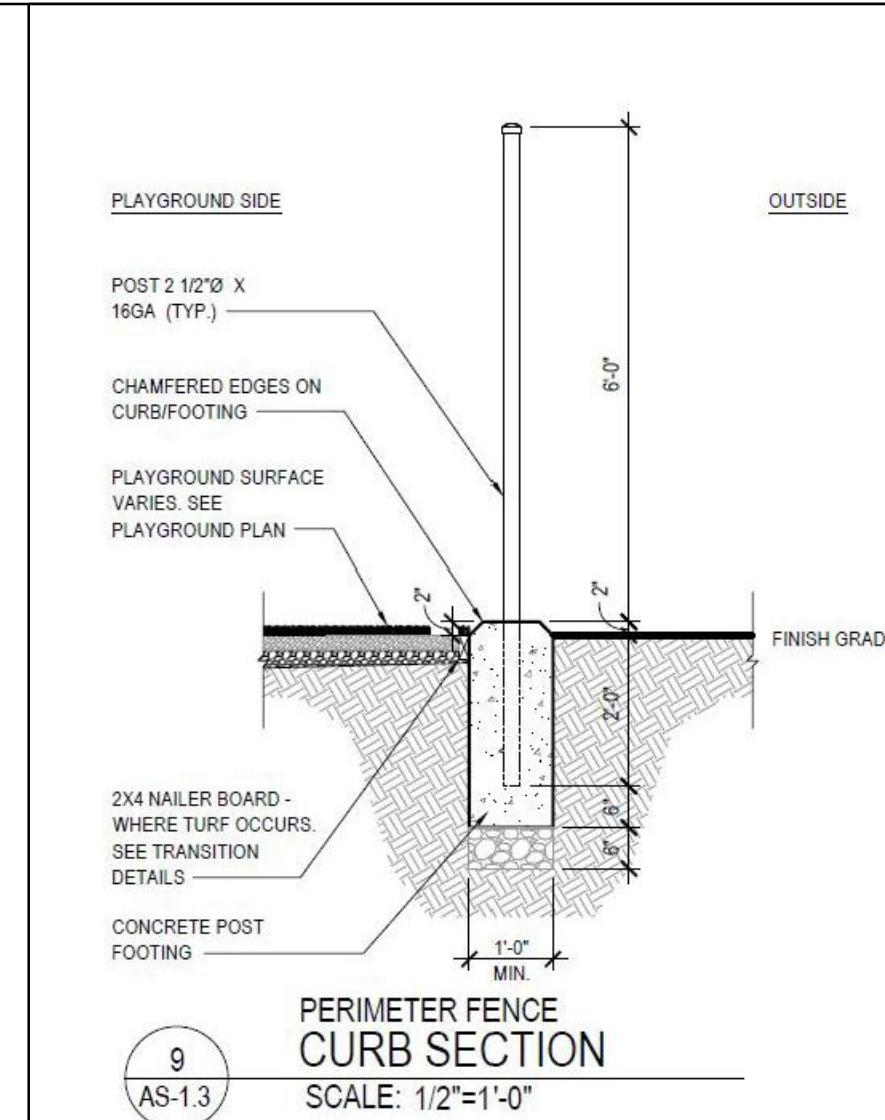
4" ASPHALT PAVING SECTION
N.T.S.



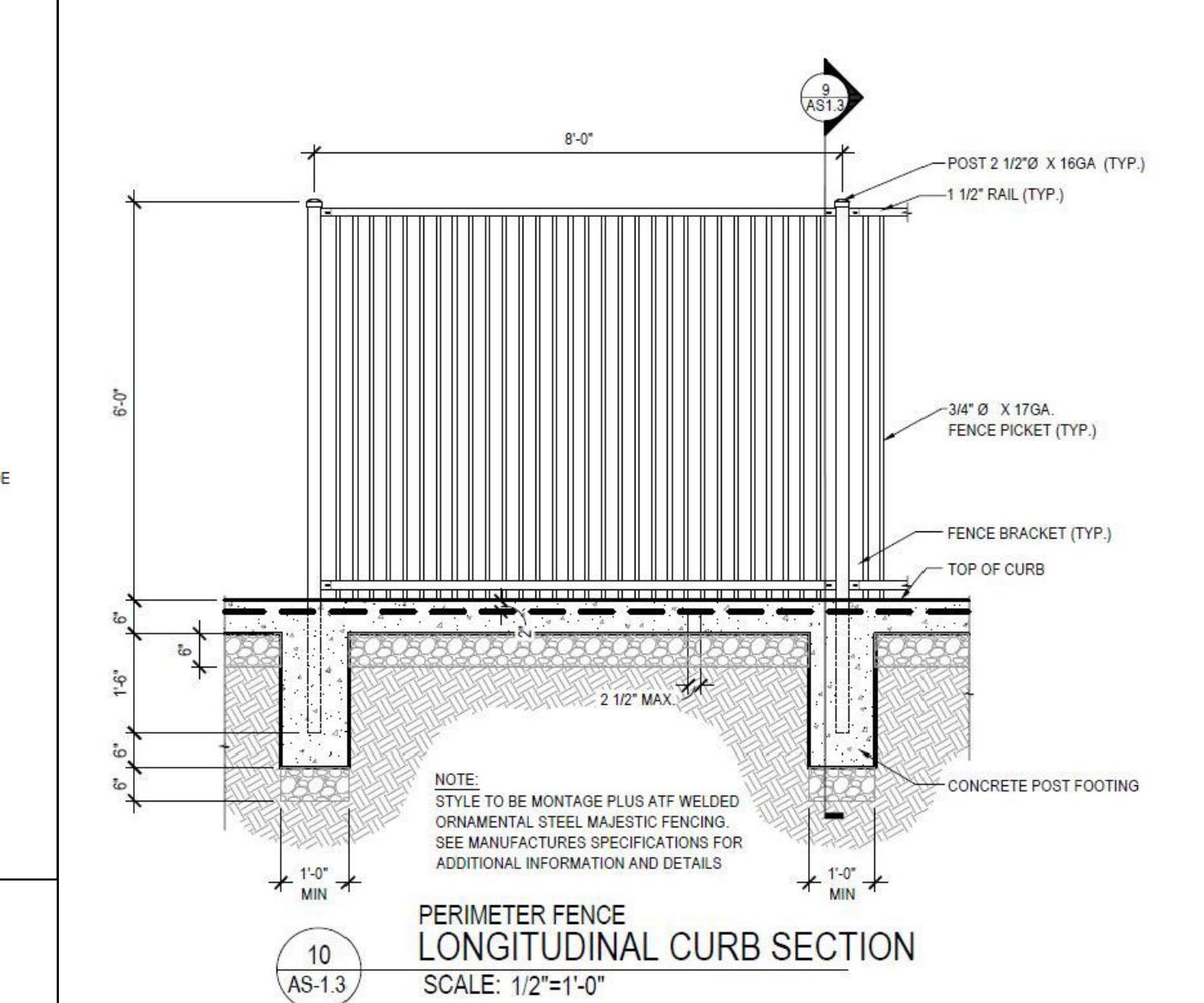
STEEL FENCE
FENCE DETAIL
SCALE: 1/2=1'-0"



