

**City of Berkeley**  
**Zoning Ordinance Steering Committee**

**Wednesday, February 7, 2024**  
**6:00 p.m. – 8:30 p.m.**

**AGENDA**

- 1. Check in (5 min)**
- 2. Review of Previous Work (1 hour)**
  - a. Draft Article 8, Sections 8.16 – 8.23 – Specific Use Provisions
  - b. Article 16 – Nonconformities
  - c. Article 17 – Zoning Board of Appeals
- 3. Review of Draft Article (1 hour)**
  - a. Article 3 – Administration and Enforcement
- 4. Preview: General Provisions & Definitions (10 min)**
  - a. Ideas
  - b. Advice
- 5. Check out (15 min)**
  - a. Community education and communication – Results from workshops in January

**Decision-Making Process**

The Steering Committee will make decisions by consensus, i.e., all members agree.

If consensus is not reached, CWA and staff will draft a memo to the Planning Commission, cc'd to City Council, explaining both sides of the issue. The Planning Commission would make a decision at its next meeting that would be acted upon during the Zoning Ordinance rewrite.

**TO:** City of Berkley Zoning Ordinance Steering Committee

**FROM:** Megan A. Masson-Minock, AICP  
Michelle Marin

**DATE:** January 24, 2024

**RE:** February 2024 Zoning Ordinance Steering Committee Meeting

Thank you for another productive meeting earlier this month where we discussed sign, landscaping, and lighting regulations. At the upcoming January meeting, we would like to review the draft **Administration and Enforcement** article. The provisions are based on existing provisions, best practices and input from staff, Planning Commission and the Steering Committee.

**Review of Previous Work**

At the previous meeting, we discussed draft Article 8 through Section 8.16. The notes for that session are on the Google Drive and document the agreements and action items from the meeting. Please come prepared to discuss the following questions that pertain to regulations for specific uses:

- *Do the changes made track with the agreements and discussions from the last meeting? Please note that we have made changes through page 6 up to the new Section 8.04.*
- *Should municipal facilities have specific regulations?*
- *Should public utility buildings have specific regulations?*

Due to time constraints, the Committee did not review draft articles on Nonconformities and the Zoning Board of Appeals. As a reminder, the tables below list current regulations and our recommended changes shown in the draft articles.

<b>Current Nonconformities Regulations</b>	<b>CWA Recommended Changes</b>
<ul style="list-style-type: none"> <li>● Regulations are a section in the General Provisions Article</li> <li>● No provisions for nonconforming lots.</li> </ul>	<ul style="list-style-type: none"> <li>● Nonconformities is an Article, making these regulations easier to find.</li> <li>● Definitions move to the Article 2 – Definitions</li> <li>● A Purpose and Intent Section is proposed, with elements from the current Section 138-52, to clarify the reasons for the regulations.</li> <li>● The sentence "Such addition or enlargement shall be treated as a separate building in determining conformity to all of the requirements of this chapter" is proposed to be removed from the sub-section that allows the enlargement of nonconforming building when the addition conforms with the regulations of the zoning district.</li> <li>● A section on nonconforming lots is proposed.</li> </ul>

Please come prepared to discuss the following questions that pertain to nonconformities:

- *Do these regulations make sense?*
- *What regulations require additional restrictions?*
- *What have we missed?*

<b>Current Zoning Board of Appeals Regulations</b>	<b>CWA Recommended Changes</b>
<ul style="list-style-type: none"> <li>● The regulations are split between Division 4 – Variances, Division 5 - Appeals and Section 138-548</li> <li>● The regulations are generally in compliance with the MZEA, except for the Section 601(3) that states a Planning Commission representative on the ZBA shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission.</li> </ul>	<ul style="list-style-type: none"> <li>● Regulations on the Zoning Board of Appeals, appeals and variances are consolidated into a single Article.</li> <li>● "Written charges" are proposed as part of the process for City Council to remove a member of the ZBA.</li> <li>● Section 17.03 has been expanded to include sub-sections on rules, votes, and representation.</li> <li>● In line with the MZEA, the following provisions are proposed:               <ul style="list-style-type: none"> <li>○ Planning Commission representative on the ZBA shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission.</li> <li>○ In order to grant a dimensional or use variance, the ZBA must find that all conditions exist listed in Section 17.04.E. 2 and 17.04.G.2, respectively.</li> </ul> </li> <li>● Standards are proposed for an appeal of an administrative decision.</li> <li>● Section 17.05 has more detailed requirements for variance applications.</li> <li>● A provision is proposed that a variance that has been denied may not be reapplied for within 12 months from the date of denial.</li> <li>● Approval periods remain 12 months, except for a variance associated with a site plan, which is valid for 2 years, in line with the timeline for approved site plans.</li> </ul>

Please come prepared to discuss the following questions that pertain to nonconformities:

- *Do these regulations make sense?*

- *Do these regulations comply with standard procedure?*
- *What have we missed?*

**Review of Draft Articles**

The following table list current regulations and our recommended changes shown in the draft Article 3 – Administration and Enforcement.

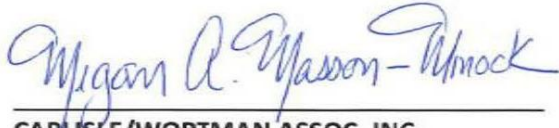
<b>Current Administration and Enforcement</b>	<b>CWA Recommended Changes</b>
<ul style="list-style-type: none"> <li>● The regulations are currently in Article VI</li> <li>● Public notice requirements mandate that the public notice be posted on the city's website not less than 15 days prior to the hearing and a temporary sign put up 7 days prior. Neither are required by state law.</li> <li>● Violations are municipal civil infractions</li> </ul>	<ul style="list-style-type: none"> <li>● The sections on amendments, variances, appeals, special land uses and site plan review have been moved to different and/or separate articles.</li> <li>● Duties have been assigned to the Zoning Administrator. It may be better for the title of Community Development Director to be used in some cases.</li> <li>● The submittal requirements for a certificate of zoning compliance are more detailed than current requirements.</li> <li>● Certificate of zoning compliance is proposed to be reviewed by a committee of the Community Development Director, Building Official, Department of Public Works Director, and Fire Inspector, or their designees, who must give written comments to the Zoning Administrator within 30 days.</li> <li>● The certificate of zoning compliance is proposed to be valid for the duration of the building permit, or, if a building permit is not required, two years, with a possible extension of two years.</li> <li>● A Completion of Construction section is proposed, stating that anything under construction before the Zoning Ordinance is adopted is not subject to it retroactively.</li> <li>● The public notice requirements are per State Law only, so the requirements that the public notice be posted on the city's website not less than 15 days prior to the hearing and a temporary sign put up 7 days prior to a public hearing are proposed to be removed.</li> <li>● New sections for performance guarantees and development agreements are proposed.</li> <li>● Violations remain municipal civil infractions but a process for dealing with violations is proposed and</li> </ul>

<b>Current Administration and Enforcement</b>	<b>CWA Recommended Changes</b>
	sub-sections on requiring compliance and public nuisance per se are proposed.

**January Community Engagement Sessions**

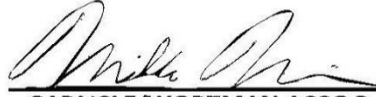
We will share results of the January Community Engagement sessions by Friday, February 2<sup>nd</sup>. Thank you all for your time and efforts at these sessions.

Thank you for your time and contributions. We look forward to meeting with you on February 7<sup>th</sup>, 6 - 8:30 p.m.! Should you have any questions, please do not hesitate to contact us.



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



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**CARLISLE/WORTMAN ASSOC., INC.**  
Michelle Marin  
Community Planner

# **ARTICLE 3**

## **ADMINISTRATION AND ENFORCEMENT**

### **SECTION 3.01 ZONING ADMINISTRATOR APPOINTMENT**

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

### **SECTION 3.02 ZONING ADMINISTRATOR DUTIES**

The duties of the Zoning Administrator or designee include the following:

- A. Interpret the provisions of this Ordinance. The Zoning Administrator may also forward matters requiring interpretation to the Zoning Board of Appeals.
- B. Receive and review for completeness all applications for site plan review, special land uses, planned unit developments, or other matters that the Planning Commission is required to decide under this Ordinance. Refer such applications to the Planning Commission, and where applicable, the City Council for determination.
- C. Receive and review for completeness all applications for appeals, variances, or other matters that the Zoning Board of Appeals is required to decide under this Ordinance. Refer such applications to the Zoning Board of Appeals for determination.
- D. Receive and review for completeness all applications for text or map (rezoning) amendments to this Ordinance. Refer such applications to the Planning Commission and City Council for determination.
- E. Make periodic site inspections to determine compliance with this Ordinance.
- F. Implement the decisions of the Planning Commission, Zoning Board of Appeals, and City Council.
- G. Investigate complaints regarding violations of the Zoning Ordinance.

- H. Grant certificates of zoning compliance and make inspections of buildings or premises necessary to carry out the enforcement of this Ordinance.

