

City of Berkeley
Zoning Ordinance Steering Committee

Wednesday, March 6, 2024
6:00 p.m. – 8:30 p.m.

AGENDA

- 1. Check in (5 min)**

- 2. Review of Draft Article (1 hour)**
 - a. Article 2 – Definitions
 - b. Article 9 – General Provisions

- 3. Preview: Full Draft (10 min)**
 - a. Ideas
 - b. Advice

- 4. Check out (5 min)**
 - a. How to present to the public

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: February 22, 2024

RE: March 2024 Zoning Ordinance Steering Committee Meeting

Thank you for another productive meeting earlier this month where we discussed nonconformities, the Zoning Board of Appeals, and administration and enforcement regulations. At the upcoming March meeting, we would like to review the draft **Definitions and General Provisions** articles. The provisions are based on existing provisions, best practices and input from staff, Planning Commission and the Steering Committee.

Review of Draft Articles

The following table lists current regulations and our recommended changes shown in the draft Article 2 – Definitions.

Current Definitions	CWA Recommended Changes
<ul style="list-style-type: none">• Definitions are found in other sections	<ul style="list-style-type: none">• All definitions are proposed to be consolidated in Article 2• Regulations are proposed to be moved out of definitions.• Several definitions, such as home-based business, have been updated.

Please come prepared to discuss the following questions regarding General Provisions:

- *What definitions are missing?*
- Which definitions were unclear?

The following table lists current regulations and our recommended changes shown in the draft Article 9 – General Provisions.

Current General Provisions	CWA Recommended Changes
<ul style="list-style-type: none">• Definitions are in each section or division• Sections include:• Fences• Wind energy	<ul style="list-style-type: none">• Definitions are proposed to be moved to Article 2.• The following sections are proposed to move to their own articles: lighting, nonconforming buildings and uses.• The following sections are proposed to be removed (the current regulations are hyperlinked to the name


Current General Provisions	CWA Recommended Changes
<ul style="list-style-type: none"> ● Accessory buildings and structures ● Exterior appliances ● Temporary uses ● Performance standards currently include smoke, dust, open storage, glare and radioactive materials, fire and explosive hazards, and grading ● Outdoor lighting ● Nonconforming buildings and uses ● Essential services ● Voting places ● Height exceptions ● Buildable lots ● Yard regulations ● Porches ● Projections ● Number of buildings on a lot ● Continuing obligations of owners ● Bulk regulations ● Incomplete dwellings ● Interpretation of use ● Signs 	<p>of the sections proposed to be removed): voting places, continuing obligations of owners, bulk regulations, incomplete dwellings, and interpretation of use. We feel that these regulations are either no longer needed (i.e., voting places) or dealt with elsewhere in the draft Zoning Ordinance (i.e., interpretation of use).</p> <ul style="list-style-type: none"> ● The following sections dealing with specific uses are proposed: Solar Energy, Wireless Communication Facilities, Outdoor Storage. These sections could be moved to Article 8 – Specific Use Provisions. ● Accessory buildings and structures remain essentially unchanged. ● For the exterior appliances section, a sub-section allowing generator testing Mon-Fri 9 am – 6 pm and a section on nonconforming exterior appliances are proposed. ● The temporary use section (current regulations here) is much more detailed than what is proposed. We recognize that you may want to keep the current provisions or find another approach than what is proposed. ● The fence regulations remain mostly unchanged. Instead of a fence certificate, a zoning permit is required. Language has been added to prevent underground encroachments into adjacent properties from footers of fences or walls. ● The wind energy section does not have proposed changes. Please see our comments on items that could be streamlined or consolidated. ● A Driveway And Curb Cut section is proposed. The residential driveway requirements of current Section 138-222 (3) are in this section. New provisions for driveway spacing for commercial uses are proposed. ● All of the performance standards except grading are proposed to move to the Site Design Based Districts, since those uses would have the impacts regulated. ● A section of structure completion is proposed. ● A section on use per lot is proposed, per a request from the City Attorney. The sub-sections on dwelling were not requested and could be removed. This

Current General Provisions	CWA Recommended Changes
	<p>section incorporates current provisions on number of buildings on a lot.</p> <ul style="list-style-type: none"> ● Current regulations on height exceptions, porches, and projections have been moved into the zoning district articles. ● Current regulations on buildable lots are proposed to be moved to the Nonconformities Article. ● The essential services section is proposed to remain the same ● The section on yard regulations is proposed for deletion. We feel that these regulations, which deal with multiple-family building setbacks, are better handled in zoning districts where multiple family buildings are allowed. ● A section on prohibited materials in residential zoning districts is proposed. ● A section requiring all parcels to be developed to have frontage on a public street is proposed. ● A section on open-air structures is proposed. ● Calculating gross floor area, grade and building height are proposed to be moved out of definitions into General Provisions so as to call out those provisions and not bury regulations in the definitions. They can be moved back to Article 2 – Definitions.

Please come prepared to discuss the following questions regarding General Provisions:

- *What sections need to be updated? Which should retain current regulations?*
- *What should be deleted? What needs to be added?*

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


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


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

ARTICLE 2

DEFINITIONS

SECTION 2.01 INTERPRETATION OF ARTICLE PROVISIONS

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

SECTION 2.02 DEFINITIONS

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

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

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

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

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

- A. *Antennas:* Structures or facilities for the reception or transmission of radio, television and microwave signals.
- B. *Dog houses:* A structure providing shelter for dogs.
- C. *Dog run:* An open air enclosure, attached or detached from the principal building for the purposes of housing or exercising animals commonly classified as domestic pets.
- D. *Garage:* A building designed and intended to be used for the periodic parking or storage of one or more private motor vehicles, yard equipment, or recreational vehicles such as, but not limited to, boats, trailers, all-terrain vehicles, and snowmobiles.
- E. *Shed:* A building designed and intended to be used for the storage of tools, garden tractors, lawn mowers, motorcycles, small recreation vehicles such as, but not limited to, snowmobiles, boats, trailers, all-terrain vehicles, motor scooters, or used as doll houses, play houses or children's club houses.
- F. *Swimming pool for private residential use only:* A swimming pool and the apparatus and equipment pertaining to the swimming pool maintained by an individual for the sole use of his household and guests without charge for admission and not for the purpose of profit or in connection with any business operated for profit, located on a lot as an accessory use to a residence. This includes hot tubs and jacuzzies as installed outside and accessory to the main residence.

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

Adult family day care home: A private residence, in which six (6) adults or less are given care and supervision for periods of time not to exceed sixteen (16) hours in a twenty-four (24) hour period. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped that require supervision on an on-going basis. An adult day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day care center.

Adult group day care home: A private home in which more than six (6) but not more than twelve (12) adults eighteen (18) years of age or older, receive care, or are given care and supervision for periods of time not to exceed sixteen (16) hours in a twenty-four (24) hour period. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped that require supervision on an on-going basis. An adult day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day care center.

Adult day care center: A center other than a private residence, in which more than six (6) adults are supervised and receive group care for periods of time not to exceed sixteen (16) hours in a twenty-four (24) hour period. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped that require supervision on an on-going basis. An adult day care center does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day care center.

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

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

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

Apartment: A building, or portion thereof, designed exclusively for occupancy by three (3) or more families living independently of each other.

Apartment, efficiency: A dwelling unit, containing not over three hundred (300) square feet of net floor area and consisting of not more than one (1) room in addition to kitchen and necessary sanitary facilities.

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

Architectural features: Features of a building, including cornices, eaves, gutters, belt courses, sills, bay windows, chimneys, and decorative ornaments.

Attached single-family residential development: Three (3) or more single-family dwelling units constructed in a series or group of attached units with property lines separating such units from other units and from common areas.

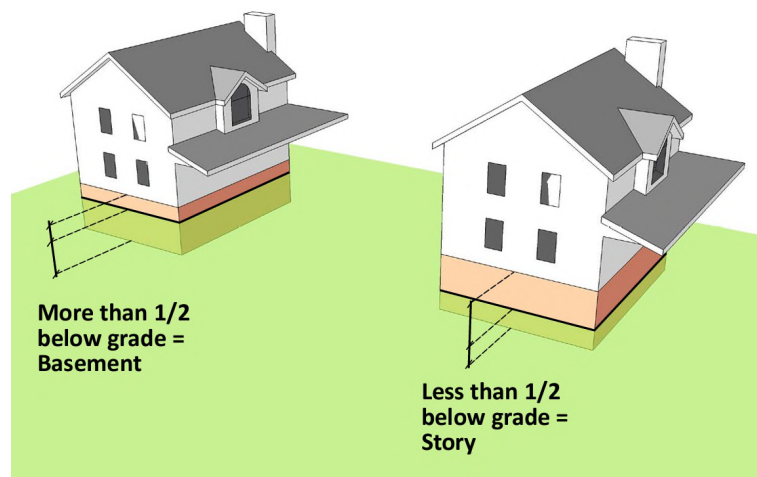
Automobile fueling / multi-use station: A place where gasoline, or any other automobile engine fuel (stored only in underground tanks), kerosene or motor oil and lubricants, or grease (for the operation of motor vehicles) are retailed directly to the public in the premises; including the sale of minor accessories and services for motor vehicles (including minor repairs).

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

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

Basement: That portion of a building that is partly or wholly below grade but so located that the vertical distance from grade to the floor is greater than the

vertical distance from the grade to the ceiling. A basement will not be counted as a story. The following diagram is illustrative of this definition:



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

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

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

Board: The Zoning Board Of Appeals.

Boardinghouse: A building, or part thereof, where sleeping rooms and meals are regularly provided for hire on a more or less permanent basis rather than transiently.

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

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

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

Building code or construction code: The Michigan State construction code.

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

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

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

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

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

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

Child day care center. A facility, other than a private residence, receiving more than one or more children for care and supervision for periods less than twenty-four (24) hours, and where the parents or guardians are not immediately available to the child.

Child family day care home. A private home in which one (1) but fewer than seven (7) minor children are received for care and supervision for periods of less than twenty-four (24) hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. The term “family day care home” includes a home in which care is given to an unrelated minor child for more than four (4) weeks during a calendar year.

Child group day care home. A private home in which more than six but not more than twelve (12) minor children are given care and supervision for periods of less than twenty-four (24) hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. The term “group day care home” includes a home in which care is given to an unrelated minor child for more than four (4) weeks during a calendar year.

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

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

Commercial amusement device center: Any place, premises, room, building, or establishment in which three (3) or more coin-operated amusement devices, coin-operated amusement rides, or a combination thereof are located.

Commercial vehicle. All motor vehicles used for the transportation of passengers for hire, or constructed or used for transportation of goods, wares, or merchandise, and/or all motor vehicles designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

Commission: The City of Berkley Planning Commission.

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

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

- A. *Condominium documents.* The master deed recorded pursuant to the condominium act, and any other instrument referred to in the master deed or bylaws that affect the rights and obligations of a co-owner in the condominium.
- B. *Condominium unit.* The portion of a condominium project designed and intended for separate ownership and use, as described in the master deed.

- C. *General common elements.* The common elements other than the limited common elements.
- D. *Limited common elements.* A portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners.
- E. *Master deed.* The condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and the condominium subdivision plan for the project and all other information required by section 8 of the condominium act, Public Act No. 59 of 1978 (MCL 559.108).

Convalescent or nursing care facility. A state-licensed medical facility providing 24-hour medical care for aged or infirmed persons.

Convenience store: Any establishment that sells convenience store items and has more than ten percent of its floor area devoted to packaged beer, wine, or liquor.

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

Court: An open space, on the same lot as a building or group of buildings and which is bounded on two (2) or more sides by such buildings.

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

DPW. The City of Berkley Department of Public Works.

Drive-in: A business establishment for the serving of food and/or beverages so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure; or to permit patron self-service and return to a motor vehicle.