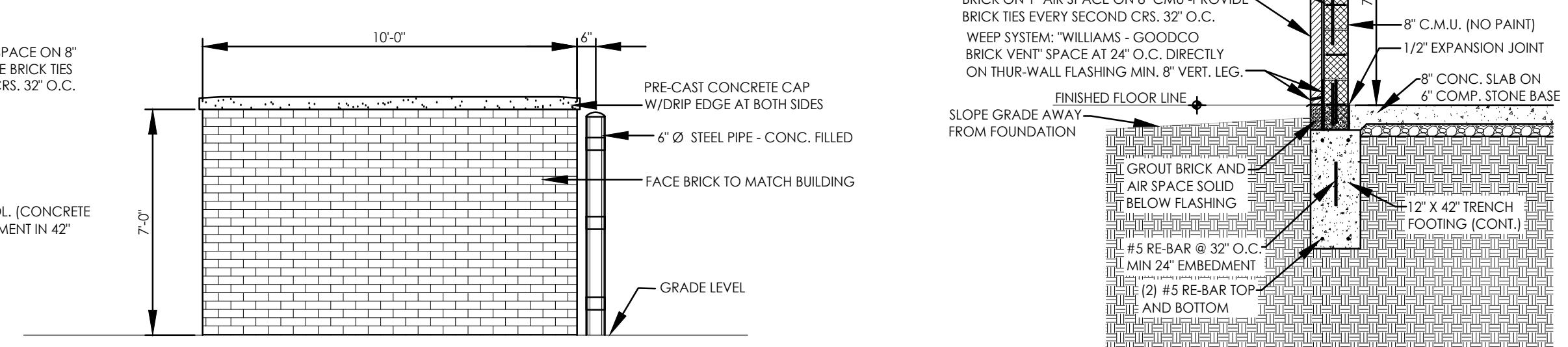
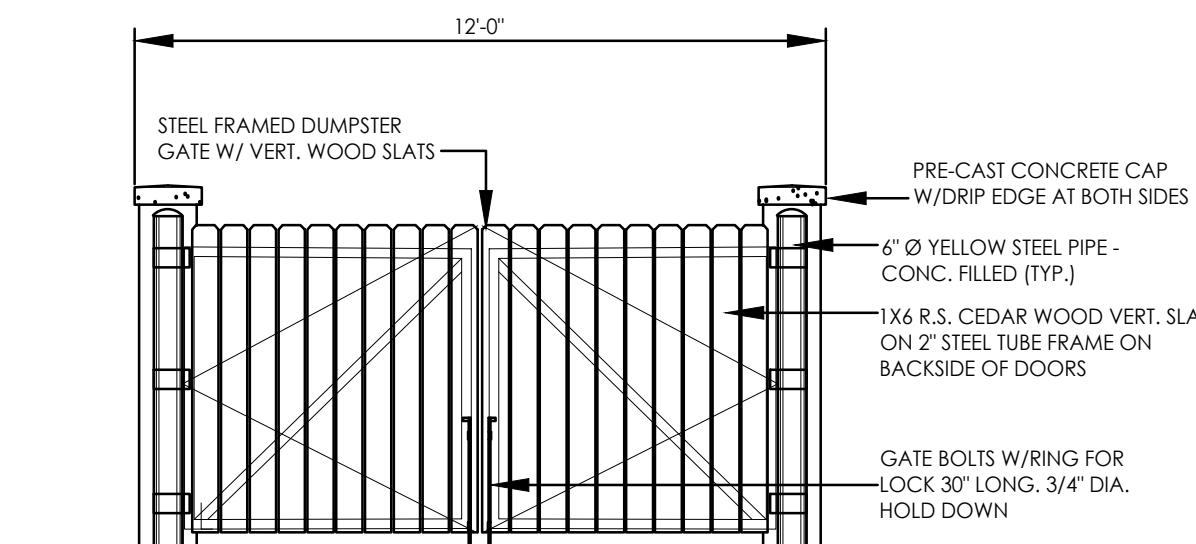
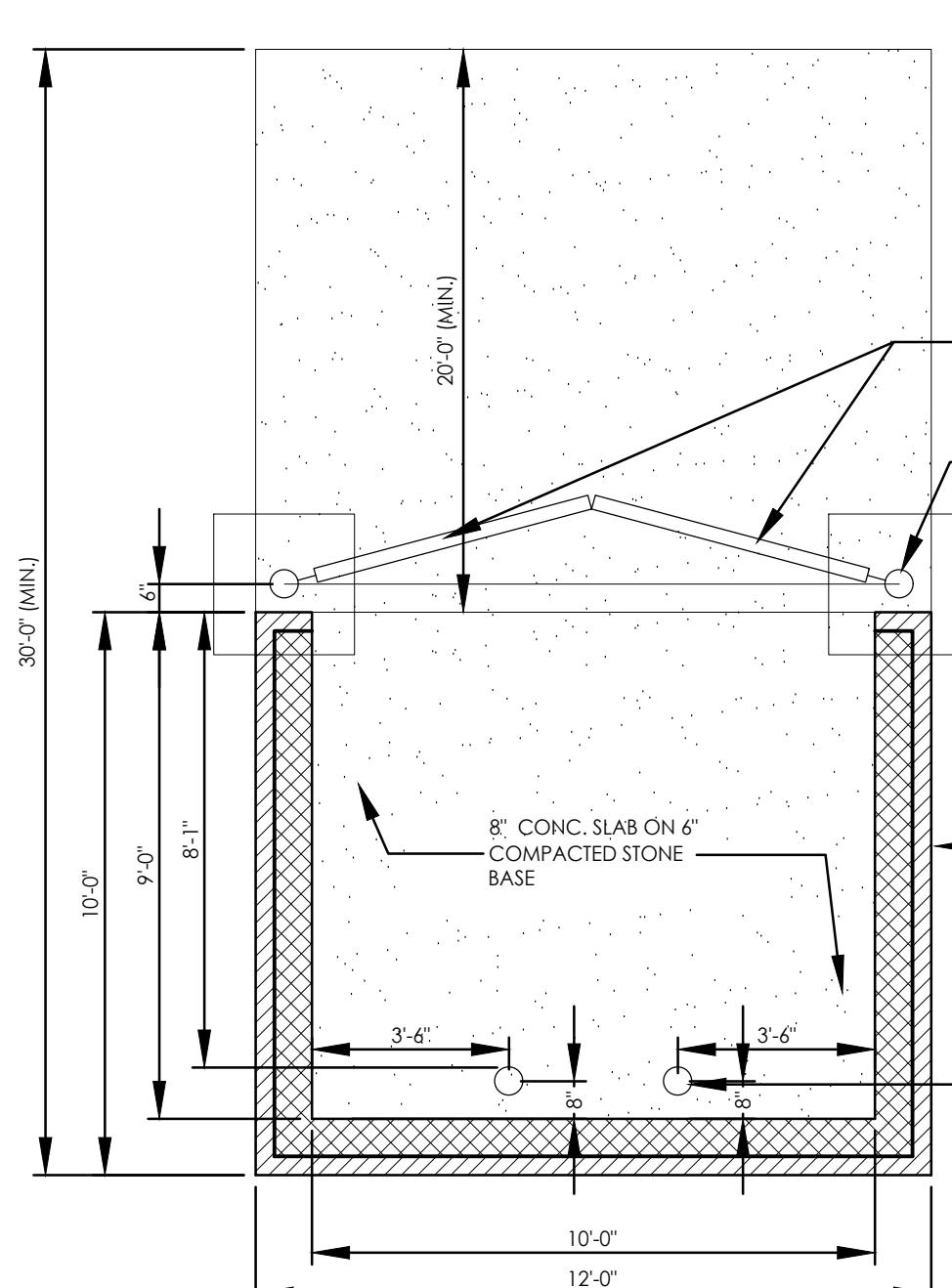
STEEL FENCE
FENCE DETAIL
SCALE: 1/2=1'-0"



PERIMETER FENCE
CURB SECTION
SCALE: 1/2=1'-0"



PERIMETER FENCE
LONGITUDINAL CURB SECTION
SCALE: 1/2=1'-0"



Dumpster Enclosure Plan
N.T.S.