### **SECTION 3.03 CERTIFICATE OF ZONING COMPLIANCE**

- A. ***Certificate of Zoning Compliance.*** It ~~is must be~~ unlawful to use, or occupy, reoccupy, or permit the use or occupancy of, any structure or premises, or parts thereof, hereafter created, erected, changed, converted, or wholly or partially altered or enlarged, until a Certificate of Zoning Compliance has been issued by the Zoning Administrator stating that the proposed use of the structure or lot conforms to the requirements of this Ordinance. The Certificate of Zoning Compliance signifies that the intended use, building, or structure complies with all provisions of this Ordinance. A building permit, when required, must not be issued unless the Certificate of Zoning Compliance has been issued. When a building permit is not required, the application for a Certificate of Zoning Compliance must be made prior to the date when construction, installation, or use of the property is intended to begin. The Building Official must not issue a certificate of occupancy for any lot, building, or structure without a Certificate of Zoning Compliance.
- B. ***Submittal Requirements.*** An application for a zoning compliance permit must be accompanied by a plot plan as required in this Section, unless a site plan is required under Article 14 Site Plan Review, herein, in which case the provisions of this Section ~~do must~~ not apply. When required, a plot plan must contain the following information:
1. Scale, date, and north point.
  2. Location, shape, and dimensions of the lot.
  3. Dimensioned location, outline, and dimensions of all existing and proposed structures.
  4. A clear description of existing and intended uses of all structures.
  5. Additional information as required by the Zoning Administrator for the purpose of determining compliance with the provisions of this Ordinance.
- C. ***Issuance of Certificate of Zoning Compliance.*** A certificate of zoning compliance must be issued by the Zoning Administrator upon the



recommendation of a review committee comprised of the Community Development Director, Building Official, Department of Public Works Director, and Fire Inspector, or their designees, in accordance with the following:

1. An application, meeting the requirements of Section 3.03.B, must be submitted to the Zoning Administrator who ~~will~~**must** distribute the plans to the review committee.
  2. ~~The review committee must return their written comments and recommendations to the Zoning Administrator within thirty (30) days after receipt from the Zoning Administrator. Each member of the committee must recommend approval, approval with conditions, or denial of the Certificate of Zoning Compliance. ¶~~
  3. ~~After receiving the recommendations from members of the review committee, the Zoning Administrator must issue a Certificate of Zoning Compliance, a Certificate of Zoning Compliance with conditions, or a denial of the Certificate of Zoning Compliance based upon the recommendations of the review committee. Any recommendations for denial of a Certificate of Zoning Compliance must state the reasons for the recommended denial.~~
  4. The Zoning Administrator must issue a Certificate of Zoning Compliance only if all members of the review committee recommend approval or approval with conditions. Any conditions of approval recommended by the Community Development Director, Building Official, Assessor, or Fire Inspector or their designee must be incorporated into the approval with conditions issued by the Zoning Administrator.
- D. **Validity and Expiration.** A Certificate of Zoning Compliance ~~is~~**must be** valid for the duration of the building permit providing no changes have been made which would invalidate the original approval. If a building permit is not required, the Certificate of Zoning Compliance ~~is~~**must be** valid for a period of two (2) years but may be extended for a further period of not to exceed two (2) years, if the Zoning Administrator ~~finds~~**must find** good cause shown for failure to complete work for which said permit was issued.

Should the holder of a zoning compliance permit fail to complete the work for which the permit was issued within the time limit as set forth above, any

unfinished structure is hereby declared a nuisance, per se, and the same may be abated by appropriate action before the Circuit Court of the County. The Board of Appeals, the City Council, any person designated by the City Council, or any aggrieved person may institute an action to have the nuisance abated.

### **SECTION 3.04 RECORDS**

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

### **SECTION 3.05 FEES AND ESCROWS**

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

### **SECTION 3.06 COMPLIANCE WITH PLANS**

Zoning compliance permits issued for plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction which deviates from the approved zoning compliance permits ~~is must be deemed~~ a violation of this Ordinance and punishable as provided for Section 3.13 Violations and Penalties.

### **SECTION 3.07 WITHHOLDING OF APPROVAL**

The Planning Commission, City Council, or Zoning Board of Appeals may withhold granting of approval of any use, site plan, Planned Unit Development, or other

approval required by this Ordinance pending approvals required by state, county, or federal agencies or departments.

### **SECTION 3.08 COMPLETION OF CONSTRUCTION**

- A. Nothing in this Ordinance can require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption of this Ordinance or later amendment which may apply. Actual construction is defined to include the placing of construction materials in a permanent position and fastening them in a permanent manner. Excavation, demolition, or the removal of materials ~~is must be~~ defined as construction.
- B. Where a building permit has been issued, said building or structure may be completed in accordance with the approved plans for which the building permit was issued, and further, may upon completion be occupied by the use for which it was originally designed. Approved construction must be diligently pursued to completion within three hundred sixty-five (365) days of the permit's effective date unless a longer period has been permitted or extended by the Building Official.

### **SECTION 3.10 PUBLIC HEARING NOTICE REQUIREMENTS**

- A. ***When Required.*** Public hearings are required in those instances specified by this Ordinance and Act 110 of the Public Acts of 2006, as amended.
- B. ***Notice Requirements.*** Notice must be given not less than fifteen (15) days before each public hearing at which an application will be considered. Notice must be given by publication in a newspaper that circulates in the City of Berkley, and by personal delivery or mailing, where required, to the following:
  - 1. The applicant, and the owner(s) of the property, if the applicant is not the owner.
  - 2. All persons to whom real property is assessed within three hundred (300) feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and property are located within the City of Berkley.

3. The occupants of any structures within three hundred (300) feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property are located within the City of Berkeley, except as set forth below.
4. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit or spatial area shall be given notice. If a single structure contains more than four (4) dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who ~~may~~ shall be requested to post the notice at the primary entrance to the structure.
5. The notice under this section is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States Postal Service or other public or private delivery service. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

**C. *Actions Exempt from Notification.***

1. Requirements for individual notice to property owners do not apply to Ordinance text amendments.
2. For any group of adjacent properties numbering eleven (11) or more that is proposed for rezoning, the requirement for individual notice as set forth in Section 3.10 does not apply to that group of adjacent properties.

**D. *Content of Notice.*** The notice must include:

1. The nature of the request.
2. The property or properties for which the request has been made.
3. A listing of all existing street addresses within the property or properties which are the subject of the request. Street addresses do not need to be created and listed if no such addresses exist. If there are no street addresses, another means of identification may be used.
4. The location where the application documents can be viewed and

copied prior to the date the application will be considered.

5. The date, time, and location of when the hearing on the application will take place.
6. The address at which written comments should be directed prior to the consideration.

## **Section 3.11 PERFORMANCE GUARANTEES**

### **A. Purpose and intent.**

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

### **B. Procedure.**

1. When a performance guarantee is required, said performance guarantee ~~must~~ shall be deposited with the City prior to the issuance of a building permit for the development and use of the land. Upon the deposit of the performance guarantee, the City ~~will~~ shall issue the appropriate building permit, and the City ~~will~~ shall thereafter deposit the performance guarantee, in the form of a cash deposit, certified check, or surety bond.
2. At the time the performance guarantee is deposited with the City and prior to the issuance of a building permit, the applicant

~~must~~ shall enter into an agreement with the City incorporating the performance guarantee provisions.

3. The agreement shall also prescribe the period of time within which the improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the building or other permit.
  4. In the event the performance guarantee deposited is a cash deposit or a certified check, the City shall rebate to the applicant, upon request from the applicant, 50% of the deposited funds when the applicant has completed 75% of the required improvements as confirmed by the City. The remaining 50% of the deposited funds shall be returned when the applicant has completed 100% of the required improvements and there is compliance with the chapter as confirmed by the City.
  5. In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the City, the City shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject property to make the improvements.
  6. If the performance guarantee is not sufficient to allow the City to complete the improvements for which such guarantee was posted, the applicant shall be required to pay the City the amount the cost of completing the improvements exceeds the amount of the performance guarantee, or a portion thereof, to complete the required improvements. Any amounts remaining after said completion shall be applied first to the City's administrative costs including, without limitation, attorney fees, planning consultant fees, and engineering consultant fees in completing the improvement with any balance remaining being refunded to the applicant.
- C. ***Guarantee with other agencies.*** If the applicant has been required to post a performance guarantee or bond with another governmental agency to ensure completion of an improvement associated with the site, the

applicant shall not be required to deposit with the City a performance guarantee for that same improvement.

**D. *Site plan completion guarantee.***

1. Prior to the issuance of any building permit for any building, and prior to the signing of the final plat by the City Clerk in a platted subdivision, or prior to the issuance of any building permit for any building in a site condominium project, or prior to issuance of a certificate of occupancy for any other development which requires site plan review under this chapter, the applicant shall provide to the City the following:
  - (a) A completion guarantee deposit to the City. Said deposit shall guarantee completion of all site improvements shown on the approved final site plan or final preliminary plat. For the purpose of this section, completion shall mean inspection by the appropriate City officials and/or other government agencies for compliance with the final site plan approved by the Planning Commission or preliminary plat finally approved by the City **CouncilBoard**, not less than six months after all site plan or plat improvements have been installed.
  - (b) All site condominiums and subdivision plats shall comply with all of the rules and regulations for posting financial securities of the City Subdivision Ordinance.
2. "Site improvements" means, but is not limited to, drives and streets, curbs and gutters, sidewalks, water and sanitary sewer systems, drainage facilities and retention/detention basins, final grading and swales, retaining walls, landscaping and parking lots.
3. In the event the applicant fails to correct any deficiencies within 30 days of written notice from the City, the City shall have the authority to use the guarantee to complete the site improvements, or repairs to said improvements, within a period of nine months following the issuance of the last certificate of occupancy unless good cause can be shown by the applicant for the delay in completion. The City may, at its sole discretion, agree in writing to a specific extension of the nine-month period. The City may use the completion guarantee to

hire subcontractors to complete work, fund inspections, and for the administration of the required work including legal fees.

4. The guarantee, or portion thereof, shall be promptly released upon the inspection and approval of all improvements in compliance with the approved final site plan or special use permit and all applicable City standards and specifications. Portions of the guarantee may be released, in not more than three installments, provided that the project or approved phase of a project has been completed for six months and the improvements for which the release is requested have been inspected and approved in accordance with the above standards, and the remaining balance is sufficient to cover the remaining improvements, including administrative and contingency expenses.
- E. ***Types of completion guarantees.*** The applicant may provide a guarantee in the form of a cash deposit or certified check, or in the form of a surety bond or letter of credit in a form acceptable to the City. Surety bonds and letters of credit shall be valid for a period of one year past the anticipated request for the last certificate of occupancy for the entire project and shall contain language acceptable to the City that states that unless the bond or letter of credit is released by the City, that 30 days prior to its expiration the bond or letter of credit shall automatically renew for one-year periods unless the issuer of the security sends by certified mail to the City a notice of its intention not to renew the financial security not less than 60 days prior to the expiration of the security.

