

City of Berkeley
Zoning Ordinance Steering Committee

Wednesday, May 3, 2023
7:00 p.m.

AGENDA

- 1. Check in**
- 2. Review of previous work**
 - a. Joint City Council/Planning Commission Meeting
 - b. Zoning Ordinance Evaluation
- 3. How we make decisions**
 - a. Discussion
- 4. Schedule**
 - a. Schedule
 - b. Focus Area Workshops (Topics & Times)
- 5. Check out**
 - a. Community education and communication
 - b. Steering Committee: Questions & suggestions to staff by May 12, 2023
 - c. Staff & CWA: Materials for next meeting to Steering Committee by May 24, 2023
 - d. Next meeting date: June 7, 2023 at 7 p.m.



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TO: City of Berkley Zoning Ordinance Steering Committee

FROM: Megan A. Masson-Minock, AICP

DATE: April 19, 2023

RE: May 2023 Zoning Ordinance Steering Committee Meeting

Thank you for serving on the Zoning Ordinance Steering Committee! We are delighted to be working with the City of Berkley again and excited to assist with the Zoning Ordinance rewrite. At your upcoming meeting, we would like to determine how the Steering Committee makes decisions and our schedule for the next year.

Steering Committee Decision-Making

The Steering Committee will be making decisions on the format and content of the revised Zoning Ordinance. After the Steering Committee has approved drafts, portions of the Zoning Ordinance will be shared with Planning Commission and City Council. The Planning Commission will provide a recommendation to the City Council, who will approve the revised Zoning Ordinance.

We anticipate that there will be times when the Committee has disagreements and may not be able to reach a unanimous decision. We would like the Committee to establish rules as to how to handle those situations. Two suggestions are:

- If a consensus is not reached, majority rules by straw poll vote facilitated by CWA.
- If a consensus is not reached, CWA and staff draft a memo to City Council and Planning Commission asking for input. A decision would be made at the next meeting, upon review of input from elected and appointed officials.

We recommend that for contentious issues, that the minority's concerns will be incorporated into communications to the Planning Commission and City Council.

Please come prepared to the upcoming meeting with any suggestions or revisions to this approach. We also welcome procedural suggestions and recommendations for discussion ground rules.

Schedule


A suggested schedule is below for the Steering Committee. The schedule could vary based on when the four focus area workshops occur and/or the subject matter. Please review and come to the meeting with revisions to the schedule and suggestions for the focus area workshops.

May 2023	Decision-Making & Schedule
June 2023	Outline & Zoning Districts Overall
July 2023	Landscaping & Lighting
Aug. 2023	Specific Changes for Corridor Districts & Residential Districts

August -September 2023 – Focus Area Workshops (up to four sessions)

Sept. 2023	Parking
Oct. 2023	Specific Use Standards
Nov. 2023	Signs
Dec. 2023	General Provisions & Definitions
Jan. 2024	Development Review Processes (Site Plan, Special Land Use, Amendments, PUD's)
Feb. 2024	Nonconformities
Mar. 2024	Administration & Enforcement
Apr. 2024	Finalize draft of Zoning Ordinance & Sign Ordinance
May 2024	Planning Commission Full Draft

Should you have any questions please do not hesitate to contact me.


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



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TO: Berkley City Council, Planning Commission and Zoning Ordinance Steering Committee
FROM: Megan Masson-Minock, AICP, Principal
DATE: April 19, 2023
RE: Summary memo of joint City Council and Planning Commission April 5th meeting

Thank you for your participation in the rewriting of the City of Berkley's Zoning Ordinance. In addition, we would like to thank those who participated in a joint meeting of the Planning Commission and City Council on April 5, 2023. The purpose of this memo is to summarize what was shared at that meeting.

At that meeting, we discussed the following items with City Council and Planning Commission members:

1. What suggestions do you have for the process of rewriting the Zoning Ordinance?
2. In addition to what is listed in this memo, what changes would you like to see to the Zoning Ordinance?
3. What are your expectations for the process? For the final product?

Zoning Ordinance Rewrite Process

Prior to the meeting, the Process & Timeline section from CWA's proposal (in the appendix of this memo) was shared. CWA staff briefly described the process and asked for any suggestions. The following items were shared:

- Generally, participants agreed with the process presented.
- Participants agreed with the suggestion from staff that the Zoning Education Workshop be an education video.
- Education is needed on how existing situations are nonconformities and are allowed to continue, even when they do not meet the current or updated Zoning Ordinance.
- Officials suggested that proposed regulation on corridors takes into consideration the type of street, building and parcel, as well as use.
- A one-page document with five to six bullet points should be developed. The document should cover why the current Zoning Ordinance does not work well, the goals of the Master Plan, and the last time a comprehensive rewrite of the Zoning Ordinance was undertaken.

