ARTICLE V

ORDINANCES AND RESOLUTIONS

Section 5.1 LEGISLATIVE POWER

The legislative power of the City is vested exclusively in the Council, except as otherwise provided by law.

Section 5.2 LEGISLATION

a. All legislation of the City shall be by resolution or by ordinance.

b. Resolutions, in the form of motions, may be adopted by majority vote of the Council members present, except as otherwise provided by this Charter.

c. The power of the Council to act by resolution is limited to matters required or permitted by law or by this Charter, and to matters pertaining to the internal concerns of the City.

d. The Council shall act by majority vote of the Entire Council when adopting an ordinance, when establishing a rule or regulation, when amending or repealing an ordinance previously adopted, or when required by law or by this Charter, except as provided in Section 5.4c.

Section 5.3 ORDINANCES - COMPOSITION - HEARINGS - PUBLICATIONS

a. Every proposed ordinance shall be introduced in writing. The enacting clause shall be “The City of Charlevoix ordains.....”.

b. Following the introduction of any ordinance, the City Clerk shall publish a summary of the proposed ordinance in a local newspaper of general circulation in the City, together with a notice setting out the time and place for a public hearing on the proposed ordinance. The public hearing may not be held sooner than five (5) days after publication. Copies of the ordinance shall be distributed without charge at the office of the City Clerk.

c. After the public hearing, the Council may consider enacting the proposed ordinance. The enactment of an ordinance shall require the majority vote of the entire Council.

d. Except as otherwise provided by law or this Charter, a summary of each ordinance, including emergency ordinances, shall be published in full in a local newspaper and the full text of each ordinance shall be posted by the City in an electronic conveyance with paper copies available for review in the City Clerk's office. Such posting shall occur within 10 days following the adoption of the ordinance by the City Council.

ANNOTATION: As amended by vote of electors November 3, 2020.

e. Except as otherwise provided by law or this Charter, every ordinance shall become effective on the thirtieth (30th) day after enactment, or at any later date specified therein.

f. An ordinance which repeals or amends any existing ordinance or part of the City Code shall identify, by title and number, the ordinance, sections, or subsections to be repealed or amended, and shall clearly indicate the matter to be omitted and the new matter to be added, except in codifying, re-codifying or continuing in code its municipal ordinances, in full or in part, as provided by statute.

g. Ordinances and codes may be enacted by reference to the extent and in the manner provided by general law.

Section 5.4 ORDINANCES - EMERGENCY

a. To meet a public emergency affecting life, health or property, one or more emergency ordinances may be enacted. However, an emergency ordinance may not levy taxes, or grant, renew or extend a franchise, or regulate the rate charged by any public utility for its service.

b. An emergency ordinance shall be introduced in the form and manner required for ordinances generally, except that it shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the emergency in clear, specific terms.

c. An emergency ordinance may be enacted on the date of introduction and given immediate effect, by a majority vote of the Council members present at the time of the enactment.

d. Every emergency ordinance is automatically repealed on the sixty first (61st) day after its enactment, unless re enacted pursuant to Section 5.3.

Section 5.5 ORDINANCE - PENALTY

An ordinance may provide a penalty for the violation of its provisions. The penalty shall not exceed the limits provided by law.

Section 5.6 ORDINANCE - EFFECTIVE DATE

All ordinances shall be recorded in an index book marked “City Ordinances”, and a record of each ordinance shall be authenticated by the signatures of the Mayor and City Clerk. Such record and authentication shall be done within thirty (30) days after the final passage of any ordinance. If any ordinance, other than an emergency ordinance, is not authenticated and recorded within thirty (30) days after final passage, the ordinance shall not take effect until seven (7) days after notice has been published in a local newspaper of general circulation in the City that the ordinance has been properly authenticated and recorded.

Section 5.7 ORDINANCE - CODIFICATION

a. Within three (3) years after the effective date of this Charter, and at least every ten (10) years thereafter, the Council shall provide for the preparation of a general codification of all City ordinances having the effect of law.

b. The general codification shall be enacted by ordinance and shall be known as the “Charlevoix City Code”. Copies of the Code shall be furnished to City officials, placed in libraries and public offices for free public reference, and made available for purchase by the public at a reasonable price to be fixed by the Council. Except as required by law, the enactment of this ordinance need not comply with the requirements of Section 5.3. After publication of the first Charlevoix City Code, new ordinances shall be printed annually in a form for integration with the City Code currently in effect.

Section 13.2 ZONING

The City Council shall prescribe by ordinance the zoning laws for the City.

TITLE XV: LAND USAGE

Chapter

CHAPTER 150: GENERAL PROVISIONS

Section

BUILDING REGULATIONS; CONSTRUCTION

§ 150.01 STATE CONSTRUCTION CODE; ENFORCING AGENCY.

(A) This section is enacted pursuant to Public Act 110 of 2006, as amended, being the Michigan Zoning Enabling Act, M.C.L.A. §§ 125.3101 et seq.

(B) Pursuant to the provisions of § 9 of Public Act 230 of 1972, being M.C.L.A. § 125.1509, the Building Official of the city is hereby designated as the enforcing agency to discharge the responsibilities of the city under Public Act 230 of 1972, being M.C.L.A. §§ 125.1501 through 125.1531. The city hereby assumes responsibility for the administration and enforcement of said Act throughout its corporate limits.

(Prior Code, § 8.1) (Ord. 823, passed 1-4-2021)

ZONING AND SUBDIVISION REVIEW; FEE SCHEDULE

§ 150.15 STANDARD FEE.

The fees for processing planning and zoning requests within the city shall be as specified by the City Council in the annual city budget ordinance.

(Prior Code, § 5.295) (Ord. 520, passed 11-6-1989; Ord. 687, passed 5-19-2003)

§ 150.16 ADDITIONAL FEE.

(A) When the city's cost for processing any matter which requires a fee exceeds the standard fee by 20% or more, then an additional fee shall be charged as provided in this section.

(B) No permit shall be issued nor shall any approval become effective until the additional fee has been paid.

(C) The additional fee shall be equal to the city's cost in processing the matter less the standard fee if the standard fee has already been paid. The ***CITY'S COST*** shall mean the total value of staff time spent on processing the matter, plus expenses. The value of staff time shall be the hourly compensation of all city employees or independent contractors whose involvement is reasonably required by the review process, including, but not limited to, the planner, Zoning Administrator and clerical staff, multiplied by the number of hours each individual has spent processing the matter in question. ***EXPENSES*** mean photocopying and postage charges.