## **Section 3.12 DEVELOPMENT AGREEMENTS**

- A. ***Development agreement requirement.*** Prior to final approval of a ~~site plan, special use,~~ planned unit development, or conditional rezoning, an applicant ~~must~~ ~~shall~~ execute a development agreement, in a form approved by the City, specifying all the terms and understandings relative to the proposed development. All costs incurred by the City, including attorney fees, in drafting and approving the development agreement shall be paid by the applicant. **The Planning Commission may require a development agreement prior to the final approval of a site plan or special land use.**



- B. **Minimum terms.** The content of the agreement shall outline the specifics of the proposed development, but shall at a minimum provide the following terms:
1. A survey of the acreage involved in the proposed development.
  2. A description of the ownership of the subject property.
  3. A land use description, including a specific description of the proposed uses, density, lot dimensions, setbacks, and other dimensional standards.
  4. Proposed method of dedication or mechanism to protect areas designated as common areas or open spaces.
  5. Description of required improvements to common areas, recreational facilities, sidewalks, and nonmotorized pathways.
  6. General description of any improvements to roads or utilities.
  7. Mechanisms to ensure the continued maintenance of common areas, including but not limited to roadways, sidewalks, lighting, landscaping, utilities, and other site improvements.
  8. Provisions assuring that open space areas shown on the plan for use by the public or residents of the development will be irrevocably committed for that purpose. The City may require conveyances or other documents to be placed in escrow to accomplish this.
  9. Provisions for the future financing of any improvement shown on the plan as site improvements, open space areas, and common areas, which are to be included within the development, and that maintenance of such improvements is assured by means satisfactory to the City.
  10. Provisions to ensure adequate protection of natural features.
  11. Financial assurances in accordance with this Section to guarantee the completion of all site improvements.
  12. Requirements that the applicant maintain insurance coverage during development in amounts established by the City, naming the

City as an additional insured, and further, required insurance provisions after the development is completed.

13. The site plan, special use, planned unit development, or conditional rezoning shall be incorporated by reference and attached as an exhibit.
14. Description of the timing to complete the development of the project. If the project is to be developed in phases, a timeline to complete the construction of each phase.
15. An acknowledgment by the applicant that the terms and conditions of the approval are fair, reasonable, and equitable, that the terms and conditions do not violate any constitutional rights, and that the applicant freely agrees to be bound by each and every condition and provision of the development agreement.

### **SECTION 3.13 VIOLATIONS AND PENALTIES**

- A. **Violations.** If the Zoning Administrator finds that any of the provisions of this Ordinance are being violated, the person responsible must be notified in writing for such violations, indicating the nature of the violation, and ordering the action necessary to correct it. Discontinuance must be ordered of illegal use(s) of land, buildings, or structures; removal of illegal buildings or structures; discontinuance of any illegal work being done; or must take any other action authorized by this Ordinance to ensure compliance with, or to prevent violation of its provisions. Violations are to be issued by the ~~Code Enforcement Officer~~~~Zoning Administrator~~. Violations of the provisions of this Ordinance, or failure to comply with any of its requirements and provisions of permits and certificates granted in accordance with this Ordinance ~~must~~ constitute a municipal civil infraction for which the fine must be no less than one hundred (\$100) dollars, nor more than five hundred (\$500) dollars for the first offense. Subsequent offenses must be not less than five hundred (\$500) dollars or more than one thousand (\$1,000) dollars for each offense. Each day such violation continues ~~is~~~~must be~~ considered a separate offense. The owner of record or tenant of any building, structure, premise, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation, may each be found guilty of a separate offense and suffer the penalties provided by law.

- B. ***Compliance Required.*** The imposition of any fine, or jail sentence, or both must not exempt the violator from compliance with the provisions of this Ordinance.
  
- C. ***Public Nuisance Per Se.*** A use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of this Ordinance or a regulation adopted under the authority of the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, is a nuisance per se, and may be abated by order of any court of competent jurisdiction.

# **Article 17**

## **ZONING BOARD OF APPEALS**

### **Section 17.01 ESTABLISHMENT**

A Zoning Board of Appeals is hereby established, which must perform its duties and exercise its powers as provided in this Article and by Public Act No. 110 of 2006 (MCL 125.3101 et seq.), as amended.

### **Section 17.02 MEMBERSHIP**

- A. The Zoning Board of Appeals must consist of seven (7) members appointed by the City Council as follows:
  - 1. The members of the Board of Appeals must be selected from the electors of the City. The members selected must be representative of the population distribution and the various interests present in the City.
  - 2. Each member of the Board of Appeals is to be appointed for a term of three (3) years. Appointments for the first year must be for a period of one, two, and three years, respectively, so as nearly as may be to provide for the appointment of an equal number of Board of Appeals members each year; thereafter, each member holds office for a full three-year term.
  
- B. The City Council may appoint two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. The alternate member may be called as specified in the Zoning Ordinance to sit as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member is absent from or unable to attend one (1) or more consecutive meetings of the Zoning Board of Appeals. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest or is a Planning Commission member who voted on the same matter when the matter was considered by the Planning Commission. The alternate member, having been appointed, must serve in the case until a final

decision has been made. The alternate member must have the same voting rights as a regular member of the Zoning Board of Appeals.

- C. The terms of the Planning Commission member and any City Council member must run concurrently with their respective current term on the Planning Commission or City Council. A successor must be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms must be filled for the remainder of the term.
- D. Members of the Zoning Board of Appeals receive no compensation.
- E. Members of the Zoning Board of Appeals are subject to the minimum standards of ethical conduct for all city officers in Section 2-40. Ethics of the City Code.
- F. A member must disqualify himself or herself from a vote in which they have a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which they have a conflict of interest must constitute misconduct in office.
- G. Members of the Zoning Board of Appeals may be removed by the City Council for nonperformance of duty, misconduct in office, misfeasance, malfeasance, or nonfeasance of office upon written charges and after a public hearing.

### **Section 17.03 RULES GOVERNING THE BOARD OF APPEALS**

- A. **Rules.** The Zoning Board of Appeals must adopt rules of procedures to govern its procedures. The Zoning Board of Appeals must elect a Chairperson and Vice-Chairperson from its membership in accordance with adopted rules of procedure.
- B. **Votes.** A concurring vote of a majority, **i.e.,—at least four (4),** of the members of the Zoning Board of Appeals, **no matter the number of members in attendance,** is necessary for any decision related to administrative review, interpretation, and dimensional variances. A concurring vote of two-thirds (2/3), **i.e., at five (5),** of the members of the Zoning Board of Appeals is necessary for any decision related to use

variance.

- C. **Representation.** Any applicant may appear on their own behalf at a hearing or may be represented by an agent or attorney.
- D. **Time Limit.** The Zoning Board of Appeals must hear and decide upon all matters properly before it within a reasonable time. The decision of the Zoning Board of Appeals must be in the form of a resolution containing a full record of its findings and determinations in each case. The time limit may be extended by written agreement between the applicant and the Zoning Board of Appeals.
- E. **Meetings and Record of Proceedings.** Meetings of the Zoning Board of Appeals must be held at the call of the Chairperson and at such times as the Board in its rules and regulations might specify. The Zoning Board of Appeals may not conduct business unless a majority of the members of the Board are present. The Board must maintain a record of its proceedings and all its official actions. The vote of each member upon a question, or a member's absence or abstention, must be recorded into the minutes of the meeting. A copy of the minutes of all meetings must be filed with the City Clerk showing the date, time, place, members present, members absent, any decisions made, and all roll call votes taken at the meeting.
- F. **Public Hearing and Notification.** The Zoning Board of Appeals must hold a public hearing on all appeals, interpretations, and variance requests. Public hearing and notification requirements are set forth in Section 3.10.

## **SECTION 17.04 POWERS AND DUTIES OF ZONING BOARD OF APPEALS**

- A. **General.** The Zoning Board of Appeals has the power to act on matters as provided in this Article and Act 110, of the Public Acts of 2006, as amended (MCL 125.3601 et. seq.). The specific powers of the Board are enumerated in the following Sections of this Article.
- B. **Delegated Duties.** The Zoning Board of Appeals must hear and decide upon the following:

1. Appeals of administrative decisions.
2. Requests for interpretation of the Zoning Ordinance or Zoning Map.
3. Requests for variances.
4. All matters upon which it is required to pass under this Article.

C. ***Appeals of Administrative Decisions.*** The Zoning Board of Appeals must hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision, or determination made by an administrative official or body in the enforcement of this Article.

1. Appeals must be filed in writing within thirty (30) days of the written decision in question with the Zoning Administrator. The appellant must have a property interest and stand to be recognized under the law to challenge the decision. The appellant must submit a clear description of the order, requirement, decision, or determination for which the appeal is made and the grounds of the appeal. The appellant may be required by the Zoning Board of Appeals to submit additional information to clarify the appeal.
2. Appeals may be taken by the person aggrieved or by any officer, department, board, agency, or bureau of the City or State governments.
3. A variance in the Zoning Ordinance may be applied for and granted under Section 4 of the Uniform Condemnation Procedures Act, 1980 PA 87, MCL 213.54.
4. An appeal stays all proceedings in the furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals that a stay would cause imminent peril to life and property. In such case, proceedings must not be stayed other than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken, and on due cause shown.
5. An administrative decision may be reversed, in whole or in part, or

may be modified. To that end, the Zoning Board of Appeals must have all the powers of the Zoning Administrator from whom the appeal is taken. In reaching its decision, the Zoning Board of Appeals must only modify or reverse an administrative decision being appealed if one (1) or more of the following requirements are met:

- a. The administrative decision was arbitrary or capricious.
- b. The administrative decision was based on an erroneous finding of material fact.
- c. The administrative decision constituted an abuse of discretion.
- d. The administrative decision was based on an erroneous interpretation of the Zoning Ordinance or zoning law.

D. Interpretation.

1. The Zoning Board of Appeals must hear and decide requests for interpretation of the Zoning Ordinance or the Zoning Map, taking into consideration the intent and purpose of the Zoning Ordinance and the Master Plan. In an interpretation of the Zoning Map, the Zoning Board of Appeals must be governed by the Rules of Interpretation set forth in Section 4.03, Interpretation of District Boundaries. The Zoning Board of Appeals does not have the power to alter or change zoning district boundaries, except where uncertainty exists as to the location of a boundary, land use classifications of any property, or Zoning Ordinance text.
2. A record must be kept by the Zoning Board of Appeals of all decisions for interpretation of the Zoning Ordinance or Zoning Map. The Zoning Board of Appeals may request the Planning Commission to initiate an Ordinance amendment that would correct or clarify the Ordinance.

E. Dimensional and Other Non-Use Variances.

1. Where literal enforcement of the provisions of the Zoning Ordinance would involve practical difficulties within the meaning of this Article, the Zoning Board of Appeals must have the power to authorize such



variation of the provisions of this Article with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Article and so that public safety and welfare are secured, and substantial justice is done.