Changes to the Zoning Ordinance

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

CWA staff reviewed Zoning Ordinance changes outlined in the City's Master Plan and input from staff, the City Attorney, Planning Commission, City Council, and the Zoning Ordinance Steering Committee. In addition to those items, meeting participants requested the following changes be added to the rewrite:

- Regulations to prevent intensive office use, particularly medical, at prominent intersections, such as Twelve Mile and Coolidge.
- The Community Development Director can make decisions on uses not listed in the Zoning Ordinance based on comparable allowed uses.

Expectations for the Process and Final Product

CWA staff asked the expectations of each meeting participant. The following was shared:

The final product should be:

- reflective of the Master Plan,
- easy to understand,
- clear and concise,
- easier to use,
- as flexible as possible without being vague, with opportunities for staff to make decisions, and
- current and allow the Zoning Ordinance to stay current in the future.

The public engagement should:

- expertly communicate the process to the public, step by step,
- give digestible information to the public,
- include the public and business community via the DDA, Chamber of Commerce and staff,
- be short and sweet,
- give a synopsis of what has been going on,
- include examples with visuals,
- communicate the future to come, and
- be clear and concise.

The process should:

- share how other communities have seen success with similar regulations,
- document where regulations come from (i.e., state law, standards from other regulatory agencies, examples from other communities),
- involve the City Attorney after review by the Steering Committee, and
- show what language was kept from the current ordinance and what is proposed.

CWA staff asked about sustainability and whether green building or infrastructure should be required or incentivized. The participants expressed concerns that requiring these items could increase the price of development beyond what developers could afford, especially with the small parcels and 1-2 story buildings in Berkley. They suggested that one of the topic workshops could be about what the public was willing to use as incentives (i.e., parking waiver or building height) for sustainability (green roofs, energy efficiency, etc.).

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

Sincerely,



CARLISLE/WORTMAN ASSOC., INC

Megan Masson-Minock, AICP

Principal



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City of Berkley
Zoning Ordinance Evaluation

Introduction

The City of Berkley has requested an evaluation of the Zoning Ordinance. This is a prudent decision because the Ordinance has had multiple amendments without a comprehensive rewrite. The City has more recently updated the Master Plan which provides guidance to the content of the Zoning Ordinance.

A significant factor in reviewing the Zoning Ordinance is the complete revision of and subsequent amendments to Michigan's zoning enabling statute. Michigan operated under separate zoning statutes for cities and villages, townships, and counties until 2006 when zoning enabling laws were consolidated into a single act, the Michigan Zoning Enabling Act (hereinafter referred to as MZEA), which is PA 110, as amended.

Guiding Principles

When CWA is asked to review a Zoning Ordinance, we recommend a set of guiding principles which will generally improve the Ordinance. The following is what we would recommend to the City of Berkley, as well:

1. Use Improved Technology – The Ordinance should be designed not only for hard copy but also for online use. Techniques such as improved searchability and the use of hyperlinks will allow cross-references to section references, definitions, etc. by clicking on key words. The City uses Municode as its codification service for all ordinances, which includes the Zoning Ordinance. When and if the Ordinance is amended, the City may wish to explore alternatives with Municode, or otherwise, to make the Ordinance more user-friendly.
2. Use Improved Graphics – The use of graphics in the document better illustrates Ordinance requirements such as dimensional regulations, landscaping, signage, etc. Currently, there are a limited number of graphic illustrations in the Ordinance.
3. Improved Organization – Ordinance organization is also a key to how easy an ordinance is to use. Organizing information logically and consistently will aid in both using and understanding the ordinance. There are several areas, pointed out in this report, where we recommend improvements in organization. We have also included as Attachment I, a recommended organizational outline.

4. Improve Readability – Without compromising legal precision, there are many sections of the Ordinance which need editing. To the extent possible, the Ordinance should be understandable to the average user.
5. Clarify Conflicting Language – Whenever an Ordinance is amended multitude times without a comprehensive review, there are bound to be conflicts. Conflicting language can often lead to misunderstandings. Due to the level of changes needed, we expect that conflicting language will be removed during the rewrite process.
6. Improve Efficiency and Avoid Repetition – There is unnecessary repetition in the Ordinance, particularly in the District regulations relative to permitted and special land uses. Much greater use can be made of presenting information in a tabular or schedule form.
7. Statutory Updates – Update the Zoning Ordinance for portions relevant to PA 110 of 2006.

Organization of Report

The Ordinance is organized in a series of Articles, and this report is organized in the same manner. Following a brief overview of the intended purpose of each Article are more specific comments about content, approach, and effectiveness of each individual Article.