GENERAL NOTES:
1. ALL EXTERIOR MATERIALS TO MATCH BUILDING
IF THERE IS NO BRICK TO MATCH - MATCH MASONRY.
2. ADHERE TO ALL LOCAL ORDINANCES AND DESIGN
REQUIREMENTS. NOTIFY ARCHITECT OF ANY
DISCREPANCIES.

Orman Engineering, LLC
5476 Vivian Lane
Waterford, MI 48327
phone: 248.682.6001
email: alex@ormanengineering.com

PROJECT
Kinder Care Child Facility

CLIENT
814 BERKLEY LLC
3221 W. Big Beaver Rd.
Ste. 111
Troy, Michigan 48084

Contact: Reed Fenton
Phone: 248-817-1522

SEAL

SHEET
DETAIL SHEET

PROJECT LOCATION
1695 12 Mile Road,
Berkley, Oakland County
MI 48072



REVISIONS

09-19-2019	SUBMITTAL FOR SITE PLAN REVIEW
Date	Description
Designed by:	Drawn by:
A.O.	S.D.M.
Approved by:	Date:
A.O.	07-26-2019
Scale:	
1" = 20'	
Job No.:	Sheet:
SP-4	



Community Development
3338 Coolidge Hwy
Berkley, MI 48072
(248) 658-3320

MEMORANDUM

To: Berkley Planning Commission
From: Erin Schlutow, Community Development Director
Subject: **Zoning Ordinance Amendment to Permit Marihuana Businesses**
Date: October 14, 2019

Members of Planning Commission,

Since May 2019, City Administration has been working to construct the regulatory framework to allow marihuana businesses to open and operate with the City of Berkley. The regulatory framework has been considered in two pieces, licensing and zoning requirements.

At the September 24, 2019 meeting, the Planning Commission held a public hearing for the proposed zoning ordinance amendments to permit marihuana businesses in the Coolidge, Downtown, Gateway, Eleven Mile, Industrial, Local Business, Office, Twelve Mile, and Woodward Districts. During the Planning Commissions discussion it was expressed that there should be notice requirements and a process to engage the community to ensure that the public, especially residents living near potential developments, would be made aware of the intended use prior to the final license approval. Following the discussion, Planning Commission recommended to City Council to permit marihuana businesses in the aforementioned districts by special land use.

At the October 7, 2019 meeting, the City Council reviewed the recommendation from the Planning Commission, as well as input from the public. Based on the recommendation and feedback, the Council opted to limit marihuana exclusively to retail establishments in the City, ultimately opting out of other previously proposed uses; growing, processing, safety compliance testing, and microbusinesses. The City Council was also favorable to the idea of notice requirements that allow for community engagement in the licensing and development process, but did not necessarily favor the idea of a special land use designation as it could create a duplicative process and pose legal issues with discretionary decisions. Additionally, the City Council agreed with sentiments expressed by the Planning Commission that the intersection buffers should be removed from the zoning ordinance. Following the review of both ordinances, the City Council has directed the City Administration to make updates to the ordinances to be presented again in the near future.

As a result of limiting the uses to Adult-Use Retail and Medical Provisioning, the Office District is no longer included in the permitted zoning districts due to the fact that the only use proposed originally in this district was the Safety Compliance Facilities. Additionally, you will note that the Woodward district is not



BERKLEY
where you want to be

listed in the updated draft, which is due to the district already permitting uses that are considered permitted under the Local Business district, thus we are essentially adding it to the district without creating a redundancy.

Due to the need expressed by both Planning Commission and the City Council for the addition of public noticing and engagement, the City Administration has developed a framework within the licensing ordinance and given explicit reference to it within the zoning ordinance. Due to this newly outlined public notice requirement within the licensing ordinance, City Administration recommends that retail marihuana businesses be permitted as principal use. Additionally, the requirement for site plan approval has been in the licensing ordinance drafts previously, but has now been added to the zoning ordinance to ensure it is explicitly stated.

With all of the new changes to the Zoning Ordinance City Administration determined that additional review and recommendation from the Planning Commission should take place. City Administration requests that the Planning Commission schedule a public hearing at its next regularly scheduled meeting.

Presented to you is the draft revised Zoning Ordinance which features all of the previously mentioned changes including principal permitted uses, noticing requirements, and a site plan approval requirement. Currently the updated Licensing Ordinance is being reviewed by the City Attorney, but we hope to provide that document to you in time for review alongside the Zoning Ordinance at the next meeting.

Thank you,

Erin Schlutow

AN ORDINANCE**of the City Council of the City of Berkley, Michigan to Amend Sections 138-363, 138-387, 138-417, 138-427, 138-442, 138-457, 138-487 and Add New Section 138-528 to Chapter 138 Zoning, to Establish Zoning Requirements for Marihuana Businesses.****THE CITY OF BERKLEY ORDAINS:**

SECTION 1: Section 138-363 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-363. – Principal uses permitted.

Principal uses permitted in the industrial district are as follows:

(1)-(3) *No Change.*

(4) **Marihuana Retailers and Medical Marihuana Provisioning Centers.**

SECTION 2: Section 138-387 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-387. – Principal uses permitted.

Principal uses permitted in the LB district are as follows:

(1)-(15) *No change.*

(16) **Marihuana Retailers and Medical Marihuana Provisioning Centers.**

SECTION 3: Section 138-417 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-417. – Principal uses permitted.

Principal uses permitted in the downtown distract are as follows:

(1)-(10) *No change.*

(11) **Marihuana Retailers and Medical Marihuana Provisioning Centers**

SECTION 4: Section 138-427 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-427. – Principal uses permitted.

Principal uses permitted in the Gateway district are as follows:

(1)-(15) *No change.*

(16) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 5: Section 138-442 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-442. – Principal uses permitted.

Principal uses permitted in the Coolidge Districts are as follows:

(1)-(15) No change.

(16) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 6: Section 138-457 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-457. – Principal uses permitted.

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

(1)-(15) No change.

(16) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 7: Section 138-487 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-487. – Principal uses permitted.

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

(1)-(21) No change.

(22) Marihuana Retailers and Medical Marihuana Provisioning Centers.

SECTION 8: Section 138-528 of Chapter 138 of the Berkley Code of Ordinances, shall be added, as follows:

Sec. 138-528. – Marihuana Business regulations.

- (a) A Marihuana Business must front on a major thoroughfare with the primary ingress/egress onto a major thoroughfare.
- (b) The Marihuana Business must have all applicable state and local licenses and approvals to operate.
- (c) The property where the Marihuana Business will be located must be entirely within the boundaries of the City, and must not be within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12.

- (d) Notwithstanding any other provision in the zoning ordinance, a Marijuana Business must operate within a fully enclosed building.
- (e) Pursuant to Article XV of Chapter 30 of the Berkley City Code, all Marijuana Businesses are subject to the following:
 - (1) Public notice requirements as outlined in Sec. 30-904; and
 - (2) Site plan approval from the Planning Commission within six (6) months from the date of receiving license approval from the City Council. Failure to do so will be grounds for license revocation pursuant to City Code.