(Prior Code, § 5.296) (Ord. 687, passed 5-19-2003)

§ 150.17 REFUNDS.

Sign permit application and zoning permit application fees shall be refundable should a sign or zoning permit not be issued by the city. Fees for subdivision review, Planning Commission, Zoning Board of Appeals and City Council reviews and approvals shall not be refundable unless an application has been withdrawn by the applicant prior to any processing of such application by city officials.

(Prior Code, § 5.297)

CHAPTER 151: STREETS AND SIDEWALKS

Section

GENERAL PROVISIONS

§ 151.01 STREET AND SIDEWALK OBSTRUCTIONS, EXCAVATIONS.

(A) *Sidewalk obstructions.* No person shall occupy any street with any materials or machinery incidental to the construction, demolition or repair of any building adjacent to said street, or for any other purpose, without first obtaining a permit from the manager. No permit shall be granted until the applicant shall post a cash deposit and file a liability insurance policy as required by § 151.22 of this chapter.

(Prior Code, § 4.40)

(B) *Pedestrian passage.* At least six feet of sidewalk space shall be kept clean and clear for the free passage of pedestrians and if the building operations are such that such free passageway is impracticable, a temporary plank sidewalk with substantial railings or sidewalk shelter shall be provided around such obstruction.

(Prior Code, § 4.41)

(C) *Safeguards.* All openings, excavations and obstructions shall be properly and substantially barricaded and railed off and, at night, shall be provided with approved warning lights. Warning lights perpendicular to the flow of traffic shall not be more than three feet apart and parallel to the flow of traffic not over 15 feet apart.

(Prior Code, § 4.42)

(D) *Shoring excavations.* All openings and excavations shall be properly and substantially sheeted and braced as a safeguard to workers and to prevent cave-ins or washouts which would tend to injure the thoroughfare or subsurface structure of the street.

(Prior Code, § 4.43)

Penalty, see § 10.99

§ 151.02 HOUSE MOVING.

(A) No person shall move, transport or convey any building or other similar bulky or heavy object, including machinery, trucks and trailers, larger in width than eight feet eight inches or higher than 13 feet six inches above the surface of the roadway, into, across or along any street, alley or other public place in the city without first obtaining a house moving permit from the Manager. Such permit shall specify the route to be used in such movement and no person shall engage in such movement along a route other than that specified in the permit. No house moving permit shall be granted until the applicant shall pay for a permit and comply with insurance and performance bond requirements found in a cash deposit in § 151.22 of this chapter; additionally, all costs associated for city services associated for with such action as contemplated in this section shall be assigned to the owner and reimbursed to the city or paid as a deposit in advance of the activity. Such costs shall include but not be limited to utility moving or replacement, traffic control, and damage to infrastructure or property. The Manager shall have the power to regulate the time and date of house moving requests to account for traffic and special event demands of the community.

(B) This section shall not be construed as to limit the transportation of wide or oversized loads on the state or federal highway which may be lawfully permitted nor shall this section limit the transportation of boats or marine vessels along routes of the city which the Police Chief shall from time to time publish in consultation with other city staff.

(Prior Code, § 4.50) (Ord. 818, passed 6-1-2020) Penalty, see § 10.99

§ 151.03 ENCROACHMENTS AND STREET CLOSINGS.

(A) *Removal of encroachment.* Encroachments and obstructions in the street may be removed and excavations refilled and the expense of such removal or refilling charged to the abutting land owner when made or permitted by him or her or suffered to remain by him or her, otherwise than in accordance with the terms and conditions of this chapter. The procedure for collection of such expenses shall be as prescribed in § 150.01 of this code of ordinances. The City Council may by resolution permit the continuance of an existing encroachment. No such resolution shall vest any permanent rights in the person owning or occupying the structure which encroaches upon the street.

(Prior Code, § 4.55)

(B) *Temporary street closings.* The manager shall have authority to temporarily close any street, or portion thereof, when he or she shall deem such street to be unsafe or temporarily unsuitable for use for any reason. He or she shall cause suitable barriers and signs to be erected on said street, indicating that the same is closed to public travel. When any street or portion thereof shall have been closed to public travel, no person shall drive any vehicle upon or over said street, except as the same may be necessary incidentally to any street repair or construction work being done in the area closed to public travel. No person shall move or interfere with any sign or barrier erected pursuant to this section without authority from the Manager.

(Prior Code, § 4.56)

Penalty, see § 10.99

§ 151.04 NEWSRACKS, PLANTERS, TABLES AND CHAIRS.

(A) *Findings and purposes.* It is found and declared that:

(1) The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic;

(2) Reasonable regulation of streets and sidewalks is necessary to protect the public health, safety and welfare;

(3) The uncontrolled placement of tables and chairs, merchandise and goods, newsracks, planters and other articles and objects present an inconvenience and danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, and traffic control;

(4) Tables and chairs, goods and merchandise, newsracks, planters and other articles and objects so located as to cause an inconvenience or danger to persons using public rights-of-way constitute public nuisances per se; and

(5) The provisions and prohibitions hereinafter contained are enacted in pursuance of and for the purpose of securing and promoting the public health, safety and welfare.

(Prior Code, § 4.1)

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ARTICLES AND OBJECTS. Any thing or obstruction placed over or upon a street or sidewalk.

GOODS AND MERCHANDISE. Any items offered for sale to the general public.

NEWSRACKS. Any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers or other news periodicals.

PLANTERS. Any device used or intended to be used for display of non-artificial flowers.

SIDEWALK. Any surface provided for the use of pedestrians.

STREET. All that area dedicated to the public use for public street purposes and shall include, but not be limited to, roadways, state trunk lines and alleys.

TABLES AND CHAIRS. Facilities provided to customers for food or beverages upon a public sidewalk.

(Prior Code, § 4.2)

(C) *License required.* It shall be unlawful for any person, firm or corporation to erect, place, maintain or operate, on any public street or sidewalk or in any other public way or place, within the city limits, except in the areas designated as the city's Downtown Development Authority District, any article, object or any other obstruction, except under the conditions and in the manner presented in this section; provided, however, the City Manager or his or her designee may grant, pursuant to the terms of this chapter, licenses for the erection, placement, maintenance or operation of newsracks, tables, chairs and planters on sidewalks within the area mapped as the Downtown Development Authority (DDA) District.