Article I – Purpose

General Comments: The purpose section of the Zoning Ordinance provides the legal basis for the regulations embodied in the Ordinance. In fact, it may be the first line of defense in any legal challenges to the Ordinance. The purpose section should closely mirror the language which establishes the legal authority found in the Michigan Zoning Enabling Act (MZEA), PA 110 of 2006. The current Ordinance provisions represent the bare minimum of what should be included in this Article.

Specific Comments:

1. Section 138-1 Preamble - Purpose needs to be expanded citing the authority granted by the MZEA and more explicitly citing phraseology used in the current Act. Reference should be made to implementing the goals of the Master Plan. Adding more expansive language regarding the scope of the Ordinance will give the City greater protection against challenges.
2. Section 138-3 Scope - Construction also needs broader and more expansive language which defers to the City the ability to liberally interpret the Ordinance to the benefit of public health, safety, and welfare. Subsections c and d may be necessary but are too specific for this Article and should be placed elsewhere.
3. Sec.138-31 under Article II is misplaced and should be cleaned up and placed under Article I.

4. Article I is missing a “validity and severability” clause which protects the entire Ordinance from being ruled invalid if one section is ruled to be invalid by a legal challenge. This is a significant omission.

Article II – Definitions

General Comments: Frequently, the exact meaning of a definition can be the deciding factor for important decisions or to fend off challenges. Therefore, a thorough review of each definition is an important task along with the addition of any new definitions, which will add substance to the Ordinance.

A definition needs to be confined to a description of terms. Mixing regulations in with a definition always runs the risk that the actual regulation may be missed if the definition is not consulted. The City’s Ordinance does a good job of separating definitions from regulations in Article 2. However, the definitions elsewhere in the Ordinance often contain regulations.

However, a problem, which is not uncommon, is the incorporation of definitions throughout the body of the Ordinance which are either absent from or may conflict with Article 2. A good example is Section 138-51 which contains definitions pertaining to accessory buildings and structures which are different than in Sec. 138-32.

We would recommend that all definitions be placed in Article 2. This report does not attempt to critique each definition, but a review of each definition will be needed later in the rewrite process.

Article III - General Provisions

General Comments: General provisions are intended to include all the regulations that are generally applicable to all Districts. It is not unusual for general provisions to be the “receptacle” for some regulations that could be placed elsewhere. It also is not unusual for the general provisions section to be disorganized. Both characteristics are evident with the Ordinance.

Specific Comments:

1. Division 1, Sec. 138-51-63 – These sections all pertain to accessory structures and could be improved with reorganization and consolidation of the various sections.
 - A. Some of the regulations are either contradictory or confusing. For example, Sec. 138-55 states that no accessory structure may be located within 5’ of a property line. However, the table in Sec. 138-5 which regulates height states that no structures are permitted within 0-5’ of a property line. It would be simpler to establish clear setback and height requirements.
 - B. While the total allowable square footage is regulated in Sec,138-54, the total number of structures is not.

- C. Some language pertaining to two story accessory buildings may conflict with the Building Code. The same comment applies to language pertaining to attics. It is unclear why either of these provisions are in the Zoning Ordinance.
 - D. The way antennas are addressed is an example where language can be consolidated. One paragraph addresses height, and another addresses the number. However, some of this language may conflict with FCC regulations.
 - E. Swimming pools are regulated by the Building Code which may conflict with Sec.138-59. We advise referring to the building code.
 - F. Sec. 138-61 is deficient. There is no definition of what constitutes a “trailer-mounted” accessory building. The restriction on use of an accessory building for “non-residential” purposes is vague. We have seen the use of shipping containers for accessory storage occurring elsewhere. We recommend language be added to prohibit such a use in residential areas.
 - G. Finally, Sec. 138-62 is an example of unnecessary language. One of the prescribed duties of the ZBA is interpretation and is should be included in the description of ZBA roles and responsibilities.
2. Division 1.5 should be consolidated with Division 1 since the appurtenant structures included in this Division are all accessory to a principal use. As with other provisions associated with accessory structures, these regulations may conflict with the Building Code. Sec.138-75 also includes separate provisions for non-conforming exterior appliances. If separate regulations are necessary, which is probably not the case, we would recommend they be placed in Division 5.- Nonconforming Buildings and Uses.
 3. Division 2. – Fences seem complicated. As written, fences of even 30” or less, are not permitted in the front yard. The restrictions on landscaping are also very strict, placing a heavy burden on the City for enforcement. As with other sections of the Ordinance, language can be consolidated and simplified. On the other hand, the Ordinance contains no landscape standards for project subject to site plan review. This is another significant omission.
 4. Division 2.5-Wind Energy is also an accessory use that could be incorporated in a revised accessory structures section. Given the potential application for wind energy in the City, these provisions could also be simplified. On the other hand, the more likely sustainable energy accessory structure will be solar devices, which are not covered by the Ordinance.
 5. Division 3-Temporary Uses is intended to regulate various forms of temporary sales and activities which occur in the City. One of the deficiencies, which applies to all circumstances, is the lack of any locational standards. For example, Sec.138-107 covers seasonal sales but does not prohibit the use of required parking to accommodate such sales. All activities covered by this Division should have locational standards. We also note that this Division refers to temporary signs, although the City Sign Ordinance is a General Ordinance.