SECTION 9: 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 10: Effective Date

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

SECTION 11: 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.

Dan Terbrack
Mayor

Attest:

Victoria Mitchell
City Clerk

AN ORDINANCE

of the City Council of the City of Berkley, Michigan
to Add New Article XV, Marihuana Businesses, to Chapter 30, Businesses,
of the City of Berkley Code of Ordinances to Adopt Local Licensing Regulations and
Operational Standards for Marihuana Businesses.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: New Article XV shall be added to Chapter 30 of the Berkley City Code, as follows:

ARTICLE XV. – MARIHUANA BUSINESSES

Sec. 30-900. – Purpose.

The purpose of this Article is to exercise the City of Berkley's regulatory authority to locally license and regulate Marihuana Businesses, including Marihuana Retail Establishments, Marihuana Provisioning Centers, Marihuana Microbusinesses, Marihuana Grower Facilities, Marihuana Safety Compliance Facilities, Marihuana Secure Transporters, Marihuana Processor Facilities, Designated Consumption Establishments, Marihuana Event Organizers, and Temporary Marihuana Events to the extent permissible under state and federal laws and regulations, and to protect and promote the public health, safety, and welfare of the City and its residents.

Sec. 30-901. – Definitions.

Except as expressly defined differently, words and phrases in this Article shall have the same meanings ascribed to them as in the Michigan Medical Marihuana Act, Michigan Medical Marihuana Facilities Licensing Act, Marihuana Tracking Act, Michigan Regulation and Taxation of Marihuana Act, Michigan Zoning Enabling Act, and the administrative rules and regulations promulgated by the State of Michigan and the Michigan Department of Licensing and Regulatory Affairs, as amended.

- (1) “Applicant” means an individual, person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity or other business entity who applies for a license to operate a marihuana business in the City.
- (2) “City” means the City of Berkley, Michigan.
- (3) “Cultivate” means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.
- (4) “Co-Locate” or “Co-Location” means any combination of growers, processors, and/or marihuana retail establishments that may operate as separate marihuana businesses at the same physical location.

- (5) “Industrial hemp” means a plant of the genus cannabis and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis, or per volume or weight of marihuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus cannabis regardless of moisture content.
- (6) “LARA” means the Michigan Department of Licensing and Regulatory Affairs.
- (7) “Marihuana” means all parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. Marihuana does not include: (i) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination; (ii) industrial hemp; or (iii) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.
- (8) “Marihuana accessories” means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.
- (9) “Marihuana concentrate” means the resin extracted from any part of the plant of the genus cannabis.
- (10) “Marihuana Business” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana provisioning center, marihuana secure transporter, or any other type of marihuana establishment or facility licensed by LARA.
- (11) “Marihuana grower” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (12) “Marihuana-infused Product” means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused Product shall not be considered a food for purpose of the Food Law, MCL 289.1101 to 289.8111.
- (13) “Marihuana Tracking Act” or “MTA” means Public Act 282 of 2016, MCL 333.27901, et seq., as amended and all future amendments.

- (14) “Marihuana Microbusiness” means a person licensed to cultivate not more than 150 marihuana plants, process and package marihuana, and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a Marihuana safety compliance facility, but not to other marihuana establishments.
- (15) “Marihuana processor” means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
- (16) “Marihuana Provisioning Center” means a licensee that is a commercial entity located in the city that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients’ registered primary caregivers.
- (17) “Marihuana retailer” means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.
- (18) “Marihuana safety compliance facility” means a person licensed to test marihuana, including certification for potency and the presence of contaminants.
- (19) “Marihuana secure transporter” means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
- (20) “Michigan Medical Marihuana Act”, or “MMMA” means the initiated law of 2008, MCL 333.26421, et seq., as amended and all future amendments.
- (21) “Michigan Medical Marihuana Facilities Licensing Act”, or “MMFLA” means Public Act 281 of 2016, MCL 333.26421, et seq., as amended and all future amendments.
- (22) “Michigan Regulation and Taxation of Marihuana Act” or “MRTMA” means, the initiated law of 2018, MCL 333.27951, et. seq., as amended and all future amendments.
- (23) “Person” means an individual, partnership, corporation, limited liability company, trust, or other legal entity.
- (24) “Primary Caregiver” or “Registered Primary Caregiver” means a person who is at least 21 years old and who has agreed to assist with a registered qualifying patient’s medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in Section 9a of Chapter X of the Code of Criminal Procedure, 1927 PA 175, MCL 770.9a.

- (25) “Process” or “Processing” means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.
- (26) “Qualifying Patient” or “Registered Qualifying Patient” means a person who has been diagnosed by a physician as having a debilitating medical condition and who has a valid registry identification card issued by LARA or an equivalent approval lawfully issued under the laws of another State or other entity of the United States which identifies the person as a registered qualifying patient.
- (27) “School” means and includes buildings and grounds used for school purposes to provide instruction to children and youth in grades pre-kindergarten through 12 by a public, private, denominational, or parochial school.
- (28) “Stakeholder” means, with respect to a trust, the trustee and beneficiaries; with respect to a limited liability company, all members and managers; with respect to a corporation, whether profit or non-profit, all stockholders, directors, corporate officers or persons with equivalent titles; and with respect to a partnership or limited liability partnership, all partners and investors.
- (29) “State” means the State of Michigan.
- (30) “State license” means a license issued by LARA that allows a person to operate a marihuana business.

Sec. 30-902. – Operation without city license prohibited.

- (a) A Marihuana Business in the City must be licensed by the State and by the City pursuant to this Article. No person shall operate a Marihuana Business in the City without first obtaining a license to do so from the City. A Marihuana Business operating without a City license under this Article or without a State license is declared to be a public nuisance.
- (b) The duration of each City license for a proposed location shall be one (1) year.

Sec. 30-903. – License application.

- (a) Applications for a City license shall be submitted to the City’s Community Development Director on an application form to be provided by the City accompanied by a fee in the amount of \$5,000.00 per each license sought. The applicant shall submit one printed and one electronic copy of the completed application and supporting information to the Community Development Department. For a co-located facility, an applicant may apply for multiple licenses using one application that explicitly details the operation of the co-located facility. Each license sought will require an additional application fee of \$5,000.00 per license.
- (b) A complete application shall be made under oath and shall contain all of the following:

- (1) The applicants' and any stakeholders' names, dates of birth, mailing address, email address, and phone numbers, including emergency contact information, and a copy of a government-issued photo identification card of the applicant and stakeholders.
- (2) For a privately held corporation, all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.
- (3) For a partnership or limited liability partnership, all partners and their spouses.
- (4) For a limited partnership and a limited liability limited partnership, all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses.
- (5) For a limited liability company, all members and managers, not including a member holding direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.
- (6) If the applicant is not an individual, the articles of incorporation or organization, Internal Revenue Service SS-4 EIN confirmation letter, and the operating agreement or bylaws of the applicant, if a limited liability company or corporation.
- (7) The name and address of the proposed Marihuana Business and any additional contact information deemed necessary by the Community Development Director.
- (8) For the applicant and every stakeholder affirmation that each is at least 21 years of age.
- (9) Written consent authorizing the City's Public Safety Department to perform a criminal background check to ascertain whether the applicant and stakeholders have any convictions involving dishonesty, theft, fraud, or controlled substances.
- (10) The name, date of birth, address, copy of photo identification, and email address for any operator or employee if other than the applicant.
- (11) An affirmation whether the applicant or operator has ever had a business license revoked or suspended, and if revoked or suspended, then the reason for such revocation or suspension.
- (12) For the applicant or for each stakeholder a resume that includes any prior experience with a Marihuana business.