(Prior Code, § 4.3)

(D) *Application.* Applications for such permit (license) shall be made in writing to the City Manager upon such form as shall be provided by the city and shall contain the name and address of the applicant; the proposed specific location of the tables and chairs, newsracks or planters; and shall be signed by the applicant.

(Prior Code, § 4.4)

(E) *Conditions.*

(1) *Indemnification, liability.* As an express condition of the acceptance of such license, the licensee thereby agrees to indemnify and save harmless the city, its officers, directors and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use or maintenance of tables and chairs, newsracks, planters or goods and merchandise within the city.

(2) *Issuance.* Licenses shall be issued for the installation of newsracks, planters, tables and chairs with prior inspection of the location, but such newsracks, planters, tables and chairs, and the installation, use or maintenance thereof shall be conditioned upon observance of the provisions of this section and upon such reasonable rules and regulations as may be established by the City Council, from time to time, by resolution. Licenses shall be issued within two working days after the application has been filed.

(3) *Validity; renewal.* Such licenses shall be valid for one year and shall be renewable pursuant to the procedure for the original applications referred to in division (D) above.

(4) *Violations.* No license shall be issued to an applicant or any license may be revoked in the event the applicant or licensee is in violation of any of the provisions of the city code.

(Prior Code, § 4.5)

(F) *Standards for maintenance and installation.* Any tables, chairs, planters or newsracks which in whole or in part rest upon, in or over any public sidewalk shall comply with the following standards: shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, all tables, chairs, planters and newsracks shall be serviced and maintained so that:

(1) They are reasonably free of dirt and grease; and

(2) They are reasonably free of chipped, faded, peeling and cracked paint in the visual painted areas thereof. The structural parts thereof are not broken or unduly misshapen.

(Prior Code, § 4.6)

(G) *Location and placement.* Any newsracks, planters, tables and chairs which rest in whole or in part upon, or in, or on any portion of a public sidewalk or right-of-way or which projects onto, into or over any part of a public sidewalk or right-of-way shall be located in accordance with the provisions of this section.

(1) No tables, chairs, planters or newsracks shall be used or maintained which projects onto, into or over any part of the roadway or public street, or which rests wholly or in part upon, along or over any portion of the roadway or any public street.

(2) No tables, chairs, planters or newsracks shall be permitted to rest upon, in or over any public sidewalk, when such installation use, or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such use unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally marked or stopped vehicle, the ingress into or the egress from any residence or place of business, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects permitted at or near such location.

(3) No tables, chairs, planters or newsracks shall be chained, bolted or otherwise attached to any fixture located in the public right-of-way, except to another newsrack, planter, table or chair.

(4) No tables, chairs, planters or newsracks shall be placed, installed, used or maintained:

(a) Within three feet of any crosswalk;

(b) Within eight feet of the back of the street curb unless approved under the city outdoor dining program;

(c) Within five feet of any driveway; or

(d) At any location whereby the clear space for the passage way of pedestrians is reduced to less than six feet.

(5) The City Manager may establish, by regulation, the number and location of areas within the city to be used for placement of newsracks.

(Prior Code, § 4.7)

(H) *Placement of goods and merchandise; exception for special events.*

(1) Notwithstanding anything herein contained to the contrary, the City Manager may allow the placement of goods and merchandise for retail sales each year for what is commonly referred to as “Sidewalk Days”.

(2) Notwithstanding anything contained herein to the contrary, the City Manager may allow the placement of goods for retail sales on a public sidewalk or public street by a non-profit organization recognized by the Internal Revenue Service as a charitable organization. The organization shall obtain a permit from the City Manager which shall specify the location(s) and time period covered by the permit. The permit shall be issued without charge and may not exceed 72 hours. The City Manager may deny the permit, if there is a reason to believe that the activity to be covered by the permit, its requested location(s) or time interval would interfere with the rights of others to use the public sidewalk or street, interfere with the ability of city employees to carry out their jobs or the right of the public to unobstructed travel along a public street or public sidewalk.

(Prior Code, § 4.8)

(I) *Violation.* Upon determination by the City Manager that a newsrack, planter, table or chair, goods or merchandise, or other article or object has been installed, used or maintained in violation of the provisions of this section, a notice to correct the offending condition will be issued to the owner or operator of such newsrack, planter, table or chair, goods or merchandise or other article or object. The notice shall describe the offending condition, request the action necessary to correct the condition and specify the time within which the offending condition must be corrected. If an offending condition is not properly identified by the owner or operator of the business premises located immediately adjacent to such section of the public street or sidewalk, the offending condition shall be removed immediately and processed as unclaimed property. An offending condition which is located on a public street, sidewalk or other public property shall be deemed a hazardous condition and an interference with the public’s right to use such public places and shall be removed. The City Manager or his or her designee may institute such legal proceedings as are necessary to enforce this section.

(Prior Code, § 4.9)

(J) *Revocation of license.* In addition to the enforcement procedures provided in division (I) above. It shall be within the power and discretion of the City Manager to suspend or revoke the license of continued or repeated violations or infractions of any provisions of this section or any rule or regulation of the city. Suspension or revocation shall be mandatory for the third offense under division (I) above.

(Prior Code, § 4.10)

(K) *City Manager's designated representative.* “City Manager”, as used in this section, shall include his or her designated representative.

(Prior Code, § 4.11)

(Ord. 515, passed 7-3-1989; Ord. 658, passed 3-6-2000; Ord. 768, passed 12-15-2014) Penalty, see § 10.99

STREETS GENERALLY

§ 151.20 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MANAGER. The City Manager or his or her duly authorized representative.

STREET. All of the land lying between property lines on either side of all streets, alleys and boulevards in the city, and includes lawn extensions and sidewalks and the area reserved therefor where the same are not yet constructed.

(Prior Code, § 4.20) (Ord. 515, passed 7-3-1989)

§ 151.21 DAMAGE AND OBSTRUCTION PROHIBITED.

No person shall make any excavation in, or cause any damage to, any street in the city, except under the conditions and in the manner permitted in this subchapter. No person shall place any article, thing or obstruction in any street, except under the conditions and in the manner permitted in this subchapter, but this provision shall not be deemed to prohibit such temporary obstructions as may be incidental to the expeditious movement of articles and things to and from abutting premises, nor to the lawful parking of vehicles within the part of the street reserved for vehicular traffic.