6. Division 4- Performance Standards are typical of industrial performance standards found in many ordinances. And, as with many ordinances, these standards are out of date and in most cases are covered by more stringent regulations at the State and federal level. While we do not recommend eliminating this Division, it needs to be updated to current standards and conditions.
7. Sec. 138-132- Grading. While the regulations are appropriate and necessary, we typically recommend that such requirements are better included in an overall engineering design standards ordinance.
8. Division 4.5- Lighting. Rather than be placed under General Provisions, we recommend that lighting be placed in a separate Article. Some of the lighting standards are out of date. For example, LED lights are now the rule, not the exception. The brightness of LED lights is regulated through their color or K-value. Anything over 3500K will appear too bright. Shielding requirements in this Section could also be updated, along with better regulation of “wall-pak” lights which are a frequent source of glare. Finally, this section needs to have clear requirements for lighting and photometric plans. We find the quality of such plans varies without clear standards.
9. Division 5.-Nonconforming Uses. We recommend that nonconforming regulations which be placed in a separate Article.

Sec. 133-152 General requirements could be more logically organized. The first and last statement in this Section are somewhat contradictory. Combining these into a more coherent statement would bring clarity to the purpose of regulating nonconformities.

The second paragraph in this section is vague and may present enforcement difficulties. First, who determines the structure is in disrepair must be indicated. Second, a process and time frame for remediation must be included. Finally, the consequences of lack of compliance must be included.

Both Secs. 138-53 and 54 need more precise language. Both may present difficulty in enforcement.

Finally, regulations on the use of non-conforming lots of record should also be included in the same Division as other nonconformities. We are unable to find if nonconforming lots are covered elsewhere in the Ordinance.

10. Division 6 – Supplementary Regulations. Generally, most of what is in this Division can be incorporated in either General Provisions or District Regulations. For example, Sec. 138-186 Essential Services can be incorporated in General Provisions. However, at a minimum, we recommend the City consider buildings associated with essential services to be subject to site plan review. Sec.- 138-187 Voting Places is also a general provision.

All the remaining sections deal with the application of zoning district regulations and should be included in Article V. District Regulations. With that, many of the sections that deal with exceptions to zoning requirements are vague. For example, Sec. 138-188 Height exceptions only grants relief for television towers and public monuments. There are typically many other architectural features i.e.; steeples., elevator shafts, rooftop screening of HVAC equipment, etc..) that are typically granted height exceptions.

Sec. 138-189 Buildable lots somewhat speaks to the issue of nonconforming lots of record, but without any regulations. Usual practice is to require minimum setbacks to be met.

In Sec.138-192, projections into the public right-of-way are too vague. If such projections are to be permitted, it should be very clear as to both the type of projection and the circumstances that would be permissible. In general, the current language is short-sighted in that it does not fully anticipate the future use of a public right-of-way.

Given the time that has lapsed since the current Ordinance was adopted, Sec. 138-196 Incomplete Dwellings is no longer necessary. What is needed is an affirmative statement that a cellar, garage, or incomplete structure shall NOT be occupied as a residence.

Sec. 138-197 Interpretation of Use should be included in the responsibilities of the ZBA.

Article IV – Parking and Loading

General Comments: Article IV includes parking, loading, and bicycle parking in the same Article. We suggest adding drive-through and access management to this Article. All these items are interrelated, and it is helpful to the user to have them in one place.

Specific Comments:

1. Division 1 Off-street Parking

- A. Sec.138-219 Parking Space by Use. Parking standards are typically out of date in most zoning ordinances. Formulas are passed down over time with little basis for whether they are accurate. The characteristics of some uses change, while other uses that are similarly classified are quite different. A studio apartment will not require the same amount of parking as a two-bedroom apartment. The parking formulas for each use in Sec.138-219 need to be reviewed and revised as part of the rewrite process.
- B. Many of the standards for required parking in Sec. 138-219 use multiple criteria (building size, number of employees, number of beds, etc.) to determine parking. This could probably be updated and simplified. Fortunately, we now have available better data through the ITE Parking Generation Manual to better formulate parking requirements.
- C. Most ordinances do not deal with mixed use projects or uses that do not quite fit into neat category. Sec.138-226 allows the Planning Commission to deviate for the strict application of parking requirements. Perhaps this section can be further modified to allow for parking in mixed use projects.
- D. Section 138-222 Parking lot location, design and construction can be revised to be less repetitive. Some of the information can be placed in a tabular or schedule form. The graphic regarding residential driveways is confusing and not helpful in explaining Ordinance language.