Duplex: A building designed exclusively for occupancy by two (2) families, independent of each other.

Dwelling, multiple-family: A building, or portion thereof, designed exclusively for occupancy by three (3) or more families living independently of each other.

Dwelling, single-family: A detached, independent building designed exclusively for occupancy by 1 family.

Dwelling, single-family, attached: A building designed so that three (3) or more dwelling units with their own front doors are attached by party walls, such as a townhouse.

Dwelling, two-family: A building designed exclusively for occupancy by two (2) families, independent of each other such as a duplex dwelling unit.

Dwelling unit: A building, or portion thereof, designed for occupancy by one (1) family for residential purposes and having cooking facilities.

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

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

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

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

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

Exterior appliance: Mechanical equipment located on the exterior of a residential or commercial building. Such types of equipment include air conditioning

condenser units, power generators, and any noise-producing mechanical system components located at the exterior of a building.

Family: An individual or married couple and the children thereof with not more than two (2) other persons related directly to the individual or married couple by blood or marriage; or a group of not more than 5 unrelated persons, living together as a single housekeeping unit in a dwelling unit.

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

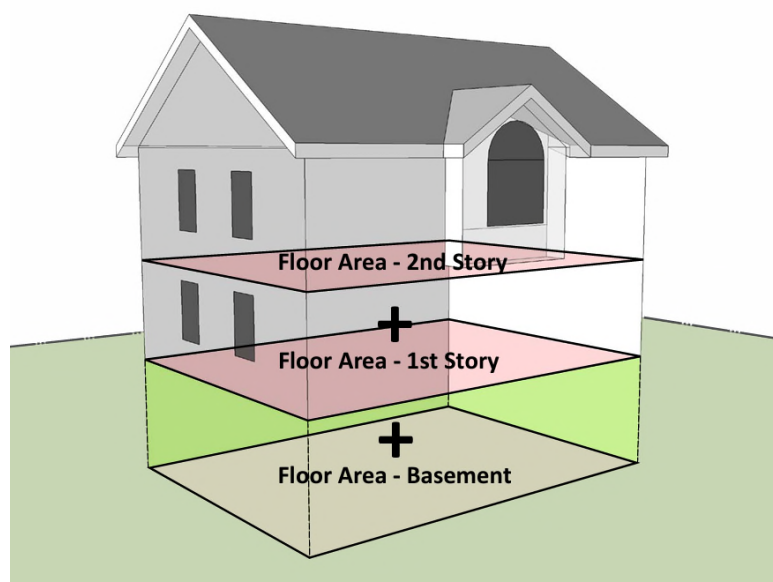
- A. *Construction site barrier:* A temporary fence erected to protect a construction site from vandalism and unauthorized entry.
- B. *Fence owner:* A person or entity who owns the property upon which a fence is erected.
- C. *Landscape treatment:* A non-sight-obscuring decorative structure used to enhance, accent, or protect the landscaping of the site. Landscape treatments include, but are not limited to, timbers, boulders, planter boxes, posts, partial fences, etc. Decorative lamp posts are not considered landscape treatment.
- D. *Landscaping (vegetation):* Decorative plant materials (trees, shrubs, flowers, etc.) when used to enhance the yards or surfaces of a property or parcel.
- E. *Masonry walls:* A built-up construction or combination of building units or materials of clay, shale, concrete, gypsum, stone, or other approved units bonded together with mortar or monolithic concrete. Reinforced concrete is not classified as masonry.
- F. *Privacy fence:* Fences of opaque material having such qualities as to constitute a visual barrier. A visual barrier is provided if the distance or open space between the boards, slats, rails, stanchions, or balusters is less than or equal to three inches when viewed and measured at ninety (90) degrees to the fence line.
- G. *Privacy screen structure:* A sight obscuring structure, erected adjacent to or around, but not limited to, a patio, deck, courtyard area, swimming pool, or outdoor hot tub, designed to screen, but not enclose, the area behind it or within its confines.

H. *Screen walls:* A masonry wall erected to screen a nonresidential lot or parcel from a residential district.

First floor elevation: The portion of an exterior wall computed from the ground level to a height of ten (10) feet or to the ceiling height, whichever is less.

Fixture: The assembly that holds a lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and a refractor or lens.

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



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

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

Garage, community: A building, or part thereof, used for the storage of self-propelled private passenger vehicles or private passenger or house trailers for the use of residents in the vicinity, and providing only incidental service to such vehicles as are stored therein.

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

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

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

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

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

Ground cover. A low-growing deciduous and/or evergreen species chosen for a very low, spreading green cover, usually dense and rapid-growing, reaching a height of three (3) feet or less at maturity.

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

Hazardous substances. Includes hazardous chemicals as defined by the state department of community health and the state department of labor and economic growth; flammable and combustible liquids as defined by the department of state police, fire marshal division; hazardous materials as defined by the U.S. Department of Transportation; and critical materials, polluting materials, and hazardous waste as defined by the state department of environmental quality. Petroleum products and waste oil are subject to regulation under this section.

Home-based business: An occupation, business, or profession customarily carried on by an occupant of a dwelling unit as a secondary use which is clearly incidental to the use of the dwelling unit for residential purposes. Convalescent care, coffee shops, or short-term rentals are not considered home occupations.

Hospital. An institution providing health services, primarily for in-patients and medical and surgical care of the sick or injured, including as an integral part of the

institution, such related facilities as laboratories, out-patient departments, training facilities, central service facilities, and staff offices.

Hotel. A building occupied or used as a temporary abiding place of individuals or groups of individuals with or without meals, and in which there are more than five (5) sleeping rooms, and in which no provision is made for cooking in any individual room.

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

Incombustible material. Any material that will not ignite at or below a temperature of twelve hundred (1,200) degrees Fahrenheit and will not continue to burn or glow at that temperature.

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

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

Kennel. Any lot or premises of any nature whatsoever, on which dogs are kept, whether for the purpose of breeding or for any other purpose, whether permanent or temporary.

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

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

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

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

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

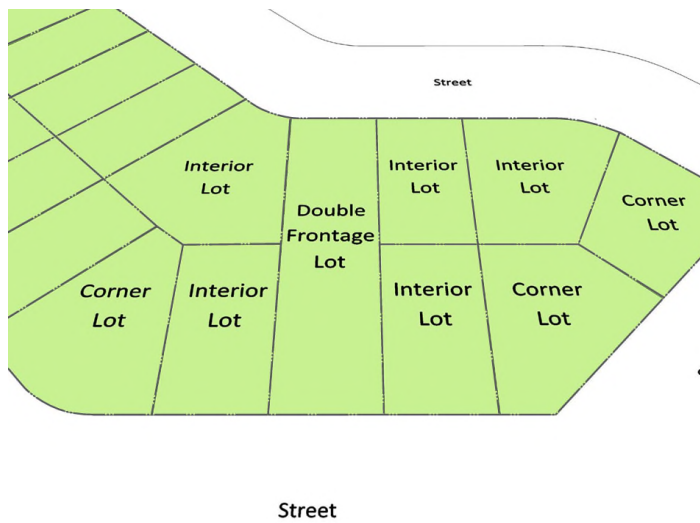
Light trespass: Light emitted by a luminaire that shines beyond the boundaries of the property on which the luminaire is located.

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

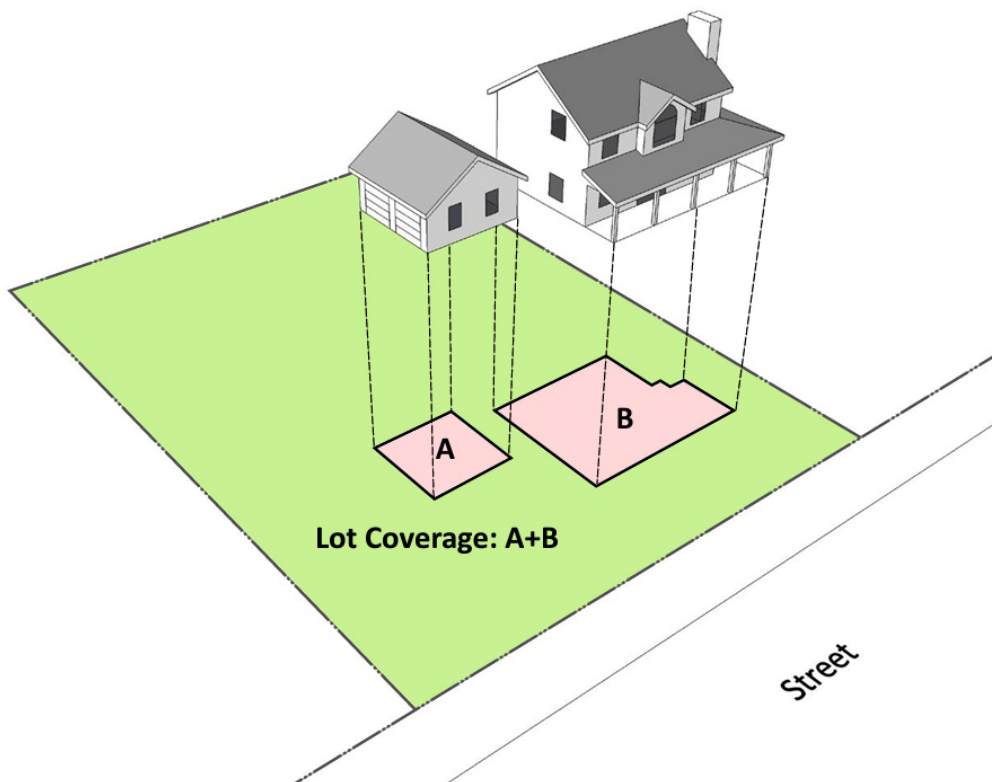
Lot: Any piece or parcel of land or a portion of a subdivision, the boundaries of which have been established by some legal instrument of record, that is recognized and intended as a unit for the purpose of transfer of ownership.

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

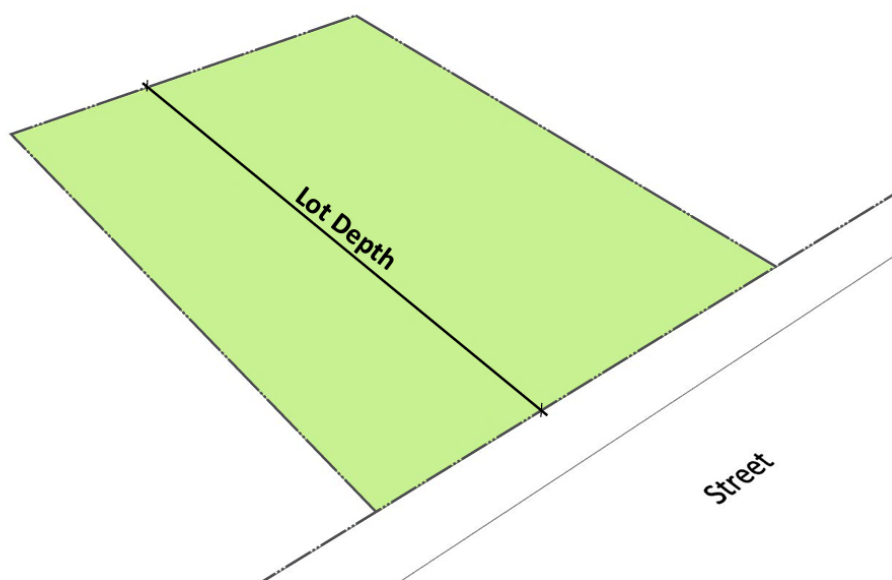
Lot, corner: A corner lot is a lot situated at the intersection of two (2) streets, where the interior angle of the intersection does not exceed one hundred and thirty-five (135) degrees.



Lot coverage. The part or percent of the lot occupied by buildings or structures, including accessory buildings or structures.