(Prior Code, § 4.21) (Ord. 515, passed 7-3-1989) Penalty, see § 10.99

§ 151.22 PERMITS AND BONDS.

(A) Where permits are required, they shall be obtained from the City Manager or his or her designee and shall contain the information necessary for consideration by the city in a manner as the Manager may require. Such permit(s) shall be revocable by the Manager for failure to comply with this code, rules and regulations adopted hereto, and the lawful orders of the Manager. The permit(s) shall only be valid for the period the Manager may designate. Application for a permit under this chapter shall be deemed an agreement by the applicant to promptly complete the work permitted, observe all pertinent regulations of the city in connection therewith, repair all damages done to the street surface, subsurface, and related structures, over or within such street, including trees, and protect and save harmless the city from all damages or actions at law that may arise or may be brought on account of injury to person or property resulting from the work done under the permit(s) or in connection therewith.

(B) Fees for such permits shall be set from time to time by resolution of Council. Council may vary the fees depending on the season and the times which are or are not preferable for the general benefit of the community to contend with construction in the public streets and rights of way. Such limitations shall not constrain public infrastructure projects which the city or the State of Michigan may from time to time undertake.

(C) Where liability insurance or bonds are required, the City Treasurer shall regularly obtain recommendations from the city's insurance carrier or other valid sources and share the same with City Council in order that it may adopt a resolution specifying minimum insurance coverages, standards, and bonds for work associated with the permits contemplated in this chapter. Similarly, Council may adopt the minimum for performance bonds and the City Manager or his or her designee may set the actual amount required in the bond subject to the minimum set by Council.

(Prior Code, § 4.22) (Ord. 515, passed 7-3-1989; Ord. 818, passed 6-1-2020) Penalty, see § 10.99

§ 151.23 STREET OPENINGS.

No person shall make any excavation or opening in or under any street without first obtaining a written permit from the City Clerk. No permit shall be granted until the applicant shall post a cash deposit and file a liability insurance policy as required by § 151.22 of this chapter, nor shall a permit be issued until the contractor’s name, address and state license number is furnished on the permit.

(Prior Code, § 4.23) (Ord. 515, passed 7-3-1989) Penalty, see § 10.99

§ 151.24 EMERGENCY OPENINGS.

The Manager may, if the public safety requires immediate action, grant permission to make a necessary street opening in an emergency; provided that, a permit shall be obtained on the following business day and the provisions of this subchapter shall be complied with.

(Prior Code, § 4.24) (Ord. 515, passed 7-3-1989)

§ 151.25 BACKFILLING.

All trenches in a public street or other public place, except by special permission, shall be backfilled with sand and compacted and at least six inches shall be air-entrained concrete of 3,500 psi bearing capacity after 28 days.

(Prior Code, § 4.25) (Ord. 515, passed 7-3-1989) Penalty, see § 10.99

§ 151.26 UTILITY POLES.

Utility poles may be placed in such streets as the Manager shall prescribe and shall be located thereon in accordance with the directions of the Manager. Such poles shall be removed or relocated as the Manager shall, from time to time, direct.

(Prior Code, § 4.26) (Ord. 515, passed 7-3-1989) Penalty, see § 10.99

§ 151.27 MAINTENANCE OF INSTALLATIONS.

Every owner of, and every person in control of, any estate hereafter maintaining a sidewalk vault, coal hole, manhole or any other excavation, or any post, pole, sign awning, wire, pipe, conduit or other structure in, under, over or upon, any street which is adjacent to or a part of his or her estate, shall do so only on condition that such maintenance shall be considered as an agreement on his or her part with the city to keep the same and the covers thereof, and any gas and electric boxes and tubes thereon, in good repair and condition at all times during his or her ownership or control thereof, and to indemnify and save harmless the city against all damages or actions at law that may arise or be brought by reason of such excavation or structure being under, over, in or upon the street, or being unfastened, out of repair or defective during such ownership or control.

(Prior Code, § 4.27) (Ord. 515, passed 7-3-1989) Penalty, see § 10.99

§ 151.28 CURB CUTS.

(A) No opening in or through any curb of any street shall be made without first obtaining a written permit from the Manager. The Manager shall have the authority, at his or her discretion, to have the cuts made by city personnel, with the applicant charged therefor at current rates, or to allow the applicant to make the cuts.

(B) Curb cuts and sidewalk driveway crossings to provide access to private property shall comply with the following.

(1) No single curb cut shall exceed 25 feet, nor be less than ten feet.

(2) The minimum distance between any curb cut and a public crosswalk shall be five feet.

(3) The minimum distance between curb cuts, except those serving residential property, shall be 25 feet.

(4) The maximum number of lineal feet of sidewalk driveway crossings permitted for any lot, parcel of land, business or enterprise, shall be 45% of the total abutting street frontage up to and including 200 lineal feet of street frontage, plus 20% of the lineal feet of street frontage in excess of 200 feet.

(5) The necessary adjustments to utility poles, light standards, fire hydrants, catch basins, street or railway signs, signals or other public improvements or installations shall be accomplished without cost to the city.

(6) All construction shall be in accordance with plans and specifications approved by the Manager.

(Prior Code, § 4.35) (Ord. 515, passed 7-3-1989) Penalty, see § 10.99

§ 151.29 ABANDONMENT.

(A) This section shall be known as the “City of Charlevoix Street Abandonment Ordinance”.

(Prior Code, § 4.58)

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CLERK. The City Clerk for the City of Charlevoix, a duly appointed deputy or other person designated by the Clerk to perform the Clerk’s function under this section.

COUNCIL. The City Council of the City of Charlevoix.

PERSON. An individual, association, corporation or partnership.

STREET, ***ALLEY*** or ***PUBLIC WAY.*** The portion of land within the city dedicated to the use of the public for the purposes of pedestrian or vehicular travel.

(Prior Code, § 4.59)

(C) When the Council deems it advisable to vacate, discontinue or abolish any street, alley or public way, or a portion thereof, it shall, by resolution, declare such intention and in the same resolution shall schedule a public hearing, not less than ten days thereafter, when it will meet to hear public comment on such proposed action.