The list of the types of vehicles prohibited in residential districts is difficult to enforce. A better approach is to regulate vehicle weight.

- E. Section 138-223 Lighting and signage has lighting standards that, if not contradictory with Division 4.5 of the General Provisions, are confusing.
- 2. Division 2 Off-street loading- As with parking, loading is frequently required more than what is needed for a given use. Therefore, a provision should be added which allows the Planning Commission to deviate from the strict Ordinance requirements for loading.
- 3. Division 3 Bicycle Parking. Graphics of unacceptable designs appear to be missing in Section 138-267.

Article V – Zoning District Regulations

General Comments: As with many Ordinances, the sections for each Zoning District are overly repetitive. While the District Regulations (i.e., area, setbacks, etc.) are placed in a tabular or schedule form, the Use Regulations could also be placed in a similar schedule or tabular form. Where there are requirements specific to a particular use, such requirements can be placed in a separate Article and referred to as “Specific Use Regulations.” Finally, none of the single and two-family zoning districts have a purpose and intent statement (referred to as preamble in other districts). Such a statement is an opportunity to tie the zoning districts in with the goals of the Master Plan.

Specific Comments for Residential Districts:

- 1. The regulation of churches needs to be reviewed. The more common and better definition, used elsewhere in the Ordinance, is “Place of Worship.” The regulation of places of worship is subject to RLUIPA - the Religious Land Use and Institutionalized Persons Act. In general, a Zoning Ordinance should be written to regulate places of worship in the same manner as other places of assembly. Generally, uses such as schools, theaters, and social clubs are considered as places of assembly.
- 2. We note that family day care homes or adult foster small group homes are neither defined nor listed as permitted use. Group day care and large group home foster care are also omitted. The MZEA contains specific provisions on how zoning is to accommodate state licensed residential facilities, which should be reflected in the Ordinance.

While nurseries and day care centers are listed as special uses, the regulations could be strengthened to ensure compatibility with surrounding neighbors.

- 3. Sec 138-298 includes standards for individual mobile homes in residential districts. The more typical approach is to have regulatory standards over all single-family dwellings that are also applicable to all forms of manufactured housing. The recommended approach avoids singling out any one specific type of housing.

4. The RM District allows medical offices in which the practitioner resides. This is a minor point, but do they still exist? If so, are there other sole practitioner professionals to which this would be applicable.

We would also note that no forms of age-related housing are permissible in the RM District. Given demographic trends, the City may want to revisit this.

Under special land uses in the RM District, the language in subsection 2 is outdated. As with other forms of state licensed residential facilities, the Ordinance needs to be consistent with the MZEA and other state statutes.

5. The R-M-H District allows various forms of senior housing as a permitted use. Given the limited applicability of this district (currently one site is zoned R-M-H), there is probably little need to modify this district.
6. The City may want to consider an additional category or overlay district to allow attached housing that may introduce “missing middle” forms of dwelling in areas that are transitional in nature from commercial to single-family residential. Currently, the area west of Coolidge would seem to be a good candidate for a different category of housing that could be attached, detached, or combinations of both.

Specific Comments for Non-Residential Districts:

1. The Industrial District, applied to the portion of Eleven Mile east of Coolidge, lists a series of uses that may no longer be realistic or wanted in a community such as Berkley. Many of the uses would typically be incorporated in a “heavy” industrial district. These types of uses include manufacturing, compounding, or processing that either no longer exist or may have external impacts that could be harmful.

The Eleven Mile District is a similar district, although it includes some consumer-oriented uses. This approach seems redundant.

One solution is to keep two industrial districts but refine them to eliminate uses that are either obsolete or unlikely to be established in the City. However, since industrial use is confined to Eleven Mile, a single district more limited in scope would be reasonable.

2. The Office District includes a standard list of permitted uses. However, we note that it is very common for financial institutions (banks, credit unions, etc.) to be treated as a permitted use. Under special uses, the standards for nursery schools and day cares are inadequate, particularly for some of the larger types of facilities.
3. The LB Local Business District is intended to be a less intense, more restrictive commercial district than many of the other commercial districts. Some of the uses listed may be appropriate, but others may not. For example, theaters and commercial recreation centers may not be compatible in a neighborhood environment.