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



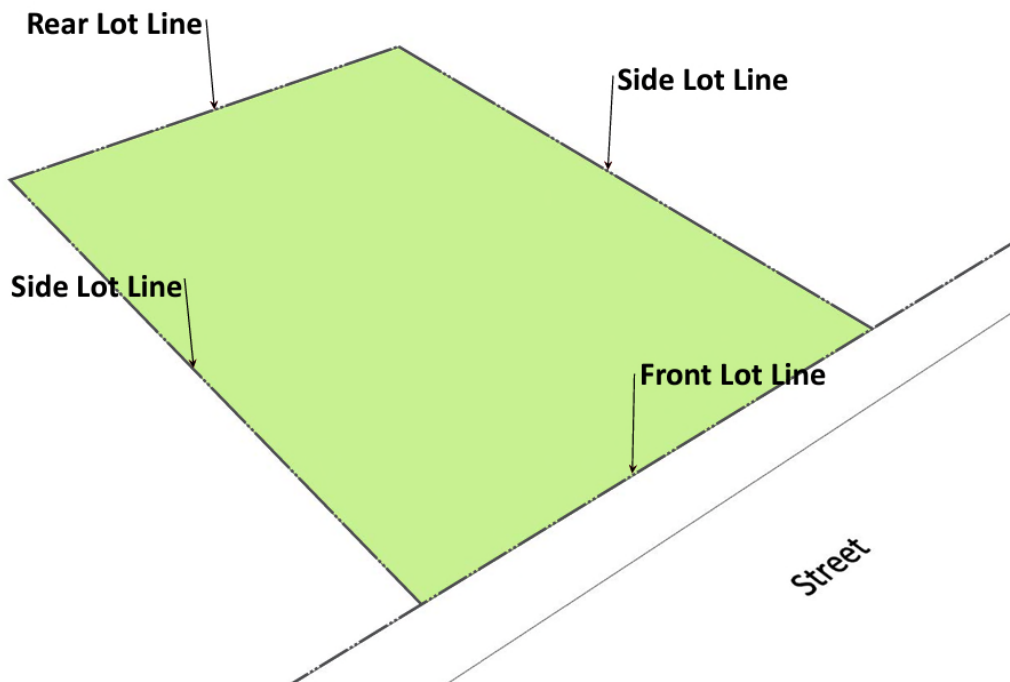
Lot, double frontage: Any interior lot having frontages on two (2) more or less parallel streets. In the case of a row of double frontage lots, one (1) street will be designated as the front street in the plat and the request for zoning compliance permit.

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

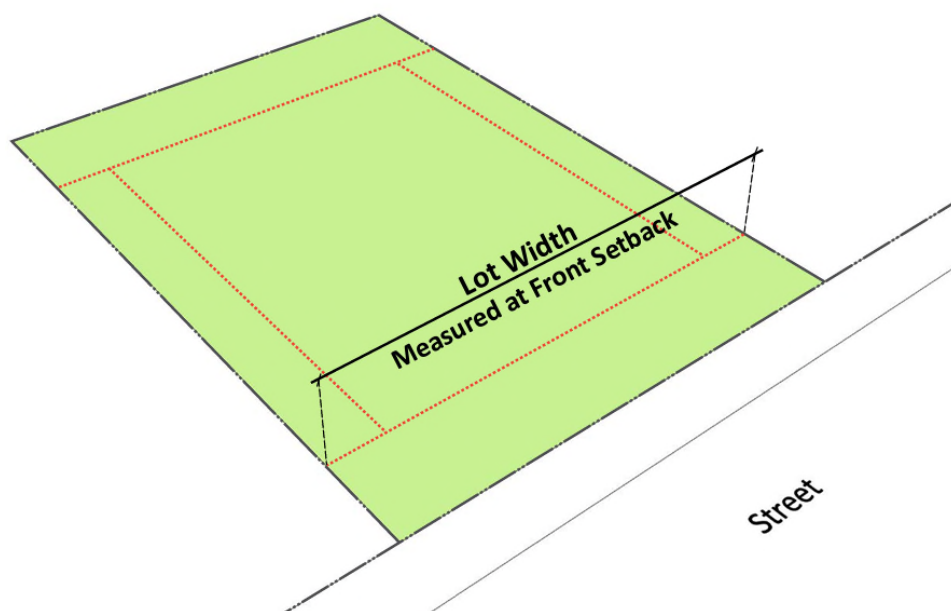
Lot line, front. In the case of an interior lot, the line separating such lot from the street. In the case of a corner lot or double frontage lot, the line separating such lot from that street which is designated as the front street in the plat and the request for zoning compliance permit.

Lot line, rear. The lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line is an imaginary line parallel to the front lot line, not less than ten (10) feet long lying farthest from the front lot line and wholly within the lot.

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



Lot width: The distance between the side lot lines, measured at the two (2) points where the building line, or front setback, intersects the side lot lines.



Low-impact development. Site design and stormwater management techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source, and that result in maintaining a site's pre-settlement hydrology.

Lumen: A unit of measurement of luminous flux.

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

Major thoroughfare: A street with a right-of-way width of one hundred and twenty (120) feet or greater.

Manufactured housing: A movable or portable dwelling constructed to be towed on its own chassis and designed for permanent year-round living as a single-family dwelling. The term "manufactured house" does not include motor homes, campers, recreational vehicles, whether licensed or not as a motor vehicle, or other transportable structures designed for temporary use and which are not designed primarily for a permanent residence and connection to sanitary sewage, electrical power, and potable water utilities.

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

- A. *Marihuana accessories:* Any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.
- B. *Marihuana concentrate:* The resin extracted from any part of the plant of the genus cannabis.
- C. *Marihuana business:* A marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana provisioning center, marihuana secure transporter, or any other type of marihuana establishment or facility licensed by LARA.

- D. *Marihuana grower*: A person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- E. *Marihuana-infused product*: A topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product is not considered a food for the purpose of the Food Law, MCL 289.1101 to 289.8111.
- F. *Marihuana Tracking Act* or *MTA*: Public Act 282 of 2016, MCL 333.27901, et seq., as amended and all future amendments.
- G. *Marihuana microbusiness*: A person licensed to cultivate not more than 150 marihuana plants, process and package marihuana, and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.
- H. *Marihuana processor*: A person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
- I. *Marihuana provisioning center*: A licensee that is a commercial entity located in the city that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers.
- J. *Marihuana retailer*: A person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.
- K. *Marihuana safety compliance facility*: A person licensed to test marihuana, including certification for potency and the presence of contaminants.
- L. *Marihuana secure transporter*: A person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
- M. *Michigan Medical Marihuana Act*, or *MMMA*: The initiated law of 2008, MCL 333.26421, et seq., as amended and all future amendments.
- N. *Michigan Medical Marihuana Facilities Licensing Act*, or *MMFLA*: Public Act 281 of 2016, MCL 333.26421, et seq., as amended and all future amendments.

- O. *Michigan Regulation and Taxation of Marihuana Act or MRTMA*: The initiated law of 2018, MCL 333.27951, et. seq., as amended and all future amendments.
- P. *Person* means an individual, partnership, corporation, limited liability company, trust, or other legal entity.
- Q. *Primary caregiver or registered primary caregiver* means a person who is at least 21 years old and who has agreed to assist with a registered qualifying patient's medical use of marihuana and who has not been convicted of any felony within the past ten years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in Section 9a of Chapter X of the Code of Criminal Procedure, 1927 PA 175, MCL 770.9a.
- R. *Process or processing*: To separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.
- S. *Qualifying patient or registered qualifying patient*: A person who has been diagnosed by a physician as having a debilitating medical condition and who has a valid registry identification card issued by LARA or an equivalent approval lawfully issued under the laws of another state or other entity of the United States which identifies the person as a registered qualifying patient.
- T. *School*: Buildings and grounds used for school purposes to provide instruction to children and youth in grades pre-kindergarten through 12 by a public, private, denominational, or parochial school.
- U. *Stakeholder*: with respect to a trust, the trustee and beneficiaries; with respect to a limited liability company, all members and managers; with respect to a corporation, whether profit or non-profit, all stockholders, directors, corporate officers or persons with equivalent titles; and with respect to a partnership or limited liability partnership, all partners and investors.
- V. *State*: The State of Michigan.
- W. *State license*: A license issued by LARA that allows a person to operate a marihuana business.

Mobile home. A structure, transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The term “mobile home” does not include motor homes, campers, recreational vehicles (whether licensed or not as motor vehicles), or other transportable structures designed for temporary use and that are not designed primarily for permanent residence.

Motel or motor hotel: A series of attached, semi-detached, or detached rental units containing bedroom, bathroom, and closet space without individual kitchen or cooking facilities.

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

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

Nonconforming use: A use which lawfully occupied a building or land on [DATE OF FIRST BERKLEY ZO], but which does not conform to the use regulations of the district in which the building or land is located as evidenced by the zoning map in effect on [DATE OF FIRST BERKLEY ZO]. If an amendment to the zoning map or this chapter occurred after [DATE OF FIRST BERKLEY ZO], and thereby caused a building or land not to conform to the use regulations of the district in which the building or land is located, then the date on which the nonconforming use arose is the effective date of the amendment.

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

Off-street parking lot. A facility providing vehicular parking spaces along with adequate drives and aisles for maneuvering so as to provide access to automobiles.

Opacity. The state of being impervious to sight.

Opaque fencing wall. A nontransparent decorative barrier intended to screen from view of adjoining neighbors or roadways the contents of the site.

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

- A. Bicycle, trailer, motor vehicle, boats, or home equipment sale or rental services;
- B. Outdoor display and sale of garages, swimming pools, and similar uses;
- C. Retail sale of trees, fruits, vegetables, shrubbery, plants, seed, topsoil, humus, fertilizer, trellis, lawn furniture, playground equipment, and other home garden supplies and equipment; and
- D. Tennis courts, archery courts, shuffleboard, horseshoe courts, miniature golf, golf driving range, amusement parks, or similar recreational uses.

Open front store: A business establishment so developed that service to the patron may be extended beyond the walls of the structure, not requiring the patron to enter the structure.

Open storage. All outdoor storage of any kind whatsoever.

Parking lot: A facility providing vehicular parking spaces along with adequate drives and aisles, for maneuvering so as to provide access for entrance and exit for the parking of more than two (2) automobiles.

Parking space. An area meeting the dimensions required by this Ordinance, providing parking for a motor vehicle, such space being exclusive of necessary drives, aisles, entrances, or exits.

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

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

Planned shopping center. Two (2) or more commercial or service establishments within a structure or group of structures bound by a common architectural style and served by a common parking area.

Planned unit development. Both a form and process of development, the approval of which is based upon a specific site plan and other information meeting the

standards set forth in this Ordinance. A planned unit development project is characterized by a unified site design and singular ownership and control.

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

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

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

Portable Storage Container. A portable, weather-resistant receptacle designed and used for the temporary storage and/or shipment of household goods or building materials. This term does not include roll-off or cargo containers.

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

Private access property. A site that is directly adjoined to and part of a single-family residential subdivision or condominium development and under the jurisdiction of a condominium association or subdivision association, which site is used, or proposed to be used, to provide water access exclusively to owners or occupants of residential units within the subdivision or condominium association.

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

Recreational vehicle. A vehicle that moves one (1) or more persons over the ground, water, ice or snow, and which is either self-propelled or connects to a self-propelled vehicle. The term "recreational vehicle" includes, but is not limited to, snowmobiles, camping vehicles, ATVs, motorcycles and related two-wheel, three-wheel, or four-wheel vehicles, mini-bikes, go-carts, boats, and iceboats; however, it does not include automobiles licensed by the state to travel upon the streets and highways.

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

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

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

Seasonal activity. Any intermittent or temporary operation that occurs annually and is subject to interruption from changes in weather, ~~water level~~, or time of year, and involves annual removal and replacement of an operation, obstruction, or structure.