(1) *Notice.* The Clerk shall cause a copy of the public hearing notice and a copy of the resolution to be published at least once in an official newspaper prior to the scheduled public hearing. Prior to the scheduled public hearing, the Clerk shall also send by first class mail a copy of the public hearing notice and a copy of the resolution to all property owners and all persons claiming under those owners located within 300 feet of the street, alley or public way described in the resolution, based on the city’s current tax assessment records.

(2) *Public hearing.* At a time scheduled for the public hearing, the Council shall hear public comment on the proposed action to vacate, discontinue or abolish any street, alley or public way, or a portion thereof. Comments regarding such proposed action of the Council may be stated at the public hearing or comments may be filed in writing with the Clerk at or prior to the public hearing.

(3) *Council action.* After considering the comments at a public hearing and any written comments filed with the Clerk, the Council, by resolution, shall be empowered to vacate, discontinue or abolish any street, alley or public way, or a portion thereof, but may not take action regarding any street, alley or public way beyond that described in the original resolution of proposed action.

(4) *Public utility easements.* When the Council determines that it is necessary for the health, welfare, comfort and safety of the public to vacate, discontinue or abolish any street, alley or public way, or a portion thereof, the Council may reserve an easement in the street, alley or public way for public utility purposes and/or other public purposes by including such reservation in the final resolution vacating, discontinuing or abolishing the street, alley or public way.

(5) *Recording of resolution.* Within 30 days after the Council adopts a resolution vacating, discontinuing or abolishing a street, alley or public way, or a portion thereof, the Clerk shall record a certified copy of such resolution in the office of the county’s Register of Deeds. This resolution shall not be effective until recorded.

(6) *Extension of zoning districts.* Whenever any street, alley or public way, or a portion thereof, is vacated, discontinued or abolished under this section, the zoning district(s) adjoining each side of the street, alley or public way shall be automatically extended to the center of such vacation. All areas included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts(s).

(7) *Fee.*

(a) Before any action is taken as provided in this section, the person proposing, recommending or petitioning for the vacation, discontinuance or abolition of a street, alley or public way, or a portion thereof, shall pay to the Clerk a fee as fixed from time to time by resolution of the Council.

(b) Under no condition shall such fee or any part thereof be refunded for failure of such action to be approved by the Council.

(8) *Exception.* The Council may not vacate, discontinue or abolish that portion of any street, alley or public way under its jurisdiction which is within 25 meters of the lake or the general course of a stream and which is also located within a platted subdivision as long as such action is prohibited by state law.

(Prior Code, § 4.60)

(Ord. 555, passed 8-5-1991)

SIDEWALKS GENERALLY

§ 151.40 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MANAGER. The City Manager or his or her duly authorized representative.

SIDEWALK. The portion of the street right-of-way designed for pedestrian travel.

(Prior Code, § 4.61)

§ 151.41 SPECIFICATIONS AND PERMITS.

No person shall construct, rebuild or repair any sidewalk, except in accordance with the line, grade, slope and specifications established for such sidewalk, nor without first obtaining a written permit from the Manager. The fee for such permit shall be $0.01 per square foot and a minimum of $1 per stake shall be paid.

(Prior Code, § 4.62) Penalty, see § 10.99

§ 151.42 CONSTRUCTION REQUIREMENTS.

Sidewalks shall not be less than four inches in thickness and expansion paper shall be placed in the joints. Sidewalks at driveway crossings shall be not less than six inches in thickness. All concrete used in sidewalk construction shall, 28 days after placement, be capable of resisting a pressure of 3,500 pounds per square inch without failure. The City Manager may establish additional detailed specifications in addition hereto and not inconsistent herewith.

(Prior Code, § 4.64) Penalty, see § 10.99

§ 151.43 PERMIT REVOCATION.

The Manager may issue a stop order to any permittee holding a permit issued under the terms of this subchapter for failure to comply with this subchapter, or the rules, regulations, plans and specifications established for the construction, rebuilding or repair of any sidewalk and the issuance of such stop order shall be deemed a suspension of such permit. Such stop order shall be effective until the next regular meeting of the City Council and, if confirmed by the Council, at its regular meeting, such stop order shall be permanent and shall constitute a revocation of the permit.

(Prior Code, § 4.65)

§ 151.44 ORDERING CONSTRUCTION.

(A) The Council may, by resolution, require the owners of lots and premises to build sidewalks in the public streets adjacent to and abutting upon such lots and premises.

(B) When such resolution shall be adopted, the Manager shall give notice thereof, in accordance herewith, to the owner of such lot or premises requiring him to construct or rebuild such sidewalk within 20 days from the date of such notice.

(Prior Code, § 4.66)

§ 151.45 CONSTRUCTION BY CITY.

If the owner of any lot or premises shall fail to build any particular sidewalk as described in said notice, and within the time and in the manner required thereby, the Manager is hereby authorized and required, immediately after the expiration of the time limited for the construction or rebuilding by the owner, to cause such sidewalk to be constructed and 60% of the expense thereof may be charged to such premises and the owner thereof, and collected as a single lot assessment as provided in § 150.01 of this code of ordinances and 40% of the costs of any such new construction shall be borne by the city.

(Prior Code, § 4.67) (Ord. 489, passed 4-4-1988)

§ 151.46 MAINTENANCE.

No person shall permit any sidewalk within the city which adjoins property owned by him or her to fall into a state of disrepair or to be unsafe.

(Prior Code, § 4.68) Penalty, see § 10.99

§ 151.47 REPAIR.

Whenever the Manager shall determine that a sidewalk is unsafe or in a state of disrepair, the city may cause the repair or restoration of said sidewalk and the cost thereof to be borne by the city.

(Prior Code, § 4.69) (Ord. 489, passed 4-4-1988)

§ 151.48 SNOW AND ICE CLEARANCE DISTRICTS.

(A) *Establishment of snow and ice clearance districts.* The Council shall, from time to time, establish by resolution snow and ice clearance districts the boundaries of which shall be drawn so as to include the substantial pedestrian traffic areas within the city.

(B) *Sidewalks to be cleared within clearance districts.* The occupant of every lot or premises, or the owner of such lot or premises located within any snow or ice clearance district, shall clear all ice and snow from sidewalks adjoining such lot or premises within the time herein required. When any snow or ice shall cease to fall during the daylight hours, such snow or ice shall be cleared from the sidewalks within 18 hours after such cessation. When a fall of snow or ice shall have ceased during the nighttime, it shall be cleared from the sidewalks by 6:00 p.m. of the day following.