As far as special land uses, all the activities allowed in conjunction with automobile service stations may not be compatible in neighborhood areas. The same holds true with many forms of drive-in and drive-through uses.

4. The Ordinance includes several “corridor-based “special purpose districts (Greenfield, Coolidge, Woodward, and Twelve Mile) which have some commonalities. As corridor-based districts, these districts are in proximity to neighboring residential areas, so promoting compatible use is important. Many of the properties along these corridors have physical challenges due to size and configuration. Most of the permitted and special uses are similar, if not identical. Finally, specific site and building design standards are required.

The Greenfield, Coolidge and Twelve Mile Districts permit a broad array of uses. The Woodward District is more restrictive in terms of use, except for allowing adult businesses. Since many of the objectives are the same for the special purpose corridor districts, it would seem more effective and less confusing to consolidate some or all these districts and include restrictions that are more prescriptive as to building location, building form and placement, and site design. We would make a distinction with the Woodward District since it is the only district which permits adult business use.

Regarding the adult business regulations, we recommend a careful review in conjunction with the City Attorney. The way communities can regulate adult businesses is largely dictated by the courts. Therefore, adult business regulations need to be consistent with standards established by legal precedent.

5. The purpose of the Gateway District is unclear. If it is intended to control the visual image of the entryways into the City, there are not sufficient standards to achieve the intended effect. The district is also very permissive as to use. Typically, communities attempt to enhance visual image through greater design standards and/or limitation of use.
6. The Downtown District, while fine in terms of permissible uses, is also devoid of standards that would enhance visual appeal. Updating the Zoning Ordinance is an opportunity to incorporate design standards that have been included in previous plans.
7. The Community Centerpiece District is intended to accommodate community facilities that are frequently located within neighborhood such as schools, day cares, places of worship, and parks. It is unclear why private clubs and lodges, and senior housing are also included in this category since they are dissimilar to the uses that would usually be found in a neighborhood. Missing from this category is any other type of public building, which would frequently be found in a community facilities district.
8. Division 18 Planned Unit Development is very similar to the way many communities regulate PUD’s. The preamble, which reflects the purpose of PUD regulations, could be expanded to be more descriptive of the intent of PUD’s. We would also recommend that Sec. 138-533 Recognizable benefits and Sec. 138-537 Standards for approval be combined. These sections serve as the basis or justification for approval or denial of a PUD.

Another area that needs revision is in Sec. 138-154. The Ordinance treats PUDs as a rezoning. Normally, the Planning Commission is responsible for holding the public hearing for a rezoning. But unique to PUD's, Section 503.4 of the MZEA requires that the body that is responsible for the final decision must hold the public hearing.

Also in Sec. 138-154 is reference to the Council's authority to have certain documents prepared to memorialize the conditions of the PUD. It should be more explicitly stated that a written PUD agreement shall be required including a description of the content of such an agreement.

Finally, we have found it useful to make a differentiation between major and minor PUD amendments. A major change typically includes a significant change in use, density, or nature of the project. A minor change would include an amendment which is not substantive in nature.

Article VI - Administration and Enforcement Administration

General Comments: As with General Provisions, this Article is poorly organized. Sections pertaining to the Zoning Board of Appeals, the standards for variances, and amendments should be separate Articles. It is also misleading to refer to the ZBA and Planning Commission as bodies responsible for administration of the Ordinance. The ZBA is not an administrative body, but rather an appellate body. While the Planning Commission does have administrative duties, such as site plan and special land use review, it does not provide day to day administration of the Ordinance, which is the responsibility of the Zoning Officer.

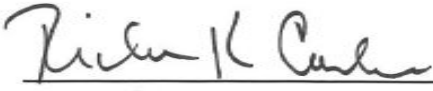
Specific Comments:

1. Division 3 – Amendments. This section is generally weak.
 - A. Procedures could be more descriptive regarding the submission of the application, information required and review process.
 - B. Standards for the review of rezonings applications should be expanded.
 - C. A procedure and standards for conditional rezonings should be added. The MZEA allows a petitioner to offer conditions to a zoning application. The City does not have the authority to prohibit an applicant from pursuing a conditional rezoning. However, this particular provision of the MZEA is widely misunderstood, we recommend the city have standards and procedures in the Ordinance for conditional rezonings.
2. Divisions 4 and 5 - Variances and Appeals. - These sections are fairly standard and adequate. However, a provision of the MZEA which is not reflected is the limitation on voting by the Planning Commission representative. Sec. 601(13) states that a Planning Commission representative on the ZBA shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission. This is why it is helpful to have designated alternates.