2. Dimensional or other non-use variances may not be granted by the Zoning Board of Appeals unless it can be determined that all of the following facts and conditions exist:
  - a. Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for permitted purposes or would render conformity with such restrictions unnecessarily burdensome.
  - b. A grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
  - c. Relief can be granted in such fashion that the spirit of the Zoning Ordinance will be observed, and public safety and welfare secured.
  - d. The proposed variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City.
  - e. The Zoning Board of Appeals may not find that any of the above criteria have been met without substantial evidence provided by the applicant to that effect.

- f. The proposed variance will be the minimum necessary, and no variance must be granted where a different solution not requiring a variance would be possible.

~~F. Dimensional Variance in Special Use Approval and Planned Unit Developments. The Zoning Board of Appeals may grant dimensional or other site plan related variances, such as, but not limited to, lot dimensions, setbacks, building height, and lot coverage for special approval uses. The Zoning Board of Appeals does not have the power to reverse or modify the Planning Commission's decision to approve or deny a special use permit, nor grant variances to any conditions placed on special use approval. The Zoning Board of Appeals does not have the authority to grant variances to any regulations or any requirement placed upon a project approved as a Planned Unit Development or conditional rezoning. However, the Zoning Board of Appeals has the authority to decide appeal requests by individual lot or unit owners for variances from other sections of the Zoning Ordinance following final approval of a Planned Unit Development, provided such variances do not affect the terms or conditions of the original approval.¶~~

~~G. Use Variances.~~

- 1. Where literal enforcement of the provisions of the Zoning Ordinance would involve practical difficulties within the meaning of this Article, the Zoning Board of Appeals has the power to authorize such variation of the provisions of this Article with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Article and so that public safety and welfare are secured, and substantial justice is done.
- 2. Use variances must not be granted by the Zoning Board of Appeals unless it can be determined that all of the following facts and conditions exist:
  - a. The building or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the current Zoning District.

- b. The need for a variance is due to unique circumstances or physical conditions of the property.
- c. The proposed use will not alter the essential character of the neighborhood.
- d. The need for the variance is not the result of actions of the property owner or previous property owners.

## **SECTION 17.05 RULES AND PROCEDURES FOR VARIANCES**

### **A. General.**

- 1. An application for a variance must be filed by the record owner of the lot in question, or by an agent authorized in writing to act on the record owner's behalf, with the Zoning Administrator.
- 2. The application must be accompanied by a site plan ~~drawn to the scale of a maximum of one inch equals twenty feet (1" = 20') and a minimum of one inch equals fifty feet (1" = 50')~~ must be placed on a standard sheet, and must contain the following information unless otherwise waived by the Zoning Administrator:
  - a. Dimensional elements for which a variance is requested.
  - b. Dimensional relationships of the subject lot to the structures located on all adjacent properties.
- 3. The application must be accompanied by an affidavit executed by the applicant explaining:
  - a. Why compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or how conformity with such restrictions would be unnecessarily burdensome.
  - b. How a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district.
  - c. Could a lesser relaxation than that applied for give substantial

relief to the owner of the property involved and be more consistent with justice to other property owners.

- d. How relief can be granted in such fashion that the spirit of the Zoning Ordinance will be observed, and public safety and welfare secured.
4. After a public hearing and upon findings of fact based upon the applicable standards set forth in this Article, the Zoning Board of Appeals may approve the variance(s) as requested, approve variance(s) that better comply with the Ordinance than that requested, or deny the request.
  5. The Zoning Board of Appeals may impose conditions with an affirmative decision. The conditions may include those necessary to promote the public health, safety, and welfare, ensure compatibility with surrounding land uses, and protect and preserve natural features. Any conditions imposed by the Zoning Board of Appeals must be related to a valid exercise of the police power and purposes which are affected by the proposed use or activity.
  6. A variance ~~that is legally utilized and maintained~~ runs with the property and any subsequent owners may legally continue the variance under its original or amended terms.
  7. An application for a variance that has been denied wholly or in part by the Zoning Board of Appeals must not be resubmitted for a period of twelve (12) months from the date of denial, except on grounds of new evidence not previously discovered at the time the variance was denied or changed conditions found by the Zoning Board of Appeals to be valid.
- B. Decision of the Zoning Board of Appeals.
1. The Zoning Board of Appeals may deem it appropriate in any given case to provide an opportunity for anyone presenting testimony or evidence to submit proposed findings of fact and conclusions.
  2. At the conclusion of the hearing, the Zoning Board of Appeals may make its decision at that meeting, or it may adjourn the hearing to a

new date for the purpose of reviewing the testimony and evidence, and reviewing proposed findings and conclusions submitted by hearing participants, in preparation for making its decision. The Zoning Board of Appeals may also request the Zoning Administrator to prepare findings and conclusions.

3. If the Zoning Board of Appeals determines to grant variance relief, it must be the minimum relief required to allow reasonable use of the property, while maintaining the essential character of the area. Such relief may be in the form of one (1) or more non-use variances and/or in the form of a use variance. The motion may include conditions that are authorized by law.

### **SECTION 17.06 ZONING BOARD OF APPEALS APPROVAL**

The Board of Appeals may require the applicant to submit all necessary surveys, plans, or other information necessary for the Board of Appeals to investigate thoroughly the matter before it. The Board of Appeals may impose such conditions or limitations in granting a variance as it may deem necessary to comply with the spirit and purposes of this Article.

### **SECTION 17.07 APPROVAL PERIODS**

- A. No order of the Zoning Board of Appeals permitting the erection or alteration of a building is valid for a period longer than twelve (12) months, unless a building permit for such erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
- B. No order of the Board of Appeals permitting a use of a building or premises is valid for a period longer than twelve (12) months, unless such use is established within such period; provided, however, that such order must continue in force and effect if a building permit for said erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with such permit.

- C. In all cases where site plan approval is required in accordance with Article 14, any variance is valid for a period of two (2) years from the date of final site plan approval subject to the requirements set forth in Section 17.07, subsection A and B.

# Article 16

## NONCONFORMING LOTS, USES, AND STRUCTURES

### Section 16.01 PURPOSE AND INTENT

- A. It is the purpose of this Article to provide regulations governing lots, buildings, structures, and uses which were lawful prior to the enactment of this Ordinance, or amendments thereto, but which are regulated under the provisions of this Ordinance.
- B. It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures, and uses of land and structures that were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Article that nonconformities must not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.
- C. The standards of this Article are intended to accomplish the following:
  - 1. Eliminate nonconforming uses which are incompatible with permitted uses.
  - 2. Permit legal nonconforming buildings, structures, or uses to remain until they are discontinued, **destroyed, damaged to the extent where repair is not permitted**, or removed.
  - 3. Encourage investment in the City by bringing nonconforming structures into compliance with this Ordinance.
  - 4. Encourage upgrading of site elements such as site landscaping, parking, paving, signage, access, pedestrian circulation, or other features of a site to comply with current Ordinance standards.

5. Encourage a combination of contiguous nonconforming lots of record to create lots that conform to current standards and are compatible with other lots in the appropriate zoning district.
- D. Nothing in this Article must be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ~~Ordinance~~ Article provided progress has been diligently pursued and substantial construction has occurred.
- E. The authorization of nonconformities that were legally established prior to the enactment or amendment of this Ordinance to continue does not apply to buildings, structures, or uses that were not legally established prior to the enactment or amendment of this Ordinance. Those nonconforming uses or nonconforming structures that have not been legally established are declared illegal and must be discontinued ~~immediately upon at~~ the effective date of this Ordinance.

## **Section 16.02 GENERAL REQUIREMENTS: USES AND STRUCTURES**

- A. Nonconformities that substantially and adversely affect the orderly development and market value of other property in the district must not be permitted to continue ~~without restriction~~.
- B. If a nonconforming structure or a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repair and maintenance and is declared to be unsafe by the City and unlawful by reason of physical condition, it shall not be restored, repaired, or rebuilt except in conformity with the regulations of the applicable zoning district.
- C. The City Council may acquire by purchase or condemnation private property to remove nonconforming structures or uses. The elimination of such nonconformity shall be declared to be for public purposes and public use. The acquired property shall not be used for public housing. The City Council may institute and prosecute proceedings for the condemnation of nonconformities under the power of eminent domain in accordance with the provisions of the city charter or in accordance with Michigan Act No. 149 of the Public Act of 1911, as amended, or any other applicable statutes.



- D. If a building permit has been obtained and work has commenced and carried on continuously prior to the adoption of this Ordinance, then the adoption of this Ordinance may not limit the construction of the building.
- E. When a building or portion thereof is moved from one district to another, or to another location within the same zoning district, it must be made to conform to all the regulations of said district.
- F. No nonconformity shall be permitted to continue if it was unlawful at the time it was established.

### **Section 16.03 REQUIREMENTS FOR NONCONFORMING USES**

- A. A nonconforming use may be continued and maintained provided there is no increase or enlargement of the area occupied by or devoted to such use. A nonconforming use shall not be added to or enlarged unless said use is made to conform to all regulations of the zoning district.
- B. There may be a change of tenancy, ownership, or management of an existing nonconforming use provided there is no change in the nature of the nonconforming use.
- C. Once a nonconforming use has stopped and the buildings and/or structures that houses the nonconforming use remain~~remains~~ vacant for 180 days, it shall constitute a rebuttable presumption that the use has been abandoned, and any subsequent use of the property shall be conforming.

### **Section 16.04 REQUIREMENTS FOR NONCONFORMING STRUCTURES**

- A. A nonconforming building shall be maintained. Maintenance shall include necessary repairs and incidental alterations. Alterations shall not aggravate the nonconforming characteristic.
- B. A building may be added to or enlarged if such addition conforms to the regulations of the applicable zoning district.

- C. If a nonconforming building is damaged or partially destroyed by less than 50 percent of its market valuation (exclusive of foundations) as determined by a licensed assessor or appraiser, then the building may be restored, and its previous occupancy or use continued. If a nonconforming building is damaged or partially destroyed by 50 percent or more than 50 percent of its market valuation (exclusive of foundations), then any restoration or new construction must comply with all current building and zoning codes.