Seasonal lighting. Lighting in use for not longer than a six (6) week period in any calendar year.

Seasonal structure. Any type of recreational structure that is placed into an inland lake and stream and removed at the end of the boating season.

Secondary thoroughfare. A street with a right-of-way width between eighty-six (86) feet and one hundred nineteen (119) feet.

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

Senior assisted living facility: Where residents occupy a private or shared residence, and have meals, medical, laundry, and other services available or provided daily.

Senior independent living facility: Where residents live in their own independent apartment or other housing unit.

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

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

Shrub. A self-supporting deciduous and/or evergreen woody species, normally branched near the base and bushy.

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

Sign, Billboard. Any sign that contains a message unrelated to or not advertising a business transacted or goods sold or produced on the premises on which the sign is located; also called a remote sign.

Sign, Electronic Message (EMS). A sign or portion of a sign, that displays an electronic image or video, which may or may not include text, introducing any sign or portion of a sign that uses changing lights or similar forms of electronic display such as LED to form a sign message with text and or images wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. This definition includes without limitation television screens, plasma screens, digital screens, flat screens, LED displays, video boards, and holographic displays.

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

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

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

Skilled nursing facility: Where residents require 24-hour supervisory nursing care in a controlled institutional setting.

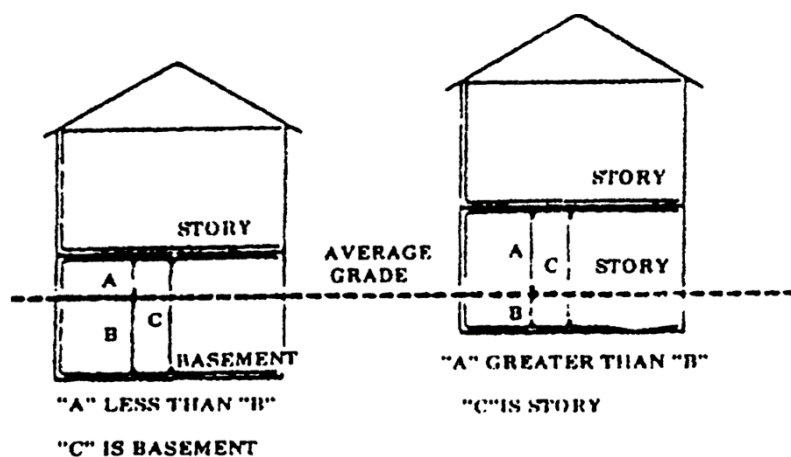
Solar energy system: A solar photovoltaic cell, panel, or array that converts solar energy to usable thermal, mechanical, chemical, or electrical energy. The following definitions are provided.

- A. *Ground-mounted solar energy system:* A freestanding solar energy system that is not attached to and is separate from any building on the same parcel on which the solar energy system is located.

- B. *Building-mounted solar energy system*: A solar energy system that is attached to a building on a parcel as the principal method of physical support.

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

Story: That part of a building included between the surface of any floor and the surface of the next floor or of the roof next above. When the distance from the average established grade to the ceiling of a story partially below such grade exceeds five (5) feet, then the basement or cellar constituting the story partially below grade is counted as a story. The following diagram is illustrative of this definition:



Stories

Story, half: A story which is situated within a sloping roof, the area of which at a height of four feet above the floor does not exceed two-thirds (2/3) of the floor area directly below it, wherein living quarters are used only as a part of a dwelling situated in the story below.

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

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

- A. *Expressway or freeway*. A highway for through traffic with full or partial control of access and generally with grade separations at intersections.
- B. *Arterial Street*. A street that provides through-traffic movement on a

continuous route joining major traffic generators, other arterials, expressways, and freeways. The access to abutting properties may be controlled.

- C. *Collector Street.* A street that provides service for internal traffic movement within an area and connects local streets to arterial streets, and where direct access to adjoining properties is generally permitted.
- D. *Local Street.* A street that provides for traffic movement within an area, primarily for the provision of direct access to abutting properties.

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

Subdivide or subdivision. The partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than one (1) year, or of building development that results in one (1) or more parcels of less than forty (40) acres or the equivalent, and that is not exempted from the platting requirements of the land division act by sections 108 and 109 (MCL 560.108, 560.109). The term “subdivide” or “subdivision” does not include a property transfer between two (2) or more adjacent parcels, if the property taken from one (1) parcel is added to an adjacent parcel; and any resulting parcel must not be considered a building site unless the parcel conforms to the requirements of the land division act or the requirements of an applicable local ordinance.

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

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

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

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

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

Tobacco shop: Any establishment having more than thirty (30) percent of shelf space devoted to the selling of tobacco products, cigarettes, cigars, CBD products, or smoking and/or vaping paraphernalia.

Townhouse: A building designed so three (3) or more dwelling units with their own front doors are attached by walls.

Trailer. Every vehicle with or without motive power, other than a pole-trailer, designed for carrying property or persons and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Tree. A self-supporting deciduous and/or evergreen woody species with a well-defined stem, or multi-stems.

Truck trailer. Every motor vehicle designed and used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

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

Vape shop: (see tobacco shop)

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

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

Vine. A type of woody-stemmed plant chosen for its habit of climbing, creeping, and twining around supports and flat surfaces.

Violation. Any act that is prohibited or made or declared to be unlawful or an offense under this Ordinance, including affirmative acts as well as omissions and/or failure to act where the act is required by this Ordinance.

Wind energy system: An aggregation of parts including the base, tower, generator, turbine, rotor, blades, and ancillary equipment such as utility interconnections and battery banks, etc., in such configuration as necessary to convert the power

of wind into mechanical or electrical energy, i.e., wind charger, windmill, or wind turbine. The following additional definitions are provided:

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

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

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

state or federal law or regulations which preempt municipal regulatory authority. The following additional definitions are provided:

- A. *Attached wireless communications facilities.* Wireless communication facilities that are affixed to existing structures, such as existing buildings, towers, water tanks, utility poles, and the like. A wireless communication support structure proposed to be newly established is not be included within this definition.
- B. *Collocation.* The location by two (2) or more wireless communication providers of wireless communication facilities on a common structure, tower, or building, with the view toward reducing the overall number of structures required to support wireless communication antennas within the community.
- C. *Wireless communication support structures.* Structures erected or modified to support wireless communication antennas. Support structures within this definition include, but are not limited to, monopoles, lattice towers, light poles, wood poles and guyed towers, or other structures which appear to be something other than a mere support structure.

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

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

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

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

Zoning Administrator. The administrative official with the responsibility of enforcing this Ordinance.

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

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

Zoning map: The map which sets the boundaries of the districts established pursuant to Article 4 of this Article.

ARTICLE 9

GENERAL PROVISIONS

SECTION 9.01 PURPOSE

The regulations in this Article applies in all zoning districts unless specifically provided otherwise in a section of this Article.

SECTION 9.02 FENCES AND WALLS

- A. **Permit.** The erection, construction, or substantial rebuilding of any fence, screen wall, or wall must be performed within all municipal codes and require a zoning permit. Building permits will be required, when applicable.

Substantial rebuilding is the reconstruction of more than fifty (50) percent of the structure, a change in the height of the structure, or a change from existing material within a twelve (12) month period. Painting, cleaning, replacement of like materials, or other actions commonly considered as general maintenance are not defined as substantial rebuilding.

- B. **Requirements for All Districts.**

1. No wall or fence may have barbed wire, razor wire, an electric current, concertina wire, nor any other material installed for the purpose of causing injury or harm. Similar material are to be determined by the code enforcement officer.
2. Each fence or screen wall owner must maintain their fences or walls in accordance with the provisions of all maintenance codes adopted by the city and with the provisions of any site maintenance agreement they may have entered into with the city.
3. Fences and screen walls must be maintained plumb and true with adequate support and in a safe and sightly manner. The owner of a fence or screen wall must remove or repair a fence or screen wall that is dangerous, dilapidated, or otherwise in violation of this Ordinance.

- C. **Requirements for Residential Districts.**

1. Fences or walls must be constructed of steel, iron, wood, masonry, or other durable material.

2. A fence or wall must not be erected between the front building line and the front lot line.
3. Landscape treatments must not exceed thirty (30) inches in height.
4. Landscape treatments may be located between the front building line and the front lot line.
5. Landscape treatments which fall within the front yard or the exterior side yard and which are parallel to, or are placed along, a lot line are limited as follows:
 - i. An aggregate length not to exceed twelve (12) feet.
 - ii. Setback of not less than two (2) feet when adjacent to an adjoining property owner's driveway.
 - iii. Placement on the property line or setback at least twelve (12) inches from the sidewalk, whichever is greater.
6. No portion of a fence, wall, landscape treatment, or landscaping may project beyond the fence owner's property line. The footing of any fence or wall may not encroach underground beyond the fence owner's property line.
7. The maximum height of a fence, privacy fence, or wall must not be erected in excess of six feet, four inches (6'-4") in height, as measured from the lowest existing adjacent grade. Where a residential property line is adjacent to a nonresidential district, the maximum height must not exceed eight feet for fences on said property line.
8. The maximum number of fences is one (1) fence per property line, for each property owner. Ownership of a fence is determined by the fence permit applicant as follows:
 - i. By a search of building permits issued to their and adjacent properties; or
 - ii. By mutual agreement of the adjacent property owners.
9. The maximum height of privacy screen structures is six (6) feet above the surface of the deck, patio, pool, or other area to be screened. Privacy screen structures exceeding the maximum grade require a variance from the Zoning Board of Appeals.

10. When erecting a fence next to an existing fence, the maintenance of the area between the fences will be the responsibility of the person erecting the new fence. Fence panels must be raised four (4) inches above grade to allow for maintenance of the area between fences.
11. Any fence having an unfinished side (e.g. stockade fence) must be installed so that the finished side of the fence faces adjacent properties or the street.
12. The maximum length of privacy screen structures is eighteen (18) feet in length.
13. Any fence erected within ten (10) feet of a driveway/public right-of-way intersection must permit a motorist an unobstructed view of the public right-of-way when exiting a driveway. The sidewalk must be visible for a distance of ten (10) feet on both sides of the driveway. Visibility is judged from the garage doorjamb or ten (10) feet from the sidewalk along the driveway's edge, whichever is closer. Visibility is judged from thirty (30) inches above the sidewalk. The Community Development Director or their designee will be the judge of visibility. These requirements apply whether or not the fence is on the same property as the driveway.

D. Requirements for Nonresidential districts.

1. The maximum height for a fence or wall is eight (8) feet high as measured from the lowest existing adjacent grade.
2. Required screen walls adjacent to all property lines separating non-residential property from residential property must comply with the regulations in Article 12, Landscaping and Screening.
3. No portion of a fence, wall, or screen wall may project beyond the fence owner's property line. The footing of any fence, wall, or screen wall may not encroach underground beyond the fence owner's property line.
4. The Planning Commission may revise the screen wall requirements for nonresidential districts if the Commission finds that the standards for site plan approval, as outlined in Article 12 Landscaping and Screening, have been met.

E. Fences around public or institutional parks are required if they incorporate a playfield (baseball, football, soccer, etc.).