3. Division 6- Special Land Uses. The standards set forth in Sec. 138-653 could be expanded to provide the Commission with additional guidance. Under Sec. 138-657 Hearing on Application, the public hearing must be held by the City Council since they are the final decision-making body.
4. Division 7 Site Plan Review. Under Sec.138-678 Administrative review, is the Building Official the appropriate person to review an administrative site plan or should that be assigned to the Zoning Officer. The standards in Sec. 138-679 should be expanded to include other factors of site development.
5. We note that there are no provisions in the Ordinance for performance guarantees. The City is authorized to require financial guarantees to ensure compliance with improvements required by the Zoning Ordinance. In order to do so, the Ordinance must have a specific procedure and standards to require financial guarantees to ensure required improvements are made.
6. We have also noted that the Ordinance does not include any landscape design standards. This is an unusual omission.

This concludes our evaluation of the Ordinance. Please do not hesitate to ask any questions which may clarify any content of this report.

Respectfully Submitted by:



CARLISLE/WORTMAN ASSOC., INC
Richard K. Carlisle, FAICP
Past President/Senior Principal

ATTACHMENT I
ORGANIZATIONAL OUTLINE

Article 1: Title, Purpose and Legal Clauses

- Section 1.01 Title
- Section 1.02 Authority, Findings and Purposes
- Section 1.03 Validity and Severability
- Section 1.04 Interpretation, Scope and Construction of Regulations
- Section 1.05 Conflicting Laws, Ordinances, Regulations or Restrictions
- Section 1.06 Vested Right
- Section 1.07 Repeal of Ordinance

Article 2: Definitions

- Section 2.01 Interpretations
- Section 2.02 Definitions

Article 3: Administration and Enforcement

- Section 3.01 Zoning Administrator Appointment
- Section 3.02 Zoning Administrator Duties
- Section 3.03 Certificate of Zoning Compliance
- Section 3.04 Records
- Section 3.05 Fees
- Section 3.06 Compliance with Plans
- Section 3.07 Withholding of Approval
- Section 3.08 Completion of Construction
- Section 3.09 Performance Guarantee
- Section 3.10 Public Hearing Notice Requirements
- Section 3.11 Violations and Penalties

Article 4: Establishment of Districts

- Section 4.01 Establishment of Districts
- Section 4.02 Map
- Section 4.03 Interpretation of District Boundaries
- Section 4.04 District Intent and Uses
- Section 4.05 Scope
- Section 4.06 Building Regulations
- Section 4.07 Regulations Applying to All Properties
- Section 4.08 Exception to Yard and Lot Area Requirement

Article 5: Residential Districts

Section 5.01	R-1A District
Section 5.02	R-1B District
Section 5.03	R-1C District
Section 5.04	R-1D District
Section 5.05	R-2 District
Section 5.06	R-M District
Section 5.07	R-M-H District

Article 6: Site Design Based Corridor Districts

Section 6.01	Purpose and Intent
Section 6.02	Applicability and Organization
Section 6.03	Use Regulations
Section 6.04	Building Design Standards
Section 6.05-6.10	Zoning Districts by Corridor (TBD)
Section 6.11	Deviations from Code and Plan Changes and Revisions
Section 6.12	General Provisions
Section 6.11	Lighting Requirements
Section 6.13	Landscaping Requirements
Section 6.14	Parking Requirements

Article 7: Site Plan Review Procedures and Requirements

Section 7.01	Intent
Section 7.02	Planning Standards
Section 7.03	Review Qualifications
Section 7.04	Submission Requirements
Section 7.05	Procedures

Article 8: Special Land Uses

Section 8.01	Intent
Section 8.02	Procedures
Section 8.03	Expiration

Article 9: Planned Unit Development

Section 9.01	Purpose and Intent
Section 9.02	General Requirements
Section 9.03	PUD Concept Plan
Section 9.04	PUD General Design Plan
Section 9.05	Final PUD Site Plan
Section 9.06	Conditions

Article 10: General Provisions

- Section 10.01 Purpose
- Section 10.02 Curb Cuts and Driveways
- Section 10.05 Essential Services
- Section 10.06 Storage in Front Yard
- Section 10.07 Home Occupation
- Section 10.08 Temporary Uses and Living Quarters
- Section 10.09 Structure Completion
- Section 10.10 Dumping or Disposal of Rubbish, etc.
- Section 10.11 Lot Limitations
- Section 10.12 Accessory Buildings
- Section 10.13 Standards for Dwelling
- Section 10.15 Streets, Roadways, Parking Lots and Rights-of-way
- Section 10.16 Satellite Receivers and Dish Antennas
- Section 10.17 Unlicensed Motor Vehicles in Residential Districts
- Section 10.18 Parking and Storage of Recreational Boats and/or Recreational Vehicles or Trailers Used for Carrying Such Boats and Recreational Vehicles in Residential Districts
- Section 10.19 Sidewalks and Pedestrian Pathways
- Section 10.20 Prohibited Materials in Residential Districts
- Section 10.21 Screen Wall and Trash Enclosure Construction
- Section 10.22 Entryways
- Section 10.23 Openings in Building Elevations that Face Residential Zoning Districts
- Section 10.24 Special Events
- Section 10.25 Central Air Condition Unit and Similar Exterior Equipment
- Section 10.26 Garage and Yard Sales
- Section 10.27 Covered Patios, Gazebos, Pergolas, Pavilions, and Similar Type “Open-Air” Structures