### **Section 16.05 REQUIREMENTS FOR NONCONFORMING LOTS**

- a. Previously lawful lots of record that could no longer be created under this Ordinance or an amendment to this Ordinance, also referred to as legally nonconforming lots, may not be divided, sold, or modified in a manner that increases any nonconformity, except as allowed in this Section.
- b. A lot described above, may continue, subject to the standards outlined below:
1. Legally nonconforming lots may be used for a permitted or special land use for the zoning district in which it is located, even if the lot area, lot width, and frontage standards are not met.
  2. Two (2) or more lots of record on the effective date of this Ordinance or an amendment to this Ordinance with continuous frontage that are under single ownership or control are considered a single lot for the purposes of this Ordinance if any individual lot or lots do not meet the standards of this Ordinance, including, but not limited to, lot area, lot width, frontage, setbacks, and coverages.

# Article 8

## SPECIFIC USE PROVISIONS

### Section 8.01 HOME-BASED BUSINESSES

All home-based businesses are subject to the following requirements, except to the extent preempted by state law.

- A. A home-based business must be clearly incidental and secondary to the primary residential use and conducted by a resident of the property.
- B. A home-based business must not change the character or appearance of the structure or the premises or have any other visible evidence of the conduct of a home-based business. There must be no external or internal alterations that are not customary in residential areas or structures.
- C. A home-based business must not create a nuisance or endanger the health, safety, welfare, or enjoyment of any other person in the area, by reason of noise, vibrations, glare, fumes, odor, electrical interferences, unsanitary or unsightly conditions, fire hazards, or the like that are involved in or resulting from such home-based business.
- D. A home-based business must not generate sewage or water use in excess of what is normally generated from a single-family dwelling in a residential area.
- E. A home-based business must be conducted within the dwelling unit or within an accessory building.
- F. **Home-based businesses** do not require a permit but are subject to the following additional requirements.
  - 1. There may be up to one (1) on-site employee other than members of the immediate family living on the property.
  - 2. No more than one (1) parking space for an employee may be provided for the home-based business. The parking space must be on-site and meet all applicable parking regulations of this Ordinance and in the City Code.

3. The exterior storage of materials, equipment, or refuse associated with the home-based business is prohibited.
4. One sign, consistent with Article 11, Signs, may be permitted.
5. Vehicles associated with home-based businesses are subject to parking regulations in this Ordinance and in the City Code.

## **Section 8.02 ~~SINGLE FAMILY HOUSES AND DUPLEXES~~ IN SINGLE-FAMILY RESIDENTIAL DISTRICTS**

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

- A. The building must comply with all pertinent building and fire codes for single-family dwellings including but not limited to the Michigan Residential Code.
- B. The building must be firmly and permanently attached to a solid foundation or basement not less in area than the perimeter area of the dwelling. The foundation and/or basement must be constructed in accordance with the Michigan Residential Code.
- C. The building must not have any exposed wheels, towing mechanism, or undercarriage.
- D. The building must be connected to a public sewer and water supply.

## **Section 8.03 ADULT-ORIENTED USES**

- A. ***Intent and Purpose.*** In the development and execution of this Article, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Specific regulations of these uses are necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this

section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one (1) area, as in not more than two (2) such uses within two thousand (2,000) feet of each other which would create adverse effects, nor may such use be located within a distance of two thousand (2,000) feet from any school, place of assembly, or public or institutional buildings or facilities. The uses to which these controls refer are as follows: Adult book or video stores, adult entertainment centers, and adult mini entertainment centers.

B. ***Definitions of Adult Business Uses.*** For the purposes of this Section, “adult business uses” are defined as and include the following:

1. Sexually oriented businesses, defined as and including the following:
  - a. Adult arcade, defined as a place to which the public is permitted or invited to view motion pictures, video or laser disc pictures, or other products of image-producing devices where the images displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”
  - b. Adult book store, adult novelty store, or adult video store, defined as a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration reading materials, photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” or instruments, devices or paraphernalia which are designed for use in connection with “specified sexual activities.”
  - c. Adult cabaret, defined as a night club, bar, restaurant, or similar commercial establishment which, as one of its principal purposes features: persons who appear in a state of nudity or semi-nudity; live performances which are characterized by the exposure of “specified anatomical areas or by “specified sexual activities”; or, films, motion pictures, videos cassettes, slides or other photographic reproductions which are characterized by

the depiction or description of “specified sexual activities” or “specified anatomical areas.”

- d. Adult motion picture theater, defined as a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, videos, internet streams, or similar photographic reproductions are regularly and primarily shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
  - e. Adult theater, defined as a theater, concert hall, auditorium, or similar commercial establishment that regularly and primarily features persons who appear in a state of nudity or semi-nudity, or live performances that are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
  - f. Sexual encounter center, defined as a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration: (a) physical contact between two (2) or more persons when one (1) or more of the persons is in a state of nudity.
2. Adult motels, defined as an establishment for temporary lodging where each individual room has a main entry door on the exterior of the building and where rooms are advertised for rent for less than a twelve (12) hour period or where rooms are rented at hourly rates, or both.
- C. ***Other Definitions.*** In addition to the definitions set forth in Section 8.03.B, the following additional definitions are used in the regulation of adult businesses.
- 1. Nudity or a state of nudity means knowingly or intentionally displaying human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or a showing of the covered male genitals in a discernibly turgid state. Public nudity does not include a

woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to feeding.

2. Principal/Primary Purpose or Primarily means the sale or display of regulated material that comprises thirty-five percent (35%) or more of sales volume or occupies thirty-five percent (35%) or more of the floor area or visible inventory within the establishment.
  3. Semi-nude or semi-nude condition means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition includes the entire lower portion of the human female breast but does not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other apparel, provided the areola is not exposed in whole or in part.
  4. Specified anatomical areas means the human male genitals in a discernibly turgid state, even if completely or opaquely covered; or less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.
  5. Specified sexual activities means any of the following: the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; sex acts, actual, or simulated, including intercourse, oral copulation, masturbation or sodomy; or excretory functions as part of or in connection with any of the activities previously mentioned in this definition.
- D. ***Locational Requirements.*** In addition to compliance with the other provisions of this Section, the following separation and distancing requirements apply to adult business uses:
1. No adult business use may be located within one thousand (1,000) feet from the property line of another adult business use. For purposes of this subsection, the distance between any two (2) adult business uses must be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which the business is located.

2. No adult business use may be located within five hundred (500) feet from the property line of any residential zoning district, lot or parcel in residential use, school property, church or other place of worship, public park, child care facility, nursery school, preschool or other use which is primarily oriented to youth (less than 18 years of age) activities. For the purpose of this subsection, measurement must be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult business use is conducted, to the nearest property line of any lot or parcel in residential use, school property, church or place of worship, public park, child care facility, nursery school, preschool or other use which is primarily oriented to youth (less than 18 years of age) activities.
  3. No adult business use may be located in any principal or accessory structure already containing an adult business use.
- E. **Existing Structures.** Existing structures and/or uses that are in violation of this Section are subject to the regulations set forth in Article 16, Nonconformities.
- F. **Parking.** All off-street parking areas for any adult business use must comply with Section 14, Parking and Access. Additionally, any adult business use must be illuminated during all hours of operation, and until one (1) hour after the business close.
- G. **Other Requirements.**
1. No person operating an adult business use may permit any person under the age of 18 years of age to be on the premises.
  2. Entrances to a proposed adult business use must be posted on both the exterior and interior walls, in a location clearly visible to those entering and exiting the business, and using lettering no less than two (2) inches in height that: a) "Persons under the age of 18 are not permitted to enter the premises." Adult business uses are permitted in the Woodward zoning district only and are subject to in all respects the standards and use provisions applicable to the district in which it is located or proposed to be located.



3. Adult business uses must comply with all other laws and ordinances applicable to the particular type of use, including without limitation, certification and licensing laws.

## Section 8.04 SENIOR ASSISTED AND INDEPENDENT LIVING

### A. Types of Dwelling and Density.

1. **Senior independent living.** Dwellings may be provided as single-family detached, two-family, or multiple-family units. The minimum site area requirements for purposes of calculating density are as follows:

<b>Table 8.06.A - Independent Living for the elderly minimum site area requirements</b>	
<i>Dwelling unit size</i>	<i>Site Area/ Unit (square feet)</i>
Efficiency / one bedroom	2,000
Two bedroom	2,500
Each additional bedroom	500

2. **Senior assisted living:** Where such facilities contain individual dwelling units with kitchen facilities, the density requirements set forth in Section 8.04.A apply. Where facilities do not contain kitchen facilities within individual dwelling units, the site area per bed must be four hundred (400) square feet.

### B. **Minimum Site Area.** The minimum site area must be one (1) acre.

### C. **Minimum Floor Area.** Each dwelling unit must comply with the following minimum floor area requirements, excluding basements.

<b>Table 8.06.B - Senior Living Minimum Floor Area</b>		
<i>Dwelling Unit Size</i>	<i>Assisted Living Unit</i>	<i>Independent Living</i>
Efficiency	250	500
One bedroom	400	650
Two bedroom	650	800
Each additional bedroom	150	150

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

## **Section 8.05 HOSPITALS, NURSING HOMES, AND CONVALESCENT CENTERS**

- A. The minimum lot area must be no less than one (1) acre.
- B. The lot location must be such that at least one (1) property line abuts a collector street, secondary thoroughfare, or primary thoroughfare. More than one (1) point of vehicle ingress and egress must be provided directly from said thoroughfare.
- C. Ambulance entrances must be screened from adjacent residential areas in accordance with the standards set forth in Article 12, Landscaping and Screening.

## **Section 8.06 AUTOMOTIVE USES**

- A. Automobile Repair.
  1. **Outdoor storage.** Dismantled, wrecked, or inoperable vehicles waiting for repair must not be stored outdoors for a period exceeding five (5) days. Outdoor storage must be enclosed by a masonry wall when adjacent to residential or an opaque fence when adjacent to non-residential uses or a minimum of six (6) feet in height, eight (8)

feet in height maximum and/or must utilize landscape screening meeting the standards set forth in Article 12, Landscaping and Screening.

2. **Disposal containers.** Suitable containers must be provided and used for disposal of used parts, and such containers must be screened from view.
  3. **Enclosed buildings.** All repair and maintenance activities, including hydraulic hoists, lubrication pits, and similar activities, must be performed entirely within an enclosed building.
  4. **Retail sales limitations.** Retail sales must be limited to those items necessary to carry out the vehicle repair occurring on the subject site.
- B. New, used, and vintage automobile sales.
1. **Setbacks.** No vehicle may be parked or displayed within five (5) feet of any street right-of-way.
  2. **Noise.** Loudspeakers broadcasting voice or music outside of a building are not permitted within five hundred (500) feet of any residential zoned or used property.
  3. All repair and maintenance activities must conform to the standards set forth in Section 8.08.A.
- C. Automobile fueling/multi-use station.
1. **Setbacks.** The following minimum setbacks apply to canopies and pump facilities constructed in conjunction with fueling/multi-use.