SECTION 9.03 WIND ENERGY

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

	Districts Permitted	Maximum Height from Roof	Setback	Other Regulations	Review Required
Roof-mounted - on site consumption	Single-Family Residential, R-2, Multiple-Family Residential, Community Centerpiece, Flex, Gateway, Woodward Cemetery, Residential Corridor	10 feet	No portion of the system's blades, rotor or other exposed moving part must extend beyond the edge of the building line to which it is attached	Wind energy systems with a rated capacity of up to 2 kilowatts (2 kW) and solar energy systems must be allowed as an accessory use subject to the required standards of this section; provided they are incidental and subordinate to a use on the same parcel, and must supply electrical power exclusively for on-site consumption	Administrative review
Free-standing on-site consumption	Gateway, Flex, Woodward, Cemetery	Rear yard	Equal to height of tower	15 feet	Administrative review
Roof-mounted—Off-site consumption	High Rise Multiple-Family Residential	160 feet for High Rise Multiple Family	No portion of the system's blades, rotor or other	Arrays of multiple-turbine roof-mounted wind energy systems may be allowed provided they are	Site plan approval by the planning commission is

General Provisions

	Districts Permitted	Maximum Height from Roof	Setback	Other Regulations	Review Required
	Woodward, Flex	80 ft for Woodward, Flex	exposed moving part must extend beyond the edge of the building line	architecturally integrated with the building upon which they are attached as determined by the planning commission, and otherwise comply with the required standards of this section. Wind systems may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with applicable state and federal law. Wind energy systems with a rated capacity of more than 20 kilowatts (20 kW) that are intended to produce electricity for sale to a utility and/or other customers for offsite consumption is permitted	required prior to obtaining any permits
Free-standing off-site consumption	Cemetery	Equal to height of tower	15 feet	Wind systems may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in	Special land use approval and site plan approval required prior to obtaining any permits

	Districts Permitted	Maximum Height from Roof	Setback	Other Regulations	Review Required
				<p>accordance with applicable state and federal law. Wind energy systems with a rated capacity of more than 20 kilowatts (20 kW) that are intended to produce electricity for sale to a utility and/or other customers for offsite consumption is permitted. A shadow flicker analysis must be submitted as part of the special land use application</p>	

SECTION 9.04 SOLAR ENERGY

- A. **Intent.** The City of Berkley promotes the effective and efficient use of solar energy systems. To protect public health, safety, and welfare, it is in the interest of the City to regulate the siting, design, and installation of solar energy systems so that they are compatible with the subject and neighboring land uses.
- B. **Permit required.** Building-mounted solar energy system installations require a zoning compliance permit, approved by the Community Development Department. Ground-mounted solar energy system installations require a site plan that may be approved administratively. All solar energy systems proposed as part of a site plan must be indicated on the site plan.
- C. **Exemptions.** The following instances are exempt from review by the Community Development Department.
 - 1. The installation of a solar energy system to power a single device or specific piece of equipment such as a lawn ornament, lights, weather station, clock, well pump, or other similar device, provided that the

solar energy system is no larger than six (6) square feet and the device itself is not subject to zoning compliance approval.

2. The repair or replacement of an existing approved solar system does not result in an expansion of the solar energy system coverage area.
3. This section applies to any solar energy system or facility with a nameplate capacity below fifty (50) megawatts.

D. *Standards for solar energy systems.* The following requirements apply to all solar energy systems.

1. The exterior surfaces of solar energy systems must be generally neutral in color and substantially non-reflective in light.
2. Solar energy systems must be functional and in good repair.
3. Solar energy systems must be installed, maintained, and used only in accordance with the manufacturer's directions. Upon request, a copy of such directions must be submitted to the Building Official prior to installation. The Building Official may inspect the completed installation to verify compliance with the manufacturer's directions.
4. All solar energy systems must comply with the City construction code, the electrical code, and other applicable building and construction codes.

The following requirements apply to building-mounted solar energy systems.

5. Building-mounted solar energy systems are permitted as an accessory use in any zoning district and are subject to the regulations set forth in this Article.
6. Building-mounted solar energy systems must be incidental and subordinate to a use on the same parcel.
7. Building-mounted solar energy systems that are mounted on the roof of a building must not project more than five (5) feet above the highest point of the roof.
8. Building-mounted solar energy systems in the Downtown Zoning District must not be visible from the street level.

9. Building-mounted solar energy systems that are mounted on a wall must not project above the highest point of the roof.
10. Building-mounted solar energy systems must not exceed the maximum building height requirements for the respective zoning district.
11. Building-mounted solar energy systems must not project horizontally beyond the eaves of the roof.
12. Building-mounted solar energy systems must not be mounted on a building wall that is parallel to an adjacent public right-of-way.
13. Building-mounted solar energy systems that are mounted on a building wall must not project into the required setback of the respective zoning district.
14. Solar energy systems mounted on the roof of a building must be only of such weight as can safely be supported by the roof and the weight of snow and/or ice that they collect. Proof thereof, in the form of certification by a professional engineer or other qualified person, must be submitted to the Building Official prior to installation; such certification is subject to the Building Official's approval.
15. Building-mounted solar energy systems must be permanently and safely attached to the building or structure. Proof of the safety and reliability of the means of such attachment must be submitted to the Building Official prior to installation; such proof must be subject to the Building Official's approval.

The following requirements apply to ground-mounted solar energy systems.

16. Ground-mounted solar energy systems are a permitted accessory use in the Flex, Cemetery, and Community Centerpiece zoning districts.
17. Ground-mounted solar energy systems must be located in the rear yard or side yard, not within any required setbacks unless permitted by the Planning Commission as a deviation in its approval of the site plan and provided it does not project into more than one required setback area.

- 18. Ground-mounted solar energy systems must not exceed thirty-five (35) feet in height, measured from the ground at the base of the equipment.
- 19. The area of the ground-mounted solar energy system must not exceed fifty (50%) percent of the square footage of the ground floor area of the primary building of the property unless it is sited over required parking in which case there is no maximum lot coverage for the ground-mounted solar energy system.
- 20. Ground-mounted solar energy systems do not count towards the maximum square footage of accessory structures allowed on site or maximum impervious surface area limits if the ground under the solar energy system is pervious.
- 21. If the ground under the ground-mounted solar energy system is impervious, the total area of ground-mounted solar energy systems must be included in the calculation of the maximum permitted lot coverage requirement for the parcel of land.

SECTION 9.05 CURB CUTS AND DRIVEWAYS

- A. **Purpose.** The purpose of this section is to establish guidelines for the location and design of driveways that can be used for new construction in undeveloped areas and the redevelopment of existing developed areas. The objectives of these requirements are to reduce the frequency of conflicts between vehicular movements and to increase the spacing between conflict points, thereby providing motorists with increased decision process time, which will increase safety and assure smoother traffic flow.
- B. **Single or Two Family Residential Uses.** For single-family or two-family homes in all zoning districts, the following regulations apply:
 - 1. Number of driveways: The number of driveways is limited per the table below:

Lot Width	Number of Driveways
0 to 99.99 feet	1 per dwelling

Lot Width	Number of Driveways
100 feet or more	Circular driveway with 2 approaches
100 feet or more on a corner lot	Circular driveway with 2 approaches and 1 driveway from side street for garage facing the side street

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

Type of Lot	Maximum Driveway Width & Location
Interior lot	16 feet between the front building line and the front lot line
Interior lot with attached garage	Width of garage façade and taper uniformly to 16 feet at the front lot line
Corner lot when garage faces side street	20 feet or the width of the garage, whichever is greater

3. **Circular driveways.** Circular driveways may not exceed ten (10) feet in width. not be less than five (5) feet from the front building line, not be less than five (5) feet from the side lot line as measured along the front lot line, and the total pavement coverage of the front yard may not exceed thirty-five (35%) percent of the front yard.
4. **Site Design Based Districts.** Driveways for single-family and two-family dwellings in the site design based districts are also subject to the requirements in Article 6.
- C. **All Other Uses.** For all uses other than single-family and two-family dwellings, the location of curb cuts and driveways must be approved by the Community Development Director in consultation with the City Engineer,

Fire Department, or Department of Public Works Supervisor and such other county and state authorities as required by law; provided however, such approval must not be given where such curb cuts and driveways will unnecessarily increase traffic hazards. Development plans must meet the following standards unless otherwise approved by the City Engineer or Community Development Director:

1. **Turn Prohibitions.** Left turns may be prohibited to and/or from driveways if any of the following circumstances exist:
 - (a) Inadequate corner clearance.
 - (b) Inadequate sight distance.
 - (c) Inadequate driveway spacing.
2. **Sight Distance.** Adequate sight distance must be ensured for all vehicles exiting from a proposed development. If certain movements cannot be made safely, then they must be prohibited.
3. **Driveway Permits.** Prior to granting a building permit for any construction involving a new or expanded driveway opening to a public street, a permit for such driveway from the appropriate governmental entity having jurisdiction over the roadway must be obtained.
4. In the event that a particular parcel or parcels lack sufficient road frontage to maintain adequate spacing, effectively prohibiting access to the site, the property owner may:
 - (a) Request a waiver from the minimum spacing requirements to allow for one (1) driveway entrance to provide access to and from the property.
 - (b) Establish a common driveway with an adjacent property owner that serves both the subject property and the adjacent property. A recorded access easement for the driveway must be provided to the City of Berkeley Community Development Department.

D. Number of Driveways Per Parcel.

1. A maximum of one (1) driveway opening is permitted to a particular

parcel from any abutting street unless these regulations conflict with the requirements of the agency that has jurisdiction over the road.

2. The Community Development Director may permit one (1) additional driveway entrance along a continuous site with frontage in excess of three hundred and thirty (330) feet and two (2) additional driveway entrances along a continuous site if driveway access volumes exceed five thousand (5,000) vehicles per day and frontage exceeds six (6) feet.
3. A dual-service (median-divided) driveway is considered to be one, direct-access driveway.
4. Only one (1) pair of one-way drives may be used per two hundred fifty (250) feet of street frontage.

SECTION 9.06 ESSENTIAL SERVICES

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

SECTION 9.07 OUTDOOR STORAGE

- A. **General Standards.** The outdoor storage of goods and materials in all districts is prohibited unless otherwise specifically permitted elsewhere in this Ordinance. For those uses where the outdoor storage of goods, materials, and equipment is permitted either by right or through a variance granted by the Zoning Board of Appeals, the following conditions apply:
1. The location and size of areas for such storage, nature of items to be stored therein, and details of the enclosure, including a description of materials and the height and typical elevation of the enclosure, must be provided as part of the site plan as set forth in Article 15, Site Plan Review.
 2. Such storage may not be located within the area between the front face of the building, as extended across the entire width of the lot, and the street right-of-way, or in any required side or rear yard.

3. Such storage may not be located in any required parking, roads, drives, driveways, or loading space.
4. Such storage must be strictly and clearly incidental to the principal use, and only products and materials owned or produced by the principal business, and equipment owned and operated by the principal use, is permitted for storage. Such storage must not be permitted as a principal use of a lot.
5. The area for such storage must be screened from view on all sides in a manner as approved by the Planning Commission during the site plan review process.

SECTION 9.08 STRUCTURE COMPLETION

- A. Nothing in this Ordinance can require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption of this Ordinance or later amendment which may apply. Actual construction is defined to include the placing of construction materials in a permanent position and fastening them in a permanent manner. Excavation, demolition, or the removal of materials are defined as construction.
- B. Where a building permit has been issued, said building or structure must be completed in accordance with the approved plans for which the building permit was issued, and further, must upon completion be occupied by the use for which it was originally designed. Approved construction must be diligently pursued to completion within one (1) year of the permit's effective date unless a longer period has been permitted or extended by the Building Official.
- C. Adoption of this Ordinance does not limit the construction of any building or structure for which a Zoning Compliance Permit had been obtained prior to the Effective Date of adoption or amendment of this Ordinance even though said building or structure does not conform to the provisions of this Ordinance.