(C) *Failure to clear.* If any occupant or owner of a lot or premises located within a snow or ice clearance district shall neglect or fail to clear ice or snow from the sidewalk adjoining his or her premises within the time limited, or shall otherwise permit ice or snow to accumulate on such sidewalk, he or she shall be guilty of a violation of this section and, in addition, the City Manager may cause the same to be cleared and the expense of removal shall become a debt to the city from the owner of such premises, and shall be collected as a single lot assessment pursuant to § 150.01 of this code of ordinances.

(Prior Code, § 4.70) (Ord. 413, passed 10-4-1982) Penalty, see § 10.99

STREET NAMES AND HOUSE NUMBERS

§ 151.60 STREET NAMES.

(A) All streets shall be known and designated by the names applied thereto on the map of the city known as the street plan, filed with the City Clerk.

(B) The naming of any new street or the changing of the name of any street shall be done by resolution, which resolution shall amend said map.

(Prior Code, § 1.21)

§ 151.61 VACATING STREETS.

Vacated portions of streets and alleys shall be eliminated from said street plan map. The vacating of any street or alley shall be done by resolution, which resolution shall amend said map.

(Prior Code, § 1.22)

§ 151.62 STREET NUMBERS.

All premises shall bear a distinctive street number on the front at or near the front entrance of said premises in accordance with and as designated upon the street plan map on file in the office of the City Clerk.

(Prior Code, § 1.23)

§ 151.63 NUMBERING BUILDINGS.

The owners and occupants of all buildings in the city shall cause the correct numbers to be placed thereon in accordance with said street plan map. No person shall display other than the officially designated numbers on any house or building.

(Prior Code, § 1.24) Penalty, see § 10.99

§ 151.64 NUMBERS.

(A) As used in this subchapter, ***NUMBERS*** shall mean Arabic numbers which are a minimum of four inches high and which are of a color which contrasts to the premises or building on which the numbers are located.

(Prior Code, § 1.25)

(B) If the location of the premises or building or the existence of obstructions do not allow the numbers on a building to be plainly visible from the road, the numbers shall not only be displayed on the premises or building, but shall also be displayed on a post or similar object which shall be adjacent to the drive or access to the premises or building and the numbers shall be a minimum of four feet above the ground and shall be plainly visible from the road. Numbers shall not be placed on mailboxes.

(Prior Code, § 1.26)

(Ord. 676, passed 9-16-2002) Penalty, see § 10.99

CHAPTER 152: TREES

Section

§ 152.01 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEPARTMENT. The department of the city responsible for tree care.

PARK. All public parks having individual names, and all areas owned by the city or to which the public has free access as a park.

PROHIBITED SPECIES. Any tree of the species of poplar (Populus Sp.) willow (Salix Sp.) and box elder (Acer Negundo).

PUBLIC UTILITY. Any person owning or operating any pole, line, pipe or conduit located in any public street or over or along any public easement or right-of-way for the transmission of electricity, gas, telephone service or telegraph service.

STREET. All of the land lying between property lines on either side of all streets, highways and boulevards in the city.

TREE. Unless the context clearly indicates otherwise, trees, shrubs, bushes and all other woody vegetation.

(B) The terms of this chapter, unless otherwise specifically stated herein, shall apply only to public streets, parkways, parks and other land publicly owned or controlled by the city.

(Prior Code, § 4.91)

§ 152.02 PERMITS FOR TREE PLANTING, CARE AND REMOVAL.

(A) Except where contemplated herein, no person shall trim, prune, cut, spray or otherwise modify the trees of the City of Charlevoix.

(B) The Department may undertake such actions to maintain the trees of the city including pruning or cutting when a public way is obstructed or when a tree may cause damage to an adjacent structure, lawfully erected.

(C) The Department may undertake actions to maintain the public spaces, parks, and recreation areas of the city consistent with the direction of the City Council and the Shade Tree and Park Commission to maintain public access and enjoyment balanced with ecological conditions for the maintenance and preservation of the same.

(D) Property owners adjacent to a street, public space or park may request to the Shade Tree and Park Commission in writing for the maintenance of trees not discussed above. If the request is granted, the city shall be compensated for all costs associated with the request and receive payment, as the Shade Tree and Park Commission may determine, for the appropriate planting of additional trees at rate of at least two new trees for every one tree removed. New trees shall be planted on city property or a street and shall be at the discretion of the city. The Shade Tree and Park Commission shall render a decision on such requests within 45 days of receipt.

(E) Property owners who make a request under subsection (D) whose request is denied or partially denied by the Shade Tree and Park Commission or if the Shade Tree and Park Commission does not render its decision within the required 45 days, may appeal the decision to the Charlevoix City Council.

(Prior Code, § 4.92) (Ord. 809, passed 11-18-2019)

§ 152.03 TREE PLANTING ORDERS.

The Shade Tree and Park Commission and the Department, separately or in conjunction, shall, from time-to-time recommend the planting of trees to the City Council to ensure the city maintains a strong tree canopy. The Council may also consider the planting of trees as a special assessment for the benefit of abutting property owners, either upon its own initiative or upon a petition as contemplated in Article IX of the Charter of the City of Charlevoix.

(Prior Code, § 4.93) (Ord. 809, passed 11-18-2019)

§ 152.04 REMOVAL OF DEAD, DISEASED AND PROHIBITED TREES.

(A) All dead trees and trees afflicted with any fatal or communicable disease shall be removed by the Department or private contractor with the approval of the Manager. The City Manager is hereby authorized to direct the Department to remove any tree of a prohibited species, but the cost of such removal shall not be assessed against the property benefitted unless the Council shall have approved the removal under the provisions of § 152.03 of this chapter.

(Prior Code, § 4.94)

(B) Trees may be removed which are not dead or infected with any disease when such trees are of an undesirable (though not prohibited) species, but only upon notice to the owner of the abutting property, and, if such owner shall file written objection with the City Clerk within seven days after service of such notice, a public hearing on such removal shall be had before the City Council, and the abutting owner shall be notified of the time and place of such hearing. The cost of any such removal shall not be assessed to the property benefitted thereby unless Council shall order such removal originally under the provisions of § 152.03 of this chapter. The City Manager is hereby authorized to direct the Department to remove any tree growing within any street, park or public place, when such tree interferes with fire hydrants, sewer and water mains, visibility of street intersections, traffic-control devices or construction within street rights-of-way or otherwise hinders municipal operations.