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

2. Fueling areas must be arranged so that motor vehicles do not park on or extend over abutting landscaped areas, sidewalks, streets, buildings, or adjacent properties while being served.
  3. Canopy structures must be designed and constructed in a manner that is architecturally compatible with the principal building.
  4. Required fire protection devices under the canopy must be architecturally screened so that the tanks are not directly visible from the street. The screens must be compatible with the design and color of the canopy.
  5. Canopy lighting must be recessed so that the light source is not visible from off-site.
  6. Vehicular fueling/multi-use stations must be designed in a manner that promotes pedestrian and vehicular safety. The parking and circulation system within each development must accommodate the safe movement of vehicles, bicycles, pedestrians, and refueling activities throughout the proposed development and to and from surrounding areas in a safe and convenient manner.
  7. All repair and maintenance activities must conform to the standards set forth in Section 8.08.A. Dismantled, wrecked, or immobile vehicles are not permitted to be stored on site.
  8. If an accessory vehicle wash is proposed, it must comply with the standards set forth in Section 8.08.D.
- D. Vehicle Wash.
1. All washing activities must be carried out within a building. Vacuuming activities must be located at least fifty (50) feet from adjacent residentially zoned or used property.
  2. Automatic car wash facilities must have a mechanical dryer operation at the end of the wash cycle.
  3. All automatic car wash facilities must provide a demonstrated means at the exit ramp for each wash bay to prevent pooling or freezing of water.

## **Section 8.09 FUNERAL HOMES AND MORTUARIES**

A funeral home or mortuary must be a licensed facility by the State of Michigan. A funeral home may contain one (1) dwelling unit for the owner and/or caretaker.



## **Section 8.10 CONTRACTOR'S YARD**

### **Add regulations and definitions**

#### **Fire hazards for mulch**

## **Section 8.10 GARDEN CENTERS AND NURSERIES**

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

## **Section 8.11 DRIVE-THROUGH AND DRIVE-IN FACILITIES**

- A. All drive-through and drive-in facilities for permitted and special land uses including, but not limited to restaurants, banks, etc. are restricted to the side or rear elevations of all structures that provide drive-through services.
- B. A setback of at least sixty (60) feet must be maintained from an existing or proposed right-of-way.
- C. Ingress and egress points must be located at least sixty (60) feet from the intersection of any two (2) streets measured from the road right-of-way lines.
- D. ~~A five (5) foot high, completely obscuring wall, fence, berm, landscaping, or combination thereof compatible with the surrounding area must be provided where abutting residential zoning districts or uses. ¶~~

## **Section 8.12 OPEN AIR BUSINESSES**

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

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

## **Section 8.13 SELF-STORAGE FACILITIES**

- A. All storage must be contained within a building.
- B. Other than the rental of storage units, no commercial, wholesale, retail, industrial, or business use may be permitted on or operated from the premises.
- C. The storage of any toxic, explosive, corrosive, or hazardous material is prohibited.
- D. On-site management and/or controlled access must be provided during hours of operation.
- E. All storage units must be served by paved access drives between buildings. Access drives must provide for continuous traffic circulation around all storage buildings. The minimum width of access drives serving storage units must be twenty-four (24) feet when storage units open onto (1) side of the access drive and thirty-six (36) feet when storage units open onto both sides of the access drive.
- F. All self-storage facilities must comply with the design standards of the applicable zoning district as detailed in Article 6, Site Design Based Districts.

## **Section 8.14 ADULT FOSTER CARE FACILITIES**

Adult foster care facilities are subject to the following requirements:

- A. Adult foster care small group homes serving between seven (7) and twelve (12) persons.
  1. A site plan, prepared in accordance with Article 15, Site Plan Review, must be submitted.
  2. The subject parcel must meet the minimum lot area requirements for the zoning district in which it is located, provided there is a minimum site area of two thousand (2,000) sq. ft. per adult, excluding employees and/or caregivers.
  3. The property is maintained in a manner that ~~does is consistent with the character of the neighborhood~~ **must not change the character or appearance of the structure or the premises . There must be no**

external or internal alterations that are not customary in residential areas or structures.

~~4.~~

~~4. One (1) off road parking space per employee and/or caregiver must be provided.~~

5. Appropriate licenses with the State of Michigan must be maintained.

B.

C. ~~Adult foster care large group homes serving between thirteen (13) and twenty (20) persons.~~

1. A separate drop-off and pickup area is required adjacent to the main building entrance, ~~located off of a public road and the parking access lane, and must be~~ of sufficient size so as to not create congestion on the site or within a public roadway.
2. A site plan, prepared in accordance with Article 15, Site Plan Review, must be submitted.
3. The subject parcel must meet the minimum lot area requirements for the zoning district in which it is located, provided there is a minimum site area of two thousand (2,000) sq. ft. per adult, excluding employees and/or caregivers.
4. The property is maintained in a manner that is consistent with the character of the neighborhood.
5. One (1) off-road parking space per employee and/or caregiver and one (1) visitor be provided.
6. Appropriate licenses with the State of Michigan must be maintained.

D. Adult foster care congregate facilities serving more than twenty (20) persons.

1. A separate drop-off and pickup area is required adjacent to the main building entrance, located off of a public road and the parking access lane, and must be of sufficient size so as to not create congestion on the site or within a public roadway.



2. A site plan, prepared in accordance with Article 15, Site Plan Review must be submitted.
3. The subject parcel must meet the minimum lot area requirements for the zoning in which it is located, provided there is a minimum site area of two thousand (2,000) sq. ft. per adult, excluding employees and/or caregivers.
4. The property is maintained in a manner that is consistent with the character of the neighborhood.
5. One (1) off-road parking space per employee and/or caregiver and one (1) visitor must be provided.
6. Appropriate licenses with the State of Michigan must be maintained.
7. The building must meet all design standards for the underlying zoning district.
8. Such facilities may include multi-purpose recreational rooms, kitchens, and meeting rooms. Such facilities may also include medical examination rooms and limited space for ancillary services for the residents of the facility, such as barber and beauty facilities.

## **Section 8.15 CHILD CARE FACILITIES**

### **A. General:**

1. The property must be maintained in a manner that is consistent with the area.
2. A state licensed family day care home of six (6) or fewer children is considered a residential use of property.
3. All outdoor play areas must be enclosed by a fence that is designed to discourage climbing and is at least four (4) feet in height but no higher than six (6) feet.

### **B. Child day-care centers are subject to the following standards:**

1. A separate drop-off and pick-up area must be provided adjacent to the main building entrance, located off a public street and the parking

access lane and must be of sufficient size so as to not create congestion on the site or within a public roadway.

2. There must be an on-site outdoor play area of at least fifteen hundred (1,500) square feet or seventy-five (75) square feet for each child present on the premises at any one time. Said play area must not be located within the front yard. This requirement may be waived by the Planning Commission if a public play area is available within three hundred (300) feet of the subject parcel.
3. For each child present at any one time, a center must have a minimum of fifty (50) square feet of indoor activity space for use by, and accessible to, the child, exclusive of all of the following: hallways, storage areas, closets, kitchens, and reception and office areas.
4. Appropriate licenses through the Michigan Department of Licensing and Regulatory Affairs (LARA) are required.

C. Child group day home homes are subject to the following standards:

1. The subject parcel must meet the minimum lot area requirements for the zoning district in which it is located.
2. There must be an on-site outdoor play area of at least five hundred (500) square feet. Said play area must not be located within the front yard. This requirement may be waived by the Planning Commission if a public play area is available within three hundred (300) feet of the subject parcel.
3. The hours of operation must not exceed sixteen (16) hours within a twenty-four (24) hour period, with a limitation on activity between the hours of 10:00 p.m. and 6:00 a.m.
4. One (1) off-street parking space per employee not a member of the group day care home family must be provided.

## **Section 8.16 PLACES OF ASSEMBLY**

Places of assembly include theaters, convention centers, auditoriums, banquet halls, sports arenas, stadiums, places of worship, and other similar facilities where more than twenty (20) people meet or are assembled.

- A. All activities must primarily take place in a fully enclosed building. Areas designated for outdoor social, recreational, and/or worship activities must be designated on the site plan as set forth in Article 15, Site Plan Review.
- B. There must be no outside loudspeakers or amplified sound outside of a completely enclosed building, except for church bells, calls to prayer, or other similar purposes.
- C. **Bench seating.** In stadiums, sports arenas, places of worship, and other places of assembly in which those in attendance occupy benches, pews, or other similar seating facilities, each twenty-four (24) inches of such seating is counted as one (1) seat. In cases where a place of assembly has both fixed seats and an open assembly area, requirements must be computed separately for each type and added together.
- D. Facilities incidental to religious institutions, when located in residential districts, must be used for worship or religious education purposes, in a manner that is consistent with residential zoning and compatible with adjacent residential property. No buildings may be used, leased, or rented for commercial purposes.
- E. Specific standards
  - 1. The minimum lot width must be one hundred and fifty (150) feet.
  - 2. The minimum site size must be three (3) acres.
  - 3. All front, side, and rear yard space must be a minimum of fifty (50) feet each from adjoining lot lines.

## **Section 8.17 INDOOR RECREATION FACILITIES**

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

- A. The principal and accessory buildings and structures must not be located within one hundred (100) feet of any residential district or permitted use.

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

## **Section 8.18 OUTDOOR SERVICE AREAS**

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

- A. **Permit.** An outdoor service area may be permitted only upon the approval of an outdoor service permit by the Zoning Administrator. All outdoor service area permits will expire on December 31st of the current year unless another time frame is specified on the permit or by the requirements of this Section. Outdoor service area permits are required to be renewed annually, subject to administrative review.