SECTION 9.09 USES AND BUILDINGS PER LOT

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

- A. **One Use.** The maximum number of principal uses per individual lot is one (1) principal use, unless otherwise permitted in this Ordinance
- B. **One Building.** The maximum number of principal buildings or structures per individual lot is one (1) principal building or structure. In the case of a Planned Unit Development, more than one (1) principal building may be approved.
- C. **Dwellings.** There is a maximum of one (1) dwelling unit per lot, except for two-family dwellings, multiple unit dwellings, or accessory dwellings that are consistent with the standards of this Ordinance. In the case of a Planned Unit Development, more than one (1) principal detached residential building may be approved.
- D. **Illegal Dwellings.** The use of any portion of a garage, accessory building, tent, recreational vehicle, or a partially completed building for dwelling or sleeping purposes is be prohibited, unless otherwise permitted in this Ordinance.

Section 9.10 LOT LIMITATIONS

- A. **Division of lots.** No lot may hereafter be divided into two (2) or more lots and no portion of any lot may be sold, unless all lots resulting from each such division or sale conform with all the applicable bulk regulations of the zoning district in which the property is located.
- B. **Location of required open space.** All yards and other open spaces allocated to a building or dwelling group must be located on the same lot as such building or dwelling group.

Section 9.11 ACCESSORY BUILDINGS AND STRUCTURES

Accessory buildings and structures must be classified as defined in Article 2, Definitions of this Ordinance and, unless otherwise provided in this Ordinance, are subject to this section. By their definition and nature, accessory buildings and structures must be secondary and clearly incidental to the principal building on a

parcel of land. Such buildings or structures must therefore not be permitted as the only building or structure on a parcel of land.

A. Layout requirements.

1. Where the accessory building or structure is attached to a main building it must conform to all regulations of this Ordinance applicable to the main building.
2. The width of a front-loading attached garage must not be more than forty-five (45%) percent of the total width of the main building as measured along the front building line. The garage portion must be recessed at least five (5) more feet from the main building's front setback.
3. Accessory buildings or structures may only be erected in a rear yard.
4. In no instance may the combined floor area of all accessory buildings and structures exceed eight hundred (800) square feet or one-half (1/2) the ground floor of the main building, whichever is greater. Lot coverage must also conform to requirements set forth in the schedule of regulations in Article 5, Use-Based Districts, or Article 6, Site Design Based Districts. Dog runs are excluded from the maximum lot coverage calculation.
5. Setbacks.
 - (a) Detached accessory buildings, except dog houses and dog runs, may not be located closer than ten (10) feet to any main building or other accessory building.
 - (b) No accessory building or structure may be located within five (5) feet of the side lot line unless proper fire separation has been installed. In no instance may an accessory building or structure be located closer than eighteen (18) inches to a side lot line.
 - (c) No accessory building or structure may be located within five (5) feet of any rear lot line. In no instance may an accessory building or structure be located within a dedicated easement or right-of-way.

B. **Height.** The maximum height of an accessory structure is determined by its location in relation to the lot lines, as follows:

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

C. An accessory building must be considered two (2) stories if the second floor contains a room as defined in Article 2 - Definitions. Accessory buildings with two (2) stories must have proper fire separation as required by state building code.

D. Attics that do not have sufficient headroom or area to qualify as a room are permitted for storage use only. Access to such storage area is permitted by ladder or drop-down stairs only.

E. In no instance may a rooftop deck on an accessory building be permitted.

F. Antennas.

1. Pole or mast-type antennas may be constructed to a height equal to the permitted maximum height of structures in these districts. Roof-mounted antennas or antennas attached to a building must not extend more than twelve (12) feet above the highest point of the roof.

2. No more than two antenna structures (no more than one of which may be ground-mounted) is permitted for each lot or parcel, with the following exception: on nonresidential parcels, two (2) antenna structures are permitted for the first twenty thousand (20,000) square feet of gross building area, with one (1) antenna structure permitted for each additional twenty thousand (20,000) square feet of gross building area, or major portion thereof.

G. **Windows.** On elevations facing neighboring properties, where the window header is eight (8) feet or more above grade, the amount of glazing must be limited to no more than eight (8) square feet per elevation.

H. *Swimming Pools.*

1. A wall of a swimming pool must not be located less than six (6) feet from any rear or side property line.
2. A wall of a swimming pool that has a capacity greater than six hundred (600) gallons must not be located less than six (6) feet from the main building or other accessory building or structure. Swimming pools that have a capacity of six hundred (600) or fewer gallons are excepted from this setback requirement.
3. Construction requires a site plan, building permit, and all applicable electrical heating and plumbing permits. All pools, which contain twenty-four (24) inches (610 mm) or more of water in depth at any point, must be surrounded by an adequate enclosure in accordance with the City's current building codes. Electrical service conductors and other overhead wires must be located a minimum of ten (10) feet from the pool's edge or a minimum of twenty-two (22) feet above the pool surface. Pool heaters must be installed according to the current adopted city code. All swimming pools must be provided with a recirculating skimming device. The water of all swimming pools must be sanitized. The installation of swimming pools must be in accordance with the requirements of the building and electrical code.

I. Garages may be attached to the principal structure provided that the principal structure including the garage is at least five (5) feet from the rear lot line and all other setback requirements are met. The garage door or combination of garage doors must not exceed eighteen (18) feet. Accessory structures or buildings on corner lots must adhere to the following regulations:

1. When a rear yard abuts a rear yard, the exterior side yard setback must not be less than ten (1) feet.
2. When a rear yard abuts a side yard, the required exterior side yard setback is as follows:

Distance from Rear Lot Line to Structure	Setback Required
0 to 5 feet	No structures permitted
5—35 feet	25 feet
Greater than 35 feet	10 feet

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

SECTION 9.12 WIRELESS COMMUNICATION FACILITIES

A. ***Intent.*** It is the general purpose and intent of the City to carry out the will of the United States Congress by authorizing communication facilities needed to operate wireless communication systems. However, it is the further purpose and intent of the City to provide for such authorization in a manner that will retain the integrity of neighborhoods and the character, property values, and aesthetic quality of the community at large. In fashioning and administering the provisions of this section, an attempt has been made to balance these potentially competing interests. Recognizing the number of providers authorized to establish and operate wireless communication services and coverage, it is the further purpose and intent of this section to:

1. Facilitate adequate and efficient provision of sites for wireless communication facilities;
2. Establish predetermined districts or zones of the number, shape, and in the location considered best for the establishment of wireless communication facilities, subject to applicable standards and conditions;
3. Recognize that operation of a wireless communication system may require the establishment of facilities in locations not within the predetermined districts or zones. In such cases, it has been determined that it is likely that there will be greater adverse impact upon neighborhoods and areas within the community.

Consequently, more stringent standards and conditions should apply to the review, approval, and use of such facilities;

4. Ensure that wireless communication facilities are situated in appropriate locations and relationships to other land uses, structures, and buildings;
 5. Limit inappropriate physical and aesthetic overcrowding of land use activities and avoid adverse impacts upon existing population, transportation systems, and other public services and facility needs;
 6. Promote public health, safety, and welfare;
 7. Provide for adequate information about plans for wireless communication facilities in order to permit the community to effectively plan for the location of such facilities;
 8. Minimize the adverse impacts of technological obsolescence of such facilities, including a requirement to remove unused and/or unnecessary facilities in a timely manner; and
 9. Minimize the negative visual impact of wireless communication facilities on neighborhoods, community landmarks, historic sites and buildings, natural beauty areas, and public rights-of-way. This contemplates the establishment of as few structures as reasonably feasible, and the use of structures that are designed for compatibility, including the use of existing structures and the avoidance of lattice structures that are unnecessary, taking into consideration the purposes and intent of this Section.
- B. The City Council finds that the presence of numerous tower and/or pole structures, particularly if located within residential areas, would decrease the attractiveness and destroy the character and integrity of the community. This, in turn, may have an adverse impact on property values. Therefore, it is necessary to minimize the adverse impact of the presence of numerous tower and/or pole structures having low architectural and other aesthetic appeal to most persons, recognizing that the absence of regulation would result in a material impediment to the maintenance and promotion of property values, and further recognizing that this economic component is an important part of the public health, safety, and welfare.
- C. *Small Cell Wireless Facilities.* Small cell wireless facilities are exempt from this

Section and subject to Article V - Small Cell Wireless Facilities Deployment of Chapter 118 of the City of Berkley Code of Ordinances.

D. **Authorization.** Subject to the standards and conditions set forth in subsection D.1 of this section, wireless communication facilities are permitted uses in the following circumstances:

1. In the following circumstances, a proposal to establish a new wireless communication facility must be deemed a permitted use:

(a) An existing structure, including public utility poles and structure, which will serve as an attached wireless communication facility where the existing structure is not, at the discretion of the Planning Commission, proposed to be either materially altered or materially changed in appearance, provided the accessory equipment building is either not visible from any residence or can be screened in accordance with the standards set forth in Article 12, Landscaping and Screening.

(b) A proposed collocation upon an attached wireless communication facility that had been preapproved for such collocation as part of an earlier approval by the City.

(c) A proposed collocation that will not do any of the following:

i. Increase the overall height of the wireless communications support structure by more than twenty (20) feet or ten percent (10%) of its original height, whichever is less.

ii. Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

iii. Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

iv. Increase the area of the existing equipment compound to greater than two thousand five hundred (2,500) square feet.

2. A collocation or other proposal for attached wireless communication facilities that satisfies the following criteria does not require special land use or site plan approval. Confirmation that these criteria are

satisfied must be determined by an administrative review and written certification by the Community Development Director or their designee to the Building Official prior to issuance of any construction code permits. Such proposals must also be reviewed for compliance with the standards and conditions in subsection D of this section, with the certification to identify any items of noncompliance.

- (a) The existing wireless communications support structure and/or wireless communications equipment compound are in compliance with this ordinance, and if not, are in compliance with a prior approval under this ordinance.
 - (b) The proposal complies with the terms and conditions of any prior final approval under this ordinance of the wireless communications support structure and/or wireless communications compound.
 - (c) The proposal will not increase the height of the wireless communications support structure by more than twenty (20) feet or ten percent (10%) of its original height (as first erected without any later additions), whichever is greater.
 - (d) The proposal will not increase the width of the wireless communications support structure by more than necessary to the stated and documented purpose of the increase.
 - (e) The proposal will not increase the area of the existing wireless equipment compound enclosure to greater than twenty-five hundred (2,500) square feet.
3. Proposals to place or install wireless communications equipment on an existing wireless communications support structure or in an existing wireless communications equipment compound that involve increases in height, width, or area greater than those specified in subsection C.2 above, or that do not comply with the terms or conditions of a prior zoning ordinance approval, are permitted subject to review and approval of a site plan or site plan amendment conforming to the standards in subsection D, and must be subject to any prior special land use approval conditions for the wireless communications support structure or wireless communications equipment compound.

- E. ***Standards and Conditions applicable to all facilities.*** All applications for wireless communication facilities must comply and be reviewed in accordance with the following standards and conditions, and, if approved, must be constructed and maintained in accordance with such standards and conditions. In addition, if the facility is approved, it must be constructed and maintained with any additional conditions imposed by the Planning Commission at its discretion.
1. Facilities must be located and designed to be harmonious with the surrounding area. Among other things, all reasonable attempts must be made and thoroughly explored to utilize existing structures on which to place facilities, i.e., to utilize attached wireless communication facilities.
 2. Wireless communication facilities must comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions, as confirmed by the submission of a certification of compliance by the applicant's licensed engineer.
 3. Applicants must demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs, which might result in lower heights.
 4. The proposal must be reviewed in conformity with the collocation requirements of this Section.
 5. The maximum height of the new or modified support structure and antenna must be the minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to collocate on the structure). The accessory building contemplated to enclose such things as switching equipment must be limited to the maximum height for the accessory structures within the respective district.
 6. The setback of a new or materially modified support structure from any residential district must be at least the height of the highest point of any structure on the premises. The setback of the support structure from any existing or proposed rights-of-way or other publicly traveled roads must be no less than the height of the structure.
 7. Where the proposed new or materially modified support structure

abuts a parcel of land zoned for a use other than residential, the minimum setback of the structure, and accessory structures, must be in accordance with the required setbacks for main or principal buildings as provided in the schedule of regulation for the zoning district in which the support structure is located. (See subsection E.3. of this section).