Article 11: Specific Use Standards – Residential Uses

- Section 11.01 Bed and Breakfast
- Section 11.02 Adult Foster Care Facilities
- Section 11.03 Accessory Dwelling Units
- Section 11.04 Senior Assisted and Independent Living
- Section 11.05-? Specific Uses TBD

Article 12: Specific Use Standards – Non-Residential Uses

- Section 12.01 Child Care Facilities
- Section 12.02 Places of Worship
- Section 12.03 Public and Private Schools/Schools of Higher Education
- Section 12.04 Cemeteries
- Section 12.05 Recreation Areas and Private Parks

- Section 12.06 Indoor Recreation Uses
- Section 12.07 Automobile Repair Garages, Service Stations and Washes
- Section 12.08 Automobile Dealers
- Section 12.09 Municipal Facilities
- Section 12.10 Public Utility Buildings
- Section 12.11 Funeral Homes and Mortuaries
- Section 12.12 Garden Centers and Nurseries
- Section 12.13 Hospitals, Nursing Homes and Convalescent Centers
- Section 12.14 Hotels and Motels
- Section 12.15 Kennels
- Section 12.16 Veterinary Clinics
- Section 12.17 Drive-In and Drive-Through Facilities
- Section 12.18 Private Service Clubs, Fraternal Organizations, and Lodge Halls
- Section 12.19 Outdoor Service Areas
- Section 12.20 Open Air Businesses
- Section 12.24 Composting Facilities
- Section 12.26 Self-storage Facilities
- Section 12.27 Wireless Communication Facilities
- Section 12.28 Adult Entertainment

Article 13: Landscape Standards

- Section 13.01 Intent
- Section 13.02 Application of Requirements
- Section 13.03 Landscape Plan Requirements
- Section 13.04 Screening Between Land Uses
- Section 13.05 Parking Lot Landscaping
- Section 13.06 Greenbelts
- Section 13.07 Site Landscaping
- Section 13.08 Subdivision and Site Condominium Landscaping
- Section 13.09 Landscape Elements
- Section 13.10 Minimum Size and Spacing Requirements

Article 14: Lighting Standards

- Section 14.01 Intent
- Section 14.02 Applicability
- Section 14.03 Light from Direct Sources
- Section 14.04 Light from Indirect Sources
- Section 14.05 Exemptions
- Section 14.06 Prohibited Lighting

Article 15: Off-Street Parking, Loading and Access Standards

- Section 15.01 Intent
- Section 15.02 Streets, Roadways, and Rights-of-Way
- Section 15.03 Clear Vision Zone
- Section 15.04 Parking Requirements
- Section 15.05 Drive-Through Facilities
- Section 15.06 Off-Street Loading Requirements

Article 16: Non-Conforming Lots Structures, and Uses of Structures

- Section 16.01 Purpose and Intent
- Section 16.02 Nonconforming Lots of Record
- Section 16.03 Nonconforming Uses of Land
- Section 16.04 Nonconforming Structures
- Section 16.05 Repairs and Maintenance
- Section 16.06 Change of Tenancy or Ownership

Article 17: Zoning Board of Appeals

- Section 17.01 Establishment
- Section 17.02 Membership
- Section 17.03 Rules and Governing the Board of Appeals
- Section 17.04 Powers and Duties of Zoning Board of Appeals
- Section 17.05 Rules and Procedures for Variances
- Section 17.06 Site Plan Requirements
- Section 17.07 Zoning Board of Appeals Approval
- Section 17.08 Approval Periods

Article 18: Rezoning and Zoning Ordinance Text Amendments

- Section 18.01 Initiation of Zoning Ordinance Map and Text Amendments
- Section 18.02 Zoning Ordinance Text and Map Amendment Application Procedure
- Section 18.03 Rezoning and Zoning Ordinance Amendment
- Section 18.04 Criteria for Amendment of the Official Zoning Map (Rezoning)
- Section 18.05 Criteria for Amendment of the Official Zoning Ordinance Text
- Section 18.06 Conditional Rezoning of Land
- Section 18.07 Amendments Required to Conform to Court Decree