- (13) With respect to Marihuana Retail establishments, a description of any drug and alcohol awareness programs that will be provided or arranged for by the applicant and made available for the public.
- (14) A written description of the training and education that the applicant will provide to employees of the Marihuana Business.
- (15) A copy of the proposed business plan for the Marihuana business, including, but not limited to:
 - a. the ownership structure of the business, including percentage ownership of each person or entity; and
 - b. planned worker training programs; and
 - c. financial structure and financing of the proposed Marihuana Business; and
 - d. short and long-term goals and objectives; and
 - e. if co-location of marihuana businesses is proposed, provide an explanation of the integration of such businesses, including a drawing showing the relationship between the businesses being co-located, including floor area and the separation provided between such facilities, including identification of any points of entry, ingress or egress, and controls at each location; and
 - f. any community outreach/education plans and strategies; and
 - g. any charitable plans and strategies.
- (16) One of the following: (a) proof of ownership of the premises wherein the Marihuana Business will be operated; or (b) written consent from the property owner to use the premises for a marihuana business requiring licensure under this Article, together with a copy of any lease for the premises.
- (17) A description of the security plan for the Marihuana Business, including, but not limited to, any lighting, alarms, barriers, recording/monitoring devices, and/or security guard arrangements proposed for the facility and premises. The security plan must contain the specification details of each item of security equipment.
- (18) A scaled floor plan of the Marihuana Business, as well as a scale diagram illustrating the property upon which the Marihuana Business will be operated, including all available parking spaces, and specifying which parking spaces, if any, are handicapped-accessible.
- (19) Any proposed elevation drawings, and photographs or other depiction of materials to be visible on the exterior of the proposed Marihuana Business.

- (20) A scaled location area map of the Marihuana Business and surrounding area identifying the relative locations and distances to surrounding property boundaries and buildings.
- (21) A sanitation plan designed to protect against any marihuana being ingested on the premises by any person or animal, indicating how the waste and byproduct will be stored and disposed of, and how any marihuana will be rendered unusable upon disposal.
- (22) A proposed recordkeeping plan that will track payment method, amount of payment, time of sale, product quantity, and other product descriptors.
- (23) An affirmation that neither the applicant nor any stakeholder is in default to the City and that the applicant or stakeholder has not failed to pay any past-due property taxes, special assessments, fines, fee or other financial obligation to the City.
- (24) A copy of the applicant's notice of prequalification status issued by the Michigan Marihuana Regulatory Agency of LARA pursuant to Rule 7 of the Adult-Use Marihuana Establishments Emergency Rules filed with the Michigan Secretary of State on July 3, 2019.
- (25) An estimate of the number and type of jobs that the Marihuana Business is expected to create, the compensation expected to be paid for such jobs, and the projected annual budget and revenue of the Marihuana Business.
- (26) A signed acknowledgment that the applicant is aware and understands that all matters related to marihuana, growing, cultivation, possession, dispensing, testing, safety compliance, transporting, distribution, and use are currently subject to state and federal laws, rules, and regulations, and that the approval or granting of a license hereunder will not exonerate or excuse the applicant from abiding by the provisions and requirements and penalties associated therewith.
- (27) Proof of insurance covering the business and naming the City of Berkley, its elected and appointed officials, employees, and agents, as additional insured parties, primary and non-contributory available for the payment of any damages arising out of an act or omission of the applicant or its stakeholders, agents, employees, or subcontractors, in the amount of:
 - a. at least Two Million Dollars (\$2,000,000) for property damage;
 - b. at least Two Million Dollars (\$2,000,000) for injury to one (1) person; and
 - c. at least Two Million Dollars (\$2,000,000) for injury to two (2) or more person resulting from the same occurrence. The insurance policy underwriter must have a minimum A.M. Best Company insurance ranking of B+, consistent with state law. The policy shall provide that the City

shall be notified by the insurance carrier thirty (30) days in advance of any cancellation or reduction in coverages.

- (28) Any other information requested by the City considered to be relevant to the processing or consideration of the application.
- (c) Upon receipt of a completed Application and application fee, the Community Development Director shall refer a copy of the Application to appropriate City departments for their review.
- (d) An Application shall not be eligible to be considered for approval, until:
 - (1) The Public Safety and Community Development Departments have inspected the proposed location for compliance with all laws for which they are charged with enforcement and for compliance with the requirements of this Article.
 - (2) The Community Development Department verifies the proposed location of the marihuana business complies with the zoning code.
 - (3) The Community Development Department confirms the proposed marihuana business meets applicable codes and this Article.
 - (4) The City Treasurer confirms the applicant and each stakeholder and the proposed location of the Business are not in default to the City.
 - (5) The Department of Public Safety determines the applicant meets the requirements of this Article with respect to the background check and security plan.

Sec. 30-904. – License application evaluation.

- (a) The City will accept applications for a license(s) for a Marihuana Business over a fourteen (14) day period, as established by the City Manager after the effective date of this Article. At the end of the fourteen(14) day period, all properly submitted and complete Applications shall be subject to examination and review by the City. The City may, in its discretion, elect to issue or not issue licenses for any of the Marihuana Business types or issue licenses in any combination thereof, but in no instance shall issue more licenses than are permitted pursuant to the terms of this Article and State law.
- (b) The City shall review all submitted applications for completeness. If an Application is found to be incomplete, it will not be further considered until made complete. The Community Development Department shall send a letter to the applicant explaining the omitted information or defect in the application. The applicant shall have two (2) weeks from the date of the letter to correct the defect or provide the required information to the City. If the correction or additional information is not provided within two (2) weeks of the letter, the application will be deemed abandoned and will no longer be considered.
- (c) Application evaluation criteria shall include:

- (1) The content and sufficiency of the information contained in the application.
- (2) Whether the proposed plan has received approval from the Public Safety Department, Community Development Department, and all other appropriate departments.
- (3) Whether the proposed facility will revitalize or redevelop property that has been vacant or unused for an extended period of time.
- (4) Whether the proposed Marihuana Business will be consistent with land use for the surrounding neighborhood and not have a detrimental effect on traffic patterns and public safety.
- (5) Whether the proposed (or existing) building and site improvements are consistent and compatible with the City's Master Plan objectives and the design of neighboring sites and buildings.
- (6) Planned outreach on behalf of the proposed Business, and whether the applicant or its stakeholders have made, or plan to make, significant physical improvements to the building housing the Marihuana Business, including plans to control traffic, noise, and odor effects on the surrounding area.
- (7) Whether the applicant or any of its stakeholders have a record of acts detrimental to the public health, security, safety, morals, good order, or general welfare prior to the date of the application; and whether the applicant or any of its stakeholders have ever been convicted of operating an illegal business enterprise of any kind.
- (8) Whether the applicant has reasonably and tangibly demonstrated it possesses adequate resources and experience to implement the submitted business plan.
- (9) Whether the proposed location in the City in relation to its proximity to other locations for Marihuana Businesses represents a reasonable and harmonious dispersion of Marihuana Businesses.
- (10) The proximity of the business to a school.
- (11) Whether adequate off street parking is provided or available.
- (12) Whether the size and nature of the use in relationship to previously approved and issued Marihuana Business licenses is reasonable.
- (13) Whether the applicant has business experience previously in the City and demonstrates that the applicant has sufficient business experience to operate the proposed Marihuana Business.
- (14) Whether the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.