8. There must be unobstructed access to the support structure, for operation, maintenance, repair, and inspection purposes, which may be provided through or over an easement. This access must have a width and location determined by such factors as:
 - (a) The location of adjacent thoroughfares and traffic and circulation within the site;
 - (b) Utilities needed to service the tower and any attendant facilities;
 - (c) The location of buildings and parking facilities;
 - (d) Proximity to residential districts and minimizing disturbance to the natural landscape; and
 - (e) The type of equipment which will be needed to access the site.
9. The division of property for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements and conditions are met;
10. Where an attached wireless communication facility is proposed on the roof of a building, if the equipment enclosure is proposed as a roof appliance or penthouse on the building, it must be designed, constructed, and maintained to be architecturally compatible with the principal building. The equipment enclosure must be located within the principal building or an accessory building. If proposed as an accessory building, it must conform with all district requirements for principal buildings, including yard setbacks. For collocation facilities served by an accessory building, there should be a single, architecturally uniform accessory building for all providers.
11. The design and appearance of the support structure and all accessory buildings must minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with

surroundings. It must be the responsibility of the applicant to maintain the wireless communication facility in a neat and orderly condition.

12. The support system must be designed to support, or be capable of supporting, the proposed equipment, and be constructed in accordance with all applicable state construction codes and must include the submission of a soils report from a geotechnical engineer, licensed in the state. This soils report must include soil borings and statements confirming the suitability of soil conditions for the proposed use. The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission must be noted.
13. A maintenance plan, and any applicable maintenance agreement, must be presented and approved as part of the site plan for the proposed facility. Such a plan must be designed to ensure long-term, continuous maintenance to a reasonable prudent standard.
14. The use of high-intensity (strobe) lighting on a wireless communication facility must be prohibited, and the use of other lighting must be prohibited absent a demonstrated need.
15. Applications made which do not include the signature of the licensed operator of a wireless communication service at the time of community processing may be tentatively approved, but must not receive final approval unless and until the application has been amended to include a signature on behalf of a licensed operator. A tentative approval must be valid for ninety (90) days. If, during a ninety (90) day period, final approval is granted to authorize a wireless communication facility within two (2) miles of the property on which a facility has been tentatively approved, such tentative approval must thereupon expire unless the applicant granted tentative approval demonstrates that it would not be feasible for it to collocate on the facility that has been newly granted final approval; and
16. The antenna and other attachments on a wireless communication facility must be designed and constructed to include the minimum attachments required to operate the facility as intended at the site, both in terms of number and size of such attachments and must be

designed and constructed to maximize aesthetic quality.

F. *Applications, Reviews, and Decisions.*

1. *Administrative Review.*

- (a) All applications for wireless communication facilities must be submitted to the Community Development Director or their designee. The Zoning Administrator must review the application and required information and determine within fourteen (14) business days if the submission is complete. If the Zoning Administrator does not notify the applicant within fourteen (14) business days of any deficiencies in the submission, the application must be considered administratively complete. Such review must be on behalf of the Planning Commission for special land use and site plan approval applications.
- (b) Upon a special land use or site plan approval application being administratively complete, the Community Development Director must promptly schedule it for a Planning Commission meeting that will allow for a Planning Commission site plan decision or special land use decision after the required public hearing within the time periods in subsection 3 below.
- (c) If an application discloses professional opinions supporting the application and the Zoning Administrator or Planning Commission has determined that independent professional review for the City of any such opinion should be performed, the reasonable costs of such review may be assessed to the Applicant by a written notice from the Zoning Administrator, as a professional review cost to be paid in accordance with the notice.

2. *Information Required for all Applications.*

- (a) The site plan prepared in accordance with Article 6.0 must be submitted, showing the location, size, screening and design of all buildings and structures, including fences, and the location and size of outdoor equipment, and the location, number and species of proposed landscaping. In the case of an existing structure, including public utility poles and structures, which

will serve as an attached wireless communication facility, the director may waive the requirements for conceptual site plan approval and allow the applicant to submit a final site plan, provided all other applicable requirements are met.

- (b) The site plan must also include a detailed landscaping plan where the support structure is being placed at a location which is not otherwise developed, or where developed areas will be disturbed. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory buildings, and enclosure.
- (c) The application must include a signed certification by a state licensed professional engineer with regard to the manner in which the proposed structure will fall, which certification will be utilized, along with other criteria such as applicable regulations for the district in question, in determining the appropriate setback to be required for the structure and other facilities.
- (d) The application must include a description of security to be posted with the City at the time of receiving a building permit for the facility to ensure removal of the facility when it has been abandoned or is no longer needed, as provided in subsection G. of this section. In this regard, the security must meet one (1) of the following:
 - i. Cash
 - ii. Surety bond;
 - iii. Letter of credit; or
 - iv. An agreement in a form approved by the City Attorney and recordable at the office of the register of deeds, establishing a promise of the applicant and owner of the property to remove the facility in a timely manner as required under this section, with the further provision that the applicant and owner must be responsible for the payment of any costs and attorney's fees incurred by the community in securing removal.

- (e) The application must include a map showing locations and heights of existing and known proposed wireless communication facilities within the City and within areas surrounding the borders of the City in the location, and in the area, which are relevant in terms of potential collocation or in demonstrating the need for the proposed facility. On the same or a separate map, facilities the applicant is using or has the right to use, and the heights at which its antennas are or may be installed, must be disclosed. Any such information which is a trade secret and/or other confidential commercial information which, if released would result in commercial disadvantage to the applicant, may be submitted with a request for confidentiality in connection with the development of governmental policy (MCL 15.243(1)(g)). This section must serve as the promise to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated in order to bring it to the attention of the community.
- (f) The application must include the name, address, and phone number of the person to contact for engineering, maintenance, and other notice purposes. This information must be continuously updated during all times the facility is on the premises.
- (g) The application must include the application fee, in the amount specified by City Council resolution.
- (h) The owner or duly authorized representative of all ownership interest in the land on which the wireless communication facility is proposed to be located must sign the application. In addition, if a licensed entity intended to be the operator of the facility does not sign the application, approval must be restricted as provided in subsection D of this section.
- (i) Identification of the dates, nature, and conditions of any prior zoning approvals or permits for the property.
- (j) If the application is for a new wireless communication support structure or to place or install additional wireless communications equipment on an existing support structure, a

structural analysis and certification to the City by a registered professional engineer that the structure is designed to support, or is capable of supporting the proposed wireless communications equipment. Any modifications necessary to a structure being capable of supporting the proposed equipment must be specifically identified in the analysis and certification.

- (k) If modifications to a wireless communications support structure are identified in a structural analysis under subsection k above, a written determination by the City construction code building official that, subject to review of an actual building permit application and plans, the identified modifications would be allowed and that with the modifications, the structure would meet construction code requirements.
- (l) If the application is for a new wireless communications support structure or to increase the height of an existing structure, a written analysis and justification by a registered engineer that the proposed height is the minimum necessary for the provision of personal wireless services and to provide collocation.
- (m) If the application is for a new wireless communications support structure, identification of all other structures and properties considered for the proposed use and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.
- (n) If the application is for a new wireless communications support structure, identification of possible alternative locations, designs, or features, whether those alternatives were considered, and if so, a factual explanation of why those alternatives are not proposed.
- (o) Disclosure and copies of all other required governmental permits or approvals and the status and copies of pending applications for those permits or approvals.
- (p) Disclosure and copies of all other required governmental permits or approvals and the status and copies of pending

applications for those permits or approvals.

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

3. *Review and Decisions on an Application.*

- (a) All complete submissions requiring site plan approval, must be reviewed in accordance with the applicable procedures set forth in Article 15, Site Plan Review.
- (b) All complete submissions requiring both special land use and site plan approval must be reviewed in accordance with the applicable procedures set forth in Article 15, Site Plan Review, and Article 10, Special Land Use Procedures and Standards.
- (c) The Planning Commission must approve or deny a special land use application for a new wireless communications support structure not more than ninety (90) days after it is administratively complete.
- (d) For all special land use and site plan applications other than new wireless communications support structures, the Planning Commission must approve or deny the application not more than sixty (60) days after it is administratively complete.

4. *Post-Approval Costs , Fees, and Administrative Actions.* For all special land use and site plan applications other than new wireless communications support structures, the Planning Commission must approve or deny the application not more than sixty (60) days after it is administratively complete.

- (a) Any conditions of the special land use or site plan approval.

- (b) Payment of any outstanding professional review costs as described in subsection E.1.c.
- (c) Payment of a reasonable zoning permit fee in an amount established by or in accordance with a Resolution of the City Council.

G. ***Collocation.***

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

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

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

3. Requirements for Collocation.

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

communication support structure within the City for a period of five (5) years from the date of the failure or refusal to permit the collocation. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in this context, must mean a demonstration that enforcement of the five (5) year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services, or that such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

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

H. ***Removal.***

1. A condition of every approval of a wireless communication facility must be adequate provision for removal of all or part of the facility by users and owners upon the occurrence on one or more of the following events:
 - (a) When the facility has not been used for one hundred eighty (180) days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) must be considered as the beginning of a period of nonuse; or
 - (b) Six (6) months after new technology is available at reasonable cost as determined by the municipal legislative body, which permits the operation of the communication system without the requirement of the support structure, or with a support structure that is lower and/or more compatible with the area.
2. The situations which removal of a facility is required, as set forth in subsection G.1. of this section, may be applied and limited to portions of a facility.
3. Upon the occurrence of one or more of the events requiring removal, specified in subsection G.1. of this section, the property owner or

persons who have used the facility must immediately apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition as reasonably determined by the planning official.

4. If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days of the applicable deadline, and after at least thirty (30) days' written notice, the City may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn, collected, and/or enforced from or under the security posted at the time application was made for establishing the facility.
5. The person who has used the facility must immediately notify the City Clerk in writing if and as soon as use of a facility ceases.

I. *Effect and Approval.*

1. Subject to subsection H.2. of this section, final approval under this section must be effective for a period of six (6) months.
2. If construction of a wireless communication facility is commenced within two (2) miles of the land on which a facility has been approved, but on which construction has not been commenced during the one (1) year period of effectiveness, the approval for the facility that has not been commenced must be void thirty (30) days following notice from the City of the commencement of the other facility unless the applicant granted approval of the facility which has not been commenced demonstrates that it would not be feasible for it to collocated on the facility that has been newly commenced.

SECTION 9.13 PROHIBITED MATERIALS IN RESIDENTIAL ZONING DISTRICTS

No junk or waste materials, building materials, parts of motor vehicles, or parts of machines not generally suited for use on the premises must be kept or stored

outside a building or structure except as specifically permitted in the zoning district in which said structures are located.

SECTION 9.14 FRONTAGE ON PUBLIC STREET REQUIRED

The development of all parcels in the City of Berkley must be predicated on having frontage on a public street. Said frontage must be in compliance with the provisions of this ordinance and any other applicable code or ordinance, and all resulting parcels must meet all of the minimum requirements for area, width, and depth of the applicable zoning district, Oakland County Health Department requirements for on-site sewage disposal systems or water supply, where a public water system is not available, and subject to the requirements of the City Subdivision and Combination of Land Ordinance.

SECTION 9.15 SPECIAL EVENTS

- A. A community special event must include an event or promotion that is not limited to a single business. Community special events must include but not be limited to the following: art fairs, sidewalk sales, and festivals. Community special event permits must be available to business, civic, or service organizations.
- B. A community special event permit is valid for no more than one (1) week.
- C. The organization is required to apply for a community special event permit. A list of participating businesses and/or organizations must be on file at the city prior to approval of a community special event permit. Upon receipt of a complete application, an applicant must be notified of City's disposition.