(Prior Code, § 4.95)

§ 152.05 PLANTING REGULATIONS.

No tree of any prohibited species shall be planted in any street or park, nor shall any such tree be planted on any private property within 50 feet of any street, sidewalk or sewer right-of-way. Shade trees planted in street right-of-way shall be spaced as required by the City Manager or authorized representative in conformance with the recommendations of the state's Agricultural Department or other recognized authorities. In no event shall any tree be placed closer than six feet to any water, sewer or gas service.

(Prior Code, § 4.96) Penalty, see § 10.99

§ 152.06 TREE PROTECTION.

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire, or permit any fire, or the heat thereof, to injure any portion of any tree. No harmful chemicals or other materials injurious to a tree shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor, and no material shall be fastened to or hung on any tree. All persons having under their care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall after notice thereof by the Department, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the Department.

(Prior Code, § 4.97) Penalty, see § 10.99

§ 152.07 EXCAVATION NEAR TREES.

Excavations and driveways shall not be placed within six feet of any tree without written permit from the City Manager. Any person making such excavation or construction shall guard any tree within six feet thereof with a good, substantial frame box to be approved by the Department, and all building material or other debris shall be kept at least four feet from any tree. All persons desiring to make such excavation or construction shall deposit with the city a sum sufficient to cover the cost of inspection and any damage which may result therefrom; provided that, such charge shall not be less than $2 in any case.

(Prior Code, § 4.98) Penalty, see § 10.99

§ 152.08 COVERING SURFACE NEAR TREES.

No person shall place within the street right-of-way, any stone, brick, sand, concrete or other material which will in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, except a sidewalk of authorized width and location.

(Prior Code, § 4.99) Penalty, see § 10.99

§ 152.09 GAS MAIN OR LEAKAGE.

Gas pipes or mains within any public rights-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. In the event a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within 24 hours. Any damage to trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired, and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.

(Prior Code, § 4.100) Penalty, see § 10.99

§ 152.10 TREES ON PRIVATE PROPERTY; REMOVAL AND TRIMMING.

(A) Every owner of any dead or diseased and dying tree upon the private property of such owner shall, upon notice, remove such dead or diseased and dying tree from such private property within 30 days of receipt of such notice, or in such additional time as the city may in writing authorize. The owner shall be responsible for the cost of said removal.

(B) Every owner of any tree overhanging any street or right-of-way within the city shall trim the branches so that such branches shall not obstruct the light from any street lamp, obstruct the view of any street intersection, obstruct city maintenance equipment, obstruct a portion of any sidewalk or touch or interfere with any public utility line. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to trim any tree or shrub on private property which violates this section.

(Prior Code, § 4.101) (Ord. 658, passed 3-6-2000) Penalty, see § 10.99

§ 152.11 OVERHEAD LINES; TRIMMING PERMITS.

The City Manager shall annually issue permits granting permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the city, in such a manner as shall keep the overhead lines of such public utilities safe and accessible. Such trimming shall be done in accordance with approved practices and under the general direction of the Department. Said permit, as provided for in this section, shall require reasonable prior notice to the city before any work is commenced thereunder; provided, however, that, in the event of an emergency requiring immediate maintenance work on the overhead lines of said public utilities, prior notice of commencing work under said permit shall not be required. The word ***EMERGENCY***, as used in this section, shall be defined to mean the occurrence or happening of an event which could not be foreseen by the exercise of reasonable care and foresight, which might cause damage to the overhead lines of the public utilities.

(Prior Code, § 4.102)

CHAPTER 153: PLANNING AND ZONING

Section

GENERAL PROVISIONS

§ 153.001 TITLE.

An ordinance enacted under Public Act 110 of 2006, being M.C.L.A. §§ 125.3101 to 125.3702, to regulate and restrict the use of land and structures; to meet the needs for food, fiber, energy and other natural resources, places of residence, recreation, industry, trade, service and other uses of land; to ensure that uses of the land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding of land and congestion of population, transportation systems and other public facilities; to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation and other public service and facility needs; and to promote public health, safety and welfare; and for those purposes to divide the city into districts; to prescribe penalties for the violation thereof; and to repeal conflicting ordinances.

(Prior Code, § 5.1) (Ord. 791, passed 3-19-2018)

§ 153.002 SHORT TITLE.

This chapter shall be known as “The Zoning Ordinance” and may be cited as such.

(Prior Code, § 5.2)

§ 153.003 PURPOSE.

(A) As they are interpreted and applied, the provisions of this chapter shall be the minimum requirements adopted to promote public health, safety and general welfare.

(B) The provisions of this chapter are intended, among other things, to:

(1) Protect the lands, water and other natural resources of the community by encouraging uses that are best suited to the capabilities and characteristics of those

resources and limiting their improper use;

(2) Promote orderly development in accordance with the city's Master Plan, as amended; to facilitate economical municipal water and sewer services, adequate traffic capacity, recreational areas, schools and other public requirements;

(3) Provide adequate light, air and healthful conditions in residential, commercial and industrial areas;

(4) Promote convenient and safe access;

(5) Protect against fire and other dangers;

(6) Avoid undue concentrations of people by regulating the height and bulk of buildings;

(7) Establish and require adequate yards, courts and other open spaces;

(8) Regulate and restrict the location of all uses, trades, industries and buildings in relation to safe traffic and pedestrian movement;

(9) Achieve stability in the expenditure of funds for public improvements and services;

(10) Promote mixed use developments in appropriate locations;

(11) Promote higher density in appropriate locations; and

(12) Protect and enhance neighborhood character.

(Prior Code, § 5.3)

§ 153.004 SCOPE.

This chapter does not repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this chapter, or of any private restrictions placed upon property by covenant, deed or other private agreement. Where this chapter imposes greater restrictions than are imposed or required by existing laws or ordinances, or by rules, regulations or permits, or by private restrictions, the provisions of this chapter shall control.

(Prior Code, § 5.4)

§ 153.005 DEFINITIONS.

(A) *Construction of language.* The following rules of construction apply to this chapter.