- (15) Whether the proposed plan incorporates infrastructure that adequately addresses stormwater drainage.
 - (16) Whether the proposed plan incorporates odor control systems to prevent odor dispersion to neighboring properties.
 - (17) Whether an applicant has applied for a co-location of equivalent licenses at one location.
 - (18) Other criteria as indicated important for consideration by any appropriate department of the City administration.
- (d) The City may engage professional expert consultant assistance in performing any of the duties and responsibilities under this Article.
- (e) The City shall use a point-based merit system, which shall be approved, and may be modified from time to time, by City Council resolution to provide objective review and selection. The merit system shall incorporate the evaluation criteria outlined within this article, and may include additional criteria intended to select licensees that provide the best outcome for the community as determined by the City.
- (1) In the event of a tie among applicants through the merit system which would result in more approvals than available licenses, the tie will be resolved through a blind lottery drawing to determine which applicant will receive recommendation for approval.
 - (2) Any application receiving less than seventy (70) per cent of possible points outlined within the point-based merit system shall be automatically denied license approval.
- (f) Within ninety (90) days of receiving the last completed application, the City Manager shall recommend applications for license approval to the City Council. The City Manager may only recommend a number of applications for consideration equal to or less than the number of remaining licenses available for issuance. All other applicants shall be sent a written notice of rejection setting forth specific reasons why the City Manager did not recommend their application for City Council approval.
- (g) Upon submittal of the City Manager's recommended applications to the City Council, the City shall publish and provide public notice of the City Council meeting when the City Council will consider the license applications. Notice shall be given not less than fourteen (14) days prior to the City Council meeting. All written feedback shall be presented to the City Council.
- (h) The public notice shall be published in a newspaper of general circulation and posted at City Hall. The notice shall be sent by mail or personal delivery to the owners and occupants of property within 300 feet of the proposed marihuana business site. The public notice must include at minimum the following:

- (1) Proposed location of the marihuana business; and
- (2) Name of the applicant(s) or organization; and
- (3) Intended marihuana business use; and
- (4) Information pertaining to methods of accepting public feedback; and
- (5) Location, date, and time of the meeting in which City Council will consider license approval.

Sec. 30-905. – License limit.

- (a) The City Council finds and determines that it is in the public interest and serves a public purpose to limit the maximum number of licenses that the City may issue to three (3) Marihuana Business locations, with the acceptable uses as follows:
 - (1) Adult Use Marihuana Retail establishments;
 - (2) Medical Marihuana Provisioning Center establishments;
- (b) The City Council finds and determines that it is in the public interest and serves a public purpose to prohibit the following marihuana business uses from receiving a license from the City:
 - (1) Adult Use and Medical Marihuana Secured Transporter establishments; and
 - (2) Designated Consumption Establishments; and
 - (3) Marihuana Event Organizer; and
 - (4) Temporary Marihuana Events; and
 - (5) Adult Use and Medical Marihuana Growing Facility establishments; and
 - (6) Adult Use and Medical Marihuana Processing establishments, and
 - (7) Adult Use and Medical Marihuana Safety Compliance facilities; and
 - (8) Adult Use Marihuana Microbusiness establishments.
- (c) Should a license for a Marihuana Business become available due to expiration, revocation, or non-renewal, the City Manager shall set an application period and receive Applications for a license(s) for a Marihuana Business over a fourteen (14) day period. At the end of the fourteen (14) day period, all properly submitted and complete Applications shall be subject to examination and review by the City. The City may elect to issue or not issue licenses for any of the permitted uses or issue licenses in any combination thereof, but in no instance shall issue more licenses than are permitted pursuant to the terms of this Article.

Sec. 30-906. – Marihuana facility co-location and stacking.

Separate Marihuana Business uses, under common ownership, and with proper licensing issued by LARA for each use, shall be permitted to operate at the same location with license approval from City. Co-locating establishments must have license approval for each Marihuana Business type and use.

Sec. 30-907. – License renewal application

- (a) Application for License Renewal shall be made in writing to the Community Development Director at least thirty (30) days prior to the expiration of an existing license.
- (b) An Application for a License Renewal shall be made under oath on forms provided by the City.
- (c) An Application for a license renewal shall be accompanied by a renewal fee in an amount of Five Thousand Dollars (\$5,000), of which half will be returned if the license is not renewed. The renewal fee is established to defray the costs of the administration of this Article.
- (d) Upon receipt of a completed Application for a License Renewal meeting the requirements of this Article and the license renewal fee, the Community Development Director shall refer a copy of the Renewal Application to appropriate City departments and officials for review,
- (e) An Application for a license renewal shall be not be considered for approval unless:
 - (1) The Fire Inspector has inspected the proposed location for compliance with all laws for which they are charged with enforcement within the past calendar year;
 - (2) The Community Development Department has confirmed that the location complies with the zoning code and this Article, at the time a license is granted;
 - (3) The Building Official has confirmed that the Marihuana Business meets the City building code requirements;
 - (4) The City Treasurer has confirmed that the applicant and each stakeholder of the applicant and the location of the Marihuana Business are not currently in default to the City;
 - (5) The Department of Public Safety has reviewed the Application and determined that the applicant has satisfied the requirements of this Article with respect to the background check and security plan;
 - (6) The applicant possesses the necessary state licenses or approvals, including those issued pursuant to the MMFLA;

- (7) The applicant has operated the Marihuana Business in accordance with the conditions and requirements of this Article;
 - (8) The Marihuana Business has not been determined to be a public nuisance; and
 - (9) The applicant is operating the Marihuana Business in accordance with applicable federal, state, and local laws and regulations.
- (f) If written approval is given by each individual, department, or entity identified in Subsection (e), and the Renewal Application is found to be compliant with this Article by the Community Development Director, the Community Development Department shall issue a license renewal to the applicant. If no renewal license is issued, half of the renewal fee shall be returned. The renewal shall be deemed approved if the City has not issued formal notice of denial within sixty (60) days of the filing date of the application, unless the applicant is advised of non-compliance with this Article or incompleteness of information or any required inspection during such period.

Sec. 30-908. – Transfer of ownership, licenses generally.

- (a) Licensees shall report any change in the required information to the Community Development Department within ten (10) business days of the change. Failure to do so may result in suspension or revocation of the license.
- (b) A license approval shall not be effective, and no Marihuana Business may operate, unless the Marihuana Business has obtained a State License and the site of the proposed use and proposed structure for the Marihuana Business is properly zoned for such use, and the proposed site plan has received approval from the Planning Commission.
- (c) Licensees may transfer a license issued under this Article to a different location upon receiving written approval from the City and LARA or the board pursuant to the MMFLA and rules promulgated by LARA. In order to request City approval to transfer a permit location, the licensee must make a written request to the Community Development Director, indicating the current license location and the proposed license location. Upon receiving the written request, the Community Development Director shall refer a copy of the written request to all appropriate departments and officials including but not limited to the Department of Public Safety, the Treasury Department, the Building Official, and the Fire Inspector. No permit transfer shall be approved unless each such City department or official gives written approval, following any necessary inspections, that the proposed new location meets the standards identified in this Article, MRTMA, MMMA, MMFLA, and LARA.
- (d) Licensees may transfer a license issued under this Article to a different individual or entity upon receiving written approval from the City and LARA. In order to request City approval to transfer a permit to a different individual or entity, the licensee must make a written request by submitting a transfer application to the Community Development Director, indicating the current licensee, the proposed licensee, and all required information needed to demonstrate proper qualifications as determined by the City. The City shall grant the request so long as LARA authorizes the transfer pursuant to the

MRTMA, MMFLA, MMMA, and rules promulgated by LARA, and the proposed licensee meets all requirements outlined in this Article. The City reserves the right to decline any transfer of license which occurs within the first year of its original issuance.