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

1. **Sketch Plan:** A sketch plan (top-view drawing of the outdoor service area) with:
  - a. The location of an outdoor service area in relation to the business it will serve; the entrance to the business; adjacent properties (include addresses) and their building entrances; and existing landscaping, road, trees, catch basins, fire hydrants, and other utilities.
  - b. The dimensions of the outdoor service area footprint.
  - c. The location of the access ramps, platforms, and enclosures.
  - d. Details of any hardware such as fasteners to be used in the construction of ramps and platforms.
  - e. The location and dimensions of all street furniture and furnishings, including, but not limited to tables, chairs, trash receptacles, benches, and sun shading.

- f. The location of outdoor lighting fixtures, if proposed, as well as the location of wiring and a description of how the wiring will be secured to prevent tripping or electrical hazards.
  - g. Location of on-site driveways and adjacent alleys.
  - h. If using on-site parking spaces, the setback dimensions of the enclosure from traffic lanes, vehicle circulation aisles, alleys, and adjacent parking spaces not used in the outdoor service area.
- 2. Photographs, drawings, or manufacturer’s brochures fully describing the appearance of all proposed tables, chairs, umbrellas, awnings, canopies, lighting, or other furnishings/fixtures related to the outdoor service area, including but not limited to portable heaters, and other fixtures used during colder weather.
- 3. A signed Hold Harmless Agreement as provided by the City.
- 4. For an outdoor service area proposed in a public right-of-way or on other public property, a Certificate of Liability Insurance, in an amount acceptable to the City, and naming the City as an additionally insured.
- 5. For an outdoor service area in which alcohol is served, a liquor liability policy or certificate of insurance naming the City as an additional insured.
- 6. If outdoor lighting is proposed, the Zoning Administrator may require a photometric plan.
- 7. If temporary shelters are proposed, a separate sketch plan must be submitted with the following:
  - a. The location and dimensions of all temporary shelters within the permitted outdoor service area.
  - b. A dimensioned interior seating layout.
  - c. The materials of which the shelters are fabricated.

- d. The type, size and location of portable heating elements, fuel tanks, and decorative lighting.
- e. The type and location of lighting to be used.
- f. The power source for portable heating elements and lighting, with description of how the wiring will be secured to prevent tripping or electrical hazards.

B. **Location.** Outdoor service areas are allowed in on-site parking spaces or lots, sidewalks, and similar areas, with the following limitations:

1. When located in the side or rear yard of a site, an outdoor service area must be a minimum 50 feet from the property line of any single-family or multiple-family zoning district.
2. Outdoor service areas must be setback at least two (2) feet from adjacent vehicle traffic lanes, vehicle circulation aisles, or alleys.
3. Outdoor service areas must be at least three (3) feet from adjacent parking spaces not used as an outdoor service area.
4. Outdoor services areas only may be allowed in on-site parking spaces or parking lots when parking provided without the spaces to be used for the outdoor service area still meets the minimum parking requirements for the principal building on-site as well as for any existing parking agreements.

C. **Time of Operation.** Permitted outdoor service areas may be operated all year. However, outdoor service areas in the public right-of-way are limited to April 1<sup>st</sup> through October 31<sup>st</sup>.

D. **Temporary Shelters.** Outdoor service area permittees may be allowed to erect temporary shelters, such as tents, igloos, bubbles, garden sheds, or similar types when in compliance with the following regulations.

1. Non-electric heating elements are prohibited inside any temporary shelters.

2. The location of all non-electric portable heating elements must be a minimum of ten (10) feet from temporary shelters.
- E. **Access.** All outdoor service areas, whether located on a sidewalk or accessed from a sidewalk, must allow a minimum of five (5) feet of unobstructed pedestrian access along the sidewalk, as well as ingress/egress to the principal use for which the outdoor service area is accessory. Outdoor service areas must comply with the Michigan Barrier Free Code.
- F. **Ramps and Platforms.** Ramps and platforms for outdoor service areas must comply with the following regulations:
1. Bolting of ramps and platforms into the road or penetrating the surface of the road/parking space is prohibited. Ramps and platforms may be bolted to the existing curb, but curbs must be restored to the satisfaction of the City of Berkley Department of Public Works.
  2. Ramps and platforms must be designed and constructed to maintain unobstructed drainage flow along the gutter.
  3. Platform and ramp substructures must be made of quality materials: i.e., wood, treated wood or composite materials. Platform and ramp surfaces must be of a non-slip, composite material.
- G. **Enclosures.** Enclosures are required for outdoor service areas in the following circumstances: when alcohol is served, when outdoor service areas on the sidewalk are within one foot of the back of the curb, and when using parking spaces. Enclosures must comply with the following regulations:
1. The enclosures must be clearly marked, using railings, planters, fencing, or similar materials.
  2. Enclosures must not block the view of traffic, including pedestrian traffic, or block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.
  3. The minimum height of an enclosure is thirty-six (36) inches and the maximum height is forty-two (42) inches.

4. For outdoor service areas serving alcohol, the enclosure must define and secure the outdoor service area for alcohol consumption.
  5. For sidewalk outdoor service areas within one foot of the back of the curb, the enclosure must be located along the curb separating the outdoor service area from the roadway.
  6. For outdoor service areas using parking spaces, the enclosure must be a continuous, rigid physical separation with a height of forty-two (42) inches on all sides of the outdoor service area adjacent to vehicle traffic lanes, vehicle circulation aisles, alleys, and parking spaces not used as an outdoor service area.
- H. ***Alcohol service.*** Alcoholic beverages may be served in an outdoor service area, as licensed by the State, for consumption by customers of the licensee. ***If the outdoor service district is located in a Social District approved by the City of Berkley, alcoholic beverages may be consumed by customers of the licensee beyond the outdoor service area within the Social District.***
- I. ***Street furniture and furnishings.*** Street furniture and furnishings are allowed in outdoor service areas when the following regulations are met:
1. Outdoor service area street furniture/fixtures must not block the view of traffic, including pedestrian traffic, or block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.
  2. All outdoor service area street furniture/fixtures must be of substantial weight so that at no time could the outdoor service area furniture present an obstruction or risk to public safety, especially during inclement weather. All umbrellas must be closed or removed each evening.
  3. Hanging or overhead objects, including umbrellas, must have a minimum clearance of at least seven (7) feet.
  4. All outdoor service area furniture/fixtures must be maintained in a state of good repair. Any outdoor service area furniture/fixtures



having broken, peeling, or rusting features or showing other signs of disrepair must be promptly removed and replaced.

5. All sun shading must be constructed of fire-retardant materials.
- J. **Lighting.** Temporary, decorative outdoor lighting, such as string lights or electric candles, may be permitted in outdoor service areas when such lighting is limited to the hours of operation of the outdoor service area, does not create glare that negatively impacts public safety or adjacent properties, and is secured in a manner to prevent trip or electrical hazard. All other lighting must meet the requirements in Article 13, Exterior Lighting Standards.
- K. **Heating elements.** Electric and non-electric heating elements may be permitted in outdoor service areas. Non-electric heating elements must be placed a minimum of ten (10) feet from all permanent or temporary structures. Electric heating elements must be secured in a manner to prevent tripping or electrical hazards.
- L. **Maintenance.** The maintenance of an outdoor service area is the responsibility of the establishment. Maintenance includes, but is not limited to surface treatment and cleaning, litter control, sweeping, and snow and ice removal. Any sidewalk or public property permitted to be used as an outdoor service area must be always kept neat and clean and free from any substance that may cause pedestrian injury or damage to the sidewalk or public property.

## **Section 8.19 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 one

thousand (1,000) feet of a pre-existing public or private school providing education in kindergarten or any of grades one (1) through twelve (12).

- D. Notwithstanding any other provision in the zoning ordinance, a marihuana business must operate within a fully enclosed building.
- E. Pursuant to Article XV of Chapter 30 of the Berkley City Code, all marihuana business license approvals are subject to the following:
  - 1. Public notice requirements as outlined in Section 30-806; and
  - 2. Site plan approval from the planning commission must be obtained prior to receiving license approval from the city council. Failure to do so will result in license denial as outlined in Section 30-813.

## **Section 8.20     RETAIL PET STORES**

A retail pet store located in the City is prohibited from selling, adopting, exchanging, transferring, or offering for sale, adoption, exchange, or transfer dogs, cats, or rabbits. This section does not prohibit a retail pet store from collaborating with and providing space to an animal protection shelter or an animal control shelter to showcase dogs, cats, or rabbits available for adoption on a not-for-profit basis. The retail pet store may not charge or retain an adoption fee or any other fee for providing space to showcase any such dog, cat, or rabbit.

## **Section 8.21     MUNICIPAL FACILITIES**

## **Section 8.22     PUBLIC UTILITY BUILDINGS**

## **Section 8.23     TOBACCO AND VAPE SHOPS**

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

**Session 1 Results:**

<b>Single Family Zoning Districts</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	1
It's a bit worse -	
I'm confused -	2
I'm neutral -	2
It's a bit better -	4
I love it! -	1

- Also, a general reduction in single-family districts would help there as well.
  - R1 lots near more busy areas should be converted most, so that local utility of amenities is more significant, less reliant of use from non-residents.
- 

<b>Two Family and Multiple Family Zoning Districts</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	1
It's a bit worse -	1
I'm confused -	2
I'm neutral -	
It's a bit better -	4
I love it! -	

- We don't have the infrastructure for multiple-family, either in sewer or roads. Address infrastructure needs first.
- What does that mean "Better \_\_\_\_\_ land uses? If it is an existing land use, no change \_\_\_\_\_.
- Allow duplexes on any lot where the original house is torn down - or everywhere. Duplexes bring people in who may not otherwise afford to live here. More kids & population too.
- More land use is needed to allow residents to create multi-generational housing options that allow them to remain in the community they love, while also reducing the "independence" required to live in a single residential dwelling. My preference is to build a dual family residence that would support me and my parents, as we age into our 70, 80, 90, 100... In my opinion, Berkley does not offer the housing types to age in place, in an environment that provides privacy and multi-generational care. Why should 2 family be limited to living in the SE quadrant and on a single street. Especially when a walking community is what attracts and retains seniors to this community.
- Allow a duplex to up anytime a house is torn down. It is preferable to the huge houses going up and allow a higher maximum for duplexes 45%?