SECTION 9.16 EXTERIOR APPLIANCES

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

1. Residential uses.
 - (a) Power generators and other exterior appliances must be located in the rear yard at least six (6) feet from the side property line.
 - (b) Air conditioning units may be permitted in the side yard under the following conditions:
 - i. The unit must be at least eighteen (18) inches from the side property line.
 - ii. The unit must be at least twelve (12) feet from the adjacent dwelling.
 - iii. The unit must be screened on at least three (3) sides by opaque fencing or landscaping, measuring at least four feet in height from grade. The principal structure may be considered one side of screening.
 - iv. Screening must be provided from street view and facing the closest adjacent property.
 - v. Chain link fencing is not permissible as a screening material for exterior appliances.
2. Nonresidential uses.
 - (a) At grade.
 - i. Exterior appliances must be at least five (5) feet from a property line.
 - ii. Power generators must be enclosed in a sound-attenuating enclosure, if located adjacent to residential property.
 - iii. Exterior appliances must be screened on at least three sides with opaque fencing or landscaping, measured at least four feet in height from grade. The principal structure may be considered one side of screening. Screening must be provided from street view and facing the closest adjacent property. Chain link fencing is not permissible as a screening material for exterior appliances.

- (b) Rooftop.
 - i. Exterior appliances located on the rooftop of commercial buildings must be screened so as to not be visible from street level. Screening materials must be consistent with the color, materials, design, and aesthetic of the building.
- (c) The Planning Commission may modify the location of the exterior appliances on non-residential properties during site plan review if the applicant can demonstrate an alternative location does not negatively impact adjacent properties, or pedestrian or vehicular traffic.

B. **Restrictions.** Generator testing is permitted Monday through Friday, 9 a.m. through 6 p.m.

C. **Nonconforming exterior appliances.**

- 1. Nonconforming exterior appliances include appliances that were lawfully installed but are no longer in compliance with the provisions of this article.
- 2. Nonconforming exterior appliances may be continued, maintained, and replaced.
- 3. If the structure that is served by a nonconforming exterior appliance is damaged or partially destroyed by less than fifty (50%) percent of its market value, the exterior appliances may be restored, and its previous use continued. If the structure that is served by a nonconforming exterior appliance is damaged or partially destroyed by fifty (50%) percent or more than fifty (50%) percent of its market value, then any restoration or new construction must comply with all current building and zoning codes.

SECTION 9.17 COVERED PATIOS, GAZEBOS, PERGOLAS, PAVILIONS, AND SIMILAR TYPE “OPEN-AIR” STRUCTURES

A. Covered patios, gazebos, pergolas, pavilions, and similar type "open-air" structures are permitted on single-family residential lots, units, or parcels

for accessory recreation or leisure use provided they meet the following requirements:

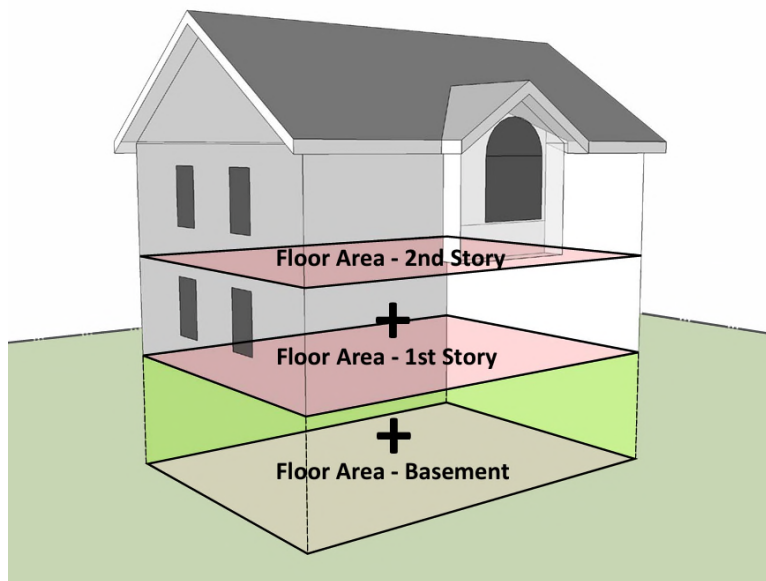
1. The "open-air" structures must not be enclosed or partially enclosed with walls.
2. The structures must be located in a manner to meet the required setbacks and locations for an accessory structure, however, must not be required a separation distance from the principal structure or swimming pool.
3. The structures must not exceed twelve (12) feet in height.
4. The structures must not be counted towards the allowance for accessory building area or towards the number of accessory buildings permitted. The coverage of the structures must be counted towards the "Maximum Lot Coverage" ratio.

SECTION 9.18 CALCULATING GROSS FLOOR AREA

- A. ***Gross Floor Area:*** The gross floor area is the sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior walls or from the centerline of walls separating two buildings. In particular, floor area includes basement space; elevator shafts or stairwells; floor space for mechanical equipment, penthouses, balconies, mezzanines, enclosed porches, and accessory buildings; attic floor space (whether or not floor has been laid) providing structural headroom of seven feet six (7'6") inches. Floor area must not include elevator or stair bulkheads, accessory water tanks, or cooling towers; uncovered steps, or attic floor space less than seven feet six (7'6") inches high. Covered but unenclosed portion of porches, terraces or breezeways must have their floor area computed as fifty percent (50%) of the actual floor area. Uncovered and unenclosed porches, terraces, or breezeways must have their floor area computed at twenty-five percent (25%) of the actual floor area.
- B. ***Floor area, usable (for the purposes of computing parking).*** That area used for, or intended to be used for, the sale of merchandise or services or for use to serve patrons, clients, or customers. One-half of such floor area that is used principally for the storage or processing of merchandise, such as hallways, basements, stairways, and elevator shafts, or for utilities or

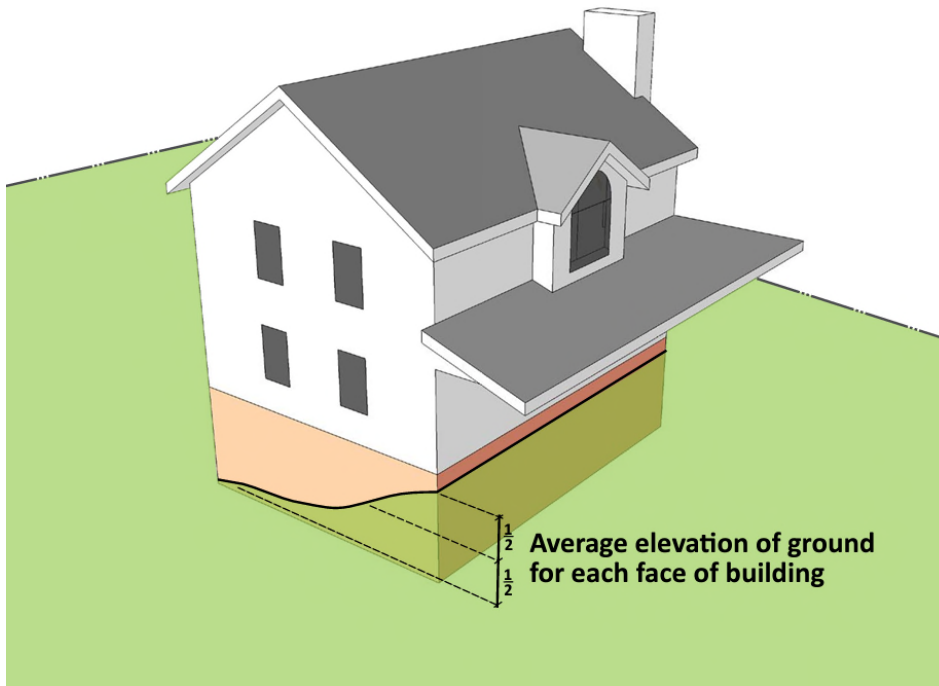
sanitary facilities, must be excluded from this computation of usable floor area. Measurement of usable floor area must be the sum of the horizontal areas of the several floors of the building, measured from the interior faces of the exterior walls.

- C. ***Floor area, usable (for the purpose of determining building size).*** All horizontal floor area within the enclosed living space of a dwelling unit, measured from the interior faces of the exterior walls; provided that usable floor area does not include basements, cellars, unfinished attics, garages, breezeways, enclosed and unenclosed porches, space used for off-street parking, elevators, accessory structures and utility rooms.



SECTION 9.19 CALCULATING GRADE

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

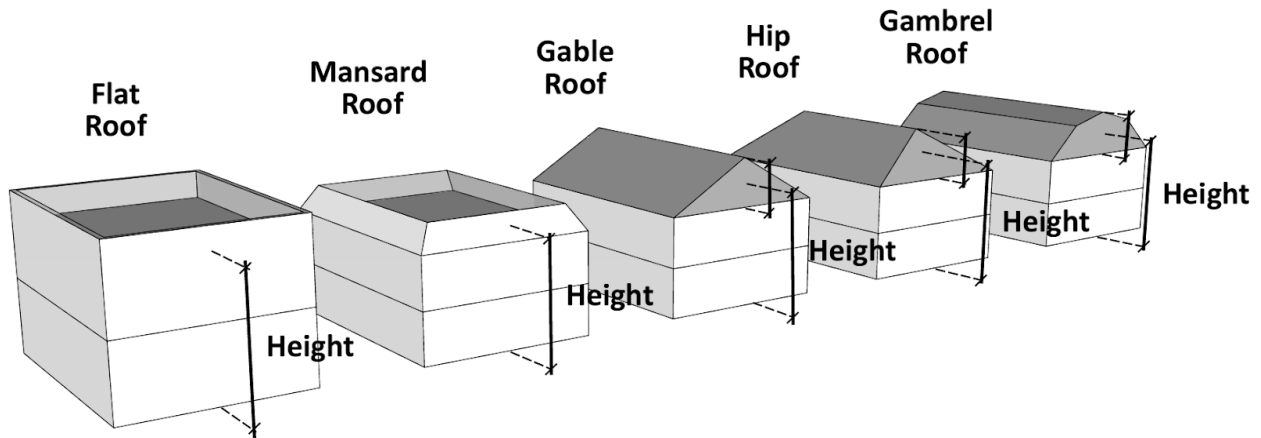


SECTION 9.20 CALCULATING BUILDING HEIGHT

- A. **Building height:** The height of a building is measured from the average established grade to a point halfway between the eaves and peak of the roof. Buildings with flat roofs must be measured from grade to the highest point of the roof's surface. In measuring the height of a building, the following must be excluded: chimneys, cooling towers, flagpoles, mechanical penthouses, tanks, water towers, radio towers, ornamental cupolas, domes, spires, and parapet walls not exceeding four (4) feet in height.
1. **Gable roof:** A roof sloping downward in two (2) parts at an angle from a central ridge, so as to leave a gable at each end. A gable roof must have at least a 3:12 pitch.
 2. **Gambrel roof:** A roof sloping downward in two (2) parts from a central ridge each side of which has a lower slope angled not less than thirty (30) degrees (or a 7:12 pitch) above a steeper one angled not greater than sixty (60) degrees (or a 20:12 pitch).
 3. **Hip roof:** A roof sloping downward in four parts (ends and sides) from a central ridge. A hip roof must have at least a 3:12 slope.
 4. **Mansard roof:** A roof sloping downward in four parts (ends and sides)

from a central point. Each side of which has a lower slope angled not greater than a 3:12 pitch above a steeper one angled not greater than a 60:12 pitch.

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



SECTION 9.21 GRADING

- A. **Residential Structures:** Grading for residential structures must drain surface water away from residential dwellings at a minimum slope of one-fourth (1/4) inch in one (1) foot. Grading on a parcel must prevent surface water from that parcel from flowing onto adjoining parcels.