- (e) With submission of a complete transfer application, the proposed licensee shall pay an application fee of Two Thousand Five Hundred Dollars (\$2,500.00), as a means to offset costs associated with review of the proposed licensee's qualifications for marihuana business operation.

Sec. 30-909. – Minimum operational standards of marihuana business.

Except as may conflict with State law or regulation the following minimum standards apply to all Marihuana Businesses:

- (1) The entire parcel where the Marihuana Business will be located must be properly zoned for that type of use, and the Marihuana Business operations must be entirely contained within the building.
- (2) The Marihuana Business shall be operated in compliance with the MMMA, the MMFLA, the MTA, MRTMA, and the State's administrative rules. Any violation of such laws or rules shall be deemed a violation of this Article.
- (3) On-premises consumption of marihuana shall be prohibited at any Marihuana Business except testing standards as outlined by LARA.
- (4) In addition to security requirements pursuant to State laws and regulations and any other applicable City Ordinances, the Marihuana Business shall continuously monitor the entire premises, interior and exterior, with surveillance systems that include security cameras operating twenty-four (24) hours a day, seven (7) days a week. The video recordings shall be maintained in a secure, off-site location for a period of one hundred eighty (180) days.
- (5) The Marihuana Business shall be contained within a lockable Facility, including all interior doors, all windows and points of entry and exits with commercial grade non-residential locks and with an alarm system monitored. Marihuana shall not be permitted to be stored in trailers or sheds or other accessory structures to the principal building. Storage shall further be in accordance with the MRTMA, MMMA, MMFLA, MTA, and promulgated rules as amended.
- (6) A locking safe or secure locking cabinet system permanently affixed to the permitted premises that shall store any marihuana and all cash remaining in the Facility overnight shall be used. For Marihuana-infused products that must be kept refrigerated or frozen, the Facility may lock the refrigerated container or freezer in a manner authorized by the MRTMA and promulgated rules as amended in place of the use of a safe so long as the container is affixed to the building structure.

- (7) No Marihuana Business shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property where the Marihuana Business is operated; or any other nuisance adverse to the public health, safety and welfare of the residents of the City.
- (8) All activity related to the provisioning, transferring, testing, or transportation of all marihuana shall be done indoors and fully compliant with State law so that it is not visible to the public.
- (9) All Marihuana Businesses shall maintain an inventory and record keeping system and/or database identifying the amount of Marihuana on the premises in accordance with the MRTMA, the MTA and the rules and regulations, as amended from time to time. This log shall be available to law enforcement personnel at anytime.
- (10) All Marijuana located on premise shall be inventoried and tagged with unique RFID tag as required by MTA and promulgated rules as amended from time to time.
- (11) The State License and the City license required by this Article shall be conspicuously displayed on the premises of a Marihuana Business.
- (12) All Marihuana Facilities shall apply for and obtain from the City, or other applicable government authority, all necessary building, mechanical, electrical, plumbing, sign, fence, soil erosion and City zoning compliance permits.
- (13)
- (13) Floors, walls, and ceilings shall be constructed in such a manner that they may be kept adequately cleaned and in good repair.
- (14) There shall be adequate screening or other protection against the entry of pests. Waste shall be disposed of so as to minimize the development of odor and minimize the potential for waste development and minimize the potential for waste becoming an attractant, harborage or breeding place for pests.
- (15) Venting of marihuana odors into the areas surrounding the Marihuana Business is prohibited and deemed and declared to be a public nuisance. All facility ventilation methods shall comply with the MRTMA and administrative rules promulgated, as amended from time to time.
- (16) Waste shall be properly removed and the operating systems for waste disposal shall be maintained in an adequate manner so that they do not constitute a source of contamination in areas where Marihuana is exposed. Disposal systems for spent water and spent soil shall be approved by the City and byproduct materials, soils, plant materials, and other materials shall be stored indoors until pickup for disposal and shall not be left outdoors for disposal pickup for longer than six (6)

- hours. Disposal of marihuana or marihuana waste or byproducts by on-site burning or introduction into the sewer system is prohibited.
- (18) The interior and exterior of all buildings, fixtures and other accessories shall be maintained in a presentable and sanitary condition.
 - (19) Marihuana Businesses shall provide its occupants with adequate and accessible restroom facilities that are maintained in a sanitary condition and good repair.
 - (20) Marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
 - (21) Marihuana Businesses shall be free from infestation by insects, rodents, birds, or vermin or any kind.
 - (22) All Marihuana shall be packaged and labeled as provided by MRTMA, MTA, and promulgated rules as amended.
 - (23) The premises shall be open for inspection during hours of operation and as such other times as anyone is present on the premises.
 - (24) No other accessory uses are permitted within the same facility other than those associated with the retailing of marihuana.
 - (25) Advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors is prohibited.

Sec. 30-910. – Additional operational standards for marihuana retail establishments.

Except as may conflict with state law or regulation, the following minimum standards for Marihuana Retail establishments shall apply:

- (1) Marihuana Retail and Medical Marihuana Provisioning Center establishments may be open to the public only between 8:00 AM to 10:00 PM.
- (2) Unless permitted by the MRTMA, public or common areas of the Marihuana Retail establishment must be separated from restricted or non-public areas of the retail establishment by a permanent barrier. Unless permitted by the MMMA, MMFLA, or the MRTMA, no Marihuana may be stored, displayed, or transferred in an area accessible to the general public.
- (3) All Marihuana storage areas within Marihuana Retail and Medical Marihuana Provisioning Center establishments must be separated from any customer/patient areas by a permanent barrier. Unless permitted by the MMMA, MMFLA, or MRTMA, no Marihuana is permitted to be stored in an area accessible by the general public or registered customers/patients. Marihuana may be displayed in a sales area only if permitted by the MRTMA.

- (4) Drive-thru windows on the premises of a Marihuana business establishment shall not be permitted.

Sec. 30-911. – License revocation, suspension and denial; basis for action; appeal.

- (a) Any City license issued under this Article may be revoked or suspended by the City after written notice and an administrative hearing if a City official finds and determines that grounds for revocation or suspension exist. Any grounds for revocation or suspension must be provided to the licensee at least ten (10) days prior to the date of the hearing by first class mail to the address given on the License Application or any address provided to the Community Development Department in writing subsequent to the filing of an application.
- (b) A license applied for or issued may be denied, revoked or suspended on any of the following grounds:
- (1) A violation of any provision of this Article, including, but not limited to, the failure to provide the information required by this Article;
 - (2) Any conviction of a felony or any misdemeanor involving controlled substances, theft or dishonesty by the licensee, stakeholder, or any person holding an ownership interest in the license;
 - (3) Commission of fraud or misrepresentation or the making of a false statement by the applicant, licensee, or any stakeholder of the applicant or licensee while engaging in any activity for which this Article requires a license;
 - (4) Failure to obtain site plan approval from the Planning Commission within six (6) months from the date of receiving license approval from the City;
 - (5) Failure to obtain or maintain a license or renewed license from the City pursuant to this Article;
 - (6) Failure of the licensee or the Marihuana Business to obtain or maintain a State license or approval pursuant to the MRTMA, MMMA, or MMFLA;
 - (7) The Marihuana Business is determined by the City to have become a public nuisance or otherwise is operating in a manner detrimental to the public health, safety or welfare;
 - (8) Any default in the payment of any charges, taxes, or fees, to the City if not cured upon forty-five (45) days following notice sent by electronic means or mail to the address of the Marihuana Business;
 - (9) Violation of any State law applicable to Marihuana Businesses.
- (c) Appeal of denial of an Application, or revocation or suspension of a license: the Community Development Department shall notify an applicant of the reason(s) for denial

of an Application for a license or license renewal or for revocation or suspension of a license or any adverse decision under this Article and provide the applicant with the opportunity to be heard. Any applicant aggrieved by the denial or revocation or suspension of a license or adverse decision under this Article may appeal to the City Council, who shall appoint a hearing officer to hear and evaluate the appeal and make a report and recommendation to the City Council. Such appeal shall be taken by filing with the Community Development Department, within fourteen (14) days after notice of the action complained of has been mailed to the applicant's last known address on the records of the Community Development Department, a written statement setting forth fully the grounds for the appeal. The City Council shall review the report and recommendation of the hearing officer and make a decision on the matter.