## Berkley Zoning Ordinance Rewrite

## Public Engagement Session Results

<b>Woodward, Gateway, and Downtown</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	3
It's a bit worse -	1
I'm confused -	1
I'm neutral -	1
It's a bit better -	4
I love it! -	1

- I don't understand/appreciate the differences between the 3 proposed districts. No issues with the map. Why aren't they all zoned as 1?
  - Too much traffic w/proposed MT rezoning on Coolidge
  - No good way to go from south to north w/o going thru Berkley
  - Crosswalks on Coolidge are unsafe as designed
  - Frustrated with Colombia PUD · DDA is WAY TO BIG · 12 Mile from Tyler to Wakefield is Downtown
  - Small site... needs to be limited to businesses with minimum vehicle parking requirements to avoid congested street parking.
  - Why does parking driveway need to be in the rear? Example of front parking - Neighbor Market - Specialty Appliance
  - Define "Plaza" that then permits 3-story building. If this zoning was in place the proposed 4-story multi-family apartment bldg wouldn't be allowed?
  - Expand to more areas on east side of Coolidge.
  - How restricted are parcels on size + # of spaces that could exist on current site - would want to know
- 

<b>Parking Overlay</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	1
It's a bit worse -	2
I'm confused -	
I'm neutral -	2
It's a bit better -	2
I love it! -	1

- I believe that parking lots need to be reduced. I believe it is very poor land use. I think the City should be focused on mostly reducing lots and replaced with things like housing / amenities. My core belief is that we need to be less car dependent.
- More parking is needed for the next 20 yrs - until there is a generational change in vehicular use.

## Berkley Zoning Ordinance Rewrite

## Public Engagement Session Results

Flex	
Spectrum location	Sticker count
I hate it! -	
It's a bit worse -	
I'm confused -	2
I'm neutral -	1
It's a bit better -	5
I love it! -	2

- I would personally say that floor area should cover a majority of lots to reduce wasteful land usage.
- Small site-parking only available on street in front of people's homes. No on-site parking. 100% lot allowed
- Commercial businesses like Quality Roots need to have adequate parking on parcel or in public lot. Street parking in residential areas impacts home owners.
- Example of parking in rear - Quality Roots
- Parking in rear places noise, exhaust, closer to residential neighbors. Also takes more site sq. ft. for circulation.
- What defines a small site vs medium site? Are business types limited to med/lrg sites based on the quantity of parking they require?

### Session 2 Results:

Accessory Dwelling Units (ADUs)	
Spectrum location	Sticker count

3

- No basement dwellers
- Where are there extra people going to park?
- R10 height with in 35' of rear lot line of 15'
- Love granny flat idea!
- Regulate available parking
- Be good to set an impervious to pervious ratio to deal w/run-off & overwhelming the stromwater

## Berkley Zoning Ordinance Rewrite

## Public Engagement Session Results

I hate it! -	4
It's a bit worse -	0
I'm confused -	0
I'm neutral -	0
It's a bit better -	0
I love it! -	5

<b>ADU location appropriate in SF District</b>	
<b>Type of ADU</b>	<b>Sticker Count</b>
Above an attached garage	6
Attached to a house	5
As a standalone structure	6
Upper level of house	9
Basement level of a house	3
Above a detached garage	7

Question from opening presentation: Can the infrastructure handle the increase in sewage, water and electricity?

<b>Duplexes</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	7

4

- I am generally a fan of MFH and duplexes as they open the community to a greater number of prospective residents. Converting existing SFH to MFH is great. Permeability and long-term maintenance should be considered.
- Duplex housing should not be regulated only to the Southeast corner of the Community. Berkley should be open to providing a variety of housing alternatives in all quadrants of the Community. New duplexes should be allowed on property that meets size requirements (single story-larger lots) multi-story adequate parking for multiple residents and vehicles.
- Along 12 Mile & Woodward, duplexes and multi-family could be added on the backside/alley abutting properties and would be close to transit corridors.

## Berkley Zoning Ordinance Rewrite

It's a bit worse -	1
I'm confused -	2
I'm neutral -	2
It's a bit better -	0
I love it! -	2

## Public Engagement Session Results

<b>Duplex appropriate in SF Districts</b>	
<b>Duplex Image</b>	<b>Sticker Count</b>
A	3
B	2
C	3
D	3
E	8
F	4
None	4

<b>Multiple Family Residences</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	8



## Berkley Zoning Ordinance Rewrite

It's a bit worse -	1
I'm confused -	0
I'm neutral -	1
It's a bit better -	1
I love it! -	4

<b>Multiple Family Appropriate in Corridor Districts</b>	
<b>MF Building Image</b>	<b>Sticker Count</b>
A	5
B	4
C	6
D	0
E	1
F	7
G	6
None	3

- I love concept of lofts on major roads - not on any residential roads
- Harvard Commons to be on Ellwoodside but fine on Greenfield side.
- Strong regulations to ensure Ellwood = stays residential (SFH)
- No expansion of RC Zoning District on Ellwood beyond what is currently zoned Greenfield
- Ellwood needs to stay single family homes
- Concern is vacancy & blight during land assembly w/the proposing zoning on Ellwood - don't like the idea
- Reduce height one-story, offer height incentive for current maximum
- Residential Corridor - Development that front Ellwood + Greenfield only allow @ corners, not mid-block
- I am not a fan of putting MFH at the fringes of town. These should be along Coolidge & 12 Mile to further develop our downtown as a true downtown and not simply two auto-centric commercial strips. Adding MFH along Woodward is also great. Please extend this to 11 Mile. MFH on 12 Mile near Coolidge is a must. Consider expanding onto Rosemont & Kenmore.
- Do not like Harvard Commons. Should not be duplicated.
- Option for multi-family to be single story only to support aging residents wanting to remain in Berkely
- Please attach an affordable housing requirement of 10% with a standard
- Add a defined parking buffer
- Ground floor retail element on Main thoroughfares
- Set an impervious to pervious ratio

## Session 3 Results:

<b>Results from the Berkley Parking Study</b>	
<b>Spectrum location</b>	<b>Sticker count</b>

- The fact that Berkley doesn't have overnight parking allowed on the streets, means that the multiple-family reduction needs to take into account that there is no opportunity for overflow parking.
- Possibly 4 bike parking spaces could equal 1 parking space for bonus in multi-family.
- Multi-buildings within so many feet of a bus line could gain a parking bonus.
- Allow shared parking across the street
- Agree on no overnight parking allowed multi-family mayb closer to 1.5.unit depending on studios vs 2-bedroom vs etc.
- What about allowing overnight parking in municipal parking lots for overflow (overnight guest, etc.)
- For someone without a car, require car space for them in actually subsidizing parking for someone else

## Berkley Zoning Ordinance Rewrite

## Public Engagement Session Results

Plentiful	4
Low Cost	1
Close Proximity	2

<b>Landscape Buffer Between Residential &amp; Parking</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	0
It's a bit worse -	0
I'm confused -	0
I'm neutral -	0
It's a bit better -	7
I love it! -	1

- Should regulate by depth, not width... Depth is the problem on Coolidge
- Landscape buffer/screening for parking lots from the road...create glare that is a hazard
- Add parking striping to Coolidge
- Likes landscaping - visual green
- If the barrier wall abuts a public right-o-way, should be a pedestrian entrance/pathway

<b>Multiple Family Parking Requirements</b>	
1.5 Spaces/dwelling unit	0

## Berkley Zoning Ordinance Rewrite

1.5 Spaces/studio or 1-bedroom + 0.5 spaces for each add'l room	4
1.5 Spaces per studio or 1-bedroom; 2 spaces/dwelling unit for 2+ bedroom units	2

- Studios should only require 1 car parking
- Indoor bike parking or (main street comment from earlier)
- Could allow previous parking spaces to help w/stormwater
- I think the 0.85 recommendation is flawed because Berkley doesn't have on-street overnight parking. So the comparison with other communities like Royal Oak or Birmingham is apples to oranges.
- I have seen that apartments with high rent have more people sharing bedrooms and also need more parking. For example, many 1 bedrooms are being rented by couples with 2-people and 2 cars. So, if developers offer affordable dwelling units, I think they could get parking reduction based on how many affordable units they have.

## Comments from “How to Determine Parking Requirements” Station

- \*Most important whatever rules gets set in place - please "enforce them" do not pick & choose or go back & be wishy washy
- Multi-family seems like should be separate considerations because it involves overnight parking, which Berkley doesn't have.
- Keep the 2am - 6am overnight parking rules for the safety of the homes and businesses
- I suggest trying to have minimum parking requirements as low as possible.
- See strongtowns.org
- For restaurants specify employees per shift or total # of employees
- Please add parking stripes along Coolidge as so many people still drive this as a lane and its unsafe

## Session 4 Results:

SITE PLAN REVIEW	
Spectrum location	Sticker count
I hate it! -	0

8

## Comments from “Site Plan Review” Station

- Proposed access should be preliminary
- Floor plans in preliminary (parking calcus)
- No photometric in prelim
- Location of proposed & existing sewer in septic should be in prelim
- Language should include layout details not as important. FDC location (Email Shiloh)
- Grading & stormwater should be in prelim
- Make sketch plan & pre-app meeting mandatory
- Landscaping requirements & tree replacement requirements needs to be considerate of cost

## Berkley Zoning Ordinance Rewrite

## Public Engagement Session Results

It's a bit worse -	0
I'm confused -	0
I'm neutral -	0
It's a bit better -	1
I love it! -	4

<b>SPECIAL LAND USE</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	0
It's a bit worse -	0
I'm confused -	0
I'm neutral -	0
It's a bit better -	0
I love it! -	5

<b>REZONING</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	0
It's a bit worse -	0
I'm confused -	0
I'm neutral -	0
It's a bit better -	1
I love it! -	4

<b>PLANNED UNIT DEVELOPMENT</b>	
<b>Spectrum location</b>	<b>Sticker count</b>
I hate it! -	0
It's a bit worse -	0

## Berkley Zoning Ordinance Rewrite

I'm confused -	0
I'm neutral -	0
It's a bit better -	1
I love it! -	4

- More opportunities for public input needed or clarified.
- Clearer process drawing / less confusing
- More/additional time for citizen comments after public hearing??
- Neighborhood meeting could ask for a city council member or liason planning member to attend
- Area Zone for Neighborhood meeting distance coulbe be from edges of property and PUD over 1 acre site could be much larger radius @ 1,000 sq. ft.
- Development Agreement brought forward in Preliminary Site Plan. Could be an outline form.
- Add a second public hearing after Final Development Plan before with Planning Commission
- Add in a bonus of parking reduction if incorporates or # of stories
- Add in a bonus for bike parking
- Traffic study for Preliminary Site Plan