Sec. 30-912. – Penalties; temporary suspension of a license.

- (a) The City may require an applicant or licensee of a Marihuana Business to produce documents, records, or any other material pertinent to the investigation of an Application or alleged violation of this Article. Failure to provide the required material may be grounds for application denial, or license revocation.
- (b) Any person in violation of any provision of this Article, including the operation of a Marihuana Business without a license shall be responsible for a misdemeanor and shall be subject to a civil fine and costs. Increased civil fines may be imposed for a repeat violation. As used in this Section “repeat violation” shall mean a second or any subsequent infraction of the same requirement or provision committed by a person or Facility within any twenty-four (24) month period. Unless otherwise specifically provided in this Article, the penalty schedule is as follows:
 - (1) Seven Hundred Fifty Dollars (\$750), plus costs, for the first violation;
 - (2) One Thousand Dollars (\$1,000), plus costs, for a repeat violation;
 - (3) Three Thousand Dollars (\$3,000), plus costs per day, plus costs for any violation that continues for more than one day.
- (c) The City may temporarily suspend a Marihuana Business license without a prior hearing if the City finds that public safety or welfare requires emergency action affecting the public health, safety, or welfare. The City shall cause the temporary suspension by issuing a suspension notice in connection with institution of proceedings for notice and a hearing.
- (d) If the City temporarily suspends a license without a prior hearing, the licensee is entitled to a hearing within thirty (30) days after the suspension notice has been served on the licensee or posted on the licensed premises. The hearing shall be limited to the issues cited in the suspension notice.
- (e) If the City does not hold a hearing within thirty (30) days after the date the suspension was served on the licensee or posted on the licensed premises, then the suspended license shall be automatically reinstated and the suspension vacated.

- (f) The penalty provisions herein are not intended to foreclose any other remedy or sanction that might be available to, or imposed by the City, including criminal prosecution.

Sec. 30-913. – Disclaimer.

- (a) Nothing in this Article shall be construed to authorize any person to engage in conduct that endangers others or causes a public nuisance, or to allow use, possession or control of marihuana for lawful purposes or allow any other activity relating to cultivation, growing, distribution or consumption of marihuana that is otherwise illegal.
- (b) Except as may be required by law or regulation, it is not the intent of this Article to diminish, abrogate, or restrict the protections for individual use of marihuana found in the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act and the Michigan Regulation and Taxation of Marihuana Act.

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: Effective Date

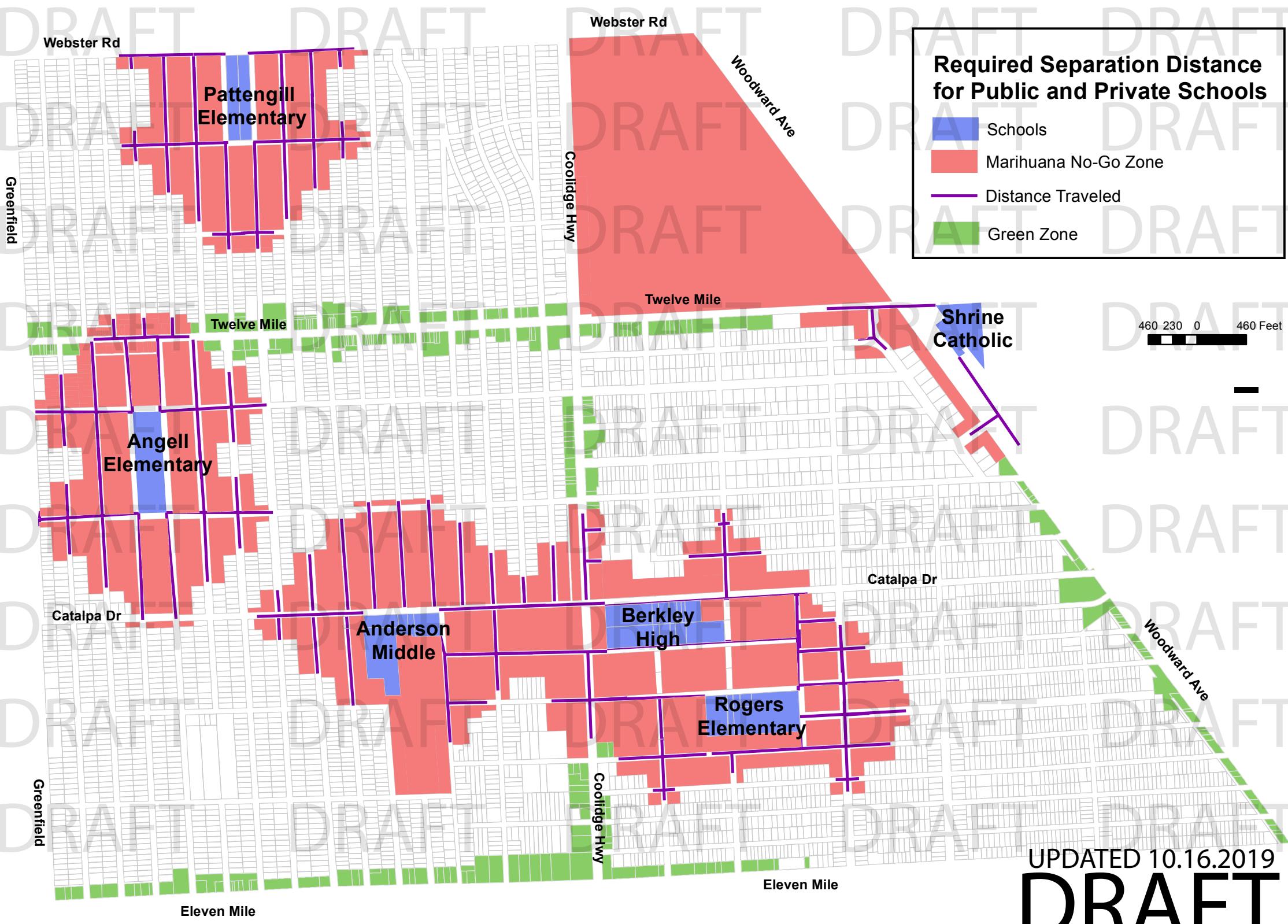
This Ordinance shall become effective 30 days following the date of adoption.

SECTION 4: 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.

Dan Terbrack
Mayor

Attest: _____
Victoria Mitchell
City Clerk



THIS MAP HAS NOT BEEN APPROVED BY A GOVERNING BODY.