(1) The particular shall control the general and the use of a general term shall not be taken to have the same meaning as another specific term. For example, a "dry cleaning retail establishment" shall not be interpreted to be the same as a "retail business supplying commodities on the premises" if each term is listed as a separate and distinct use.

(2) In case of any difference of meaning or implication between the text of this chapter and any caption or illustration, the text shall control.

(3) A building or structure includes any and all of its parts.

(4) The phrase "used for" includes, but is not limited to, "arranged for", "designed for", "intended for", "maintained for" and "occupied for".

(5) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

(6) The word "person" includes any individual, corporation, partnership, incorporated association, limited liability company or any other similar entity.

(7) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunctions "and", "or" or "either...or", the conjunction shall be interpreted as follows:

(a) "And" indicates that all of the connected items, conditions, provisions or events apply.

(b) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(c) "Either...or" indicates that the connected items, conditions, provisions or events may apply singly, but not in combination.

(8) Terms not defined in this chapter shall have the meaning customarily assigned to them.

(B) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABUTTING. See ***ADJOINING***.

ABUTTING LOT, PARCEL OR RIGHT-OF-WAY. A lot, parcel or public or private street right-of-way that shares a common property line with the subject lot or parcel.

ACCESSORY BUILDING. An attached or detached building on the same lot with and of a customarily incidental nature that is subordinate to the principal use or building. (See § 153.116 of this chapter.)

ACCESSORY DWELLING UNIT (ADU). See ***DWELLING UNIT: DWELLING, ACCESSORY (ADU).***

ACCESSORY STRUCTURE. See ***STRUCTURE, ACCESSORY.***

ACCESSORY USE. A use located on the same lot that is customarily found in connection with, but clearly incidental to the principal use to which it is related. (See § 153.116 of this chapter.)

ADDITION. An extension or increase in floor area or height of a building or structure.

ADJACENT. See ***ADJOINING***.

ADJOINING. All lands which touch, border or are contiguous to a specific parcel of land including, but not limited to, those lands separated from the parcel by a road right-of-way, easements, public utility rights-of-way or inland lakes and streams as defined by the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, being M.C.L.A. §§ 324.11501 et seq.

ADULT. A person at the legal age of adulthood, as defined by the laws of the state.

ADULT DAY CARE HOME. A private residence with the approved capacity to receive six or fewer adults, to be provided with foster care for periods of less than 24 hours per day, five or more days per week and for two or more consecutive weeks, as licensed and regulated under the Adult Foster Care Facility Licensing Act, Public Act 218 of 1979, being M.C.L.A. §§ 400.701 et seq., as amended.

ADULT FOSTER CARE. See ***FOSTER CARE***.

AGGRIEVED PERSON. A person who has suffered a special damage from a zoning decision not in common to other property owners similarly situated.

ALLEY. A public or private right-of-way that provides a secondary means of access to an abutting property, usually an improved surface providing access to the rear of the lot.

ALTERATION. A change, addition or modification in construction or type of occupancy; any change in a building, such as walls, partitions, columns or joists; any change in the dimensions or configuration of the roof, exterior walls or foundation; or any change which may be referred to as altered or reconstructed.

AMUSEMENT PARK, SMALL SCALE. An outdoor recreation area in a park-like setting which, along with required parking and landscaping, is comprised of limited participatory amusement facilities and activities.

ASSISTED LIVING. See ***SENIOR HOUSING***.

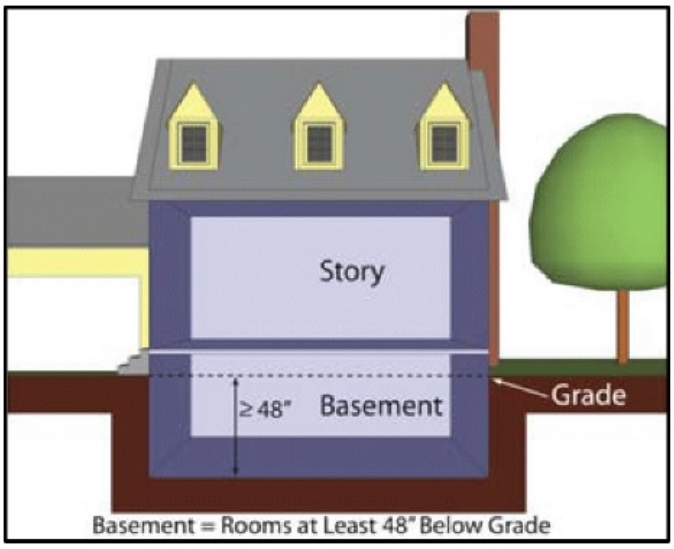
ATHLETIC COURT. An improved surface designed or intended for sports activities including, but not limited to, basketball, tennis, badminton, pickle ball or shuffleboard. (See § 153.125 of this chapter.)

AWNING. A permanent shelter constructed on a supporting framework, projecting from and supported by the exterior wall of a building.

BASEMENT.

(a) The part of a building between a floor and ceiling, which is partially below and partially above ground level, but with a vertical distance from grade to the floor below that is greater than the vertical distance from grade to the ceiling.

(b) A ***BASEMENT*** is not counted as a story.



BED AND BREAKFAST. Any place of lodging that provides rooms for rent for more than ten nights in a 12-month period, is the owner's personal residence, is occupied by the owner or owner's representative at the time of rental and in which a morning meal is served to guests.

BEDROOM. A separate room or space with a legal means of egress, used or intended to be used specifically for sleeping purposes. The following spaces do not qualify as ***BEDROOMS***:

(a) Kitchens;

(b) Dining areas;

(c) Gathering spaces such as family rooms, dens or living rooms; and

(d) Attics or basements without egress meeting standards in applicable Building, Residential and Fire Codes.

BERM. An earth mound covered with grasses, trees and/or other plants; designed to provide visual interest, screen undesirable views and impacts and help separate incompatible uses.

BOARDING/ROOMING HOUSE. A building, structure, or portion thereof, where individual rooms are rented to separate parties for more than 30 consecutive days, such as seasonal worker housing, transitional homes, hostels or similar uses.

BOAT, COMMERCIAL. Any vessel, such as, but not limited to, a tugboat or freighter, used for commercial purposes without regard to the carrying capacity.

BOAT DOCKING SPACE. The space along a dock, pier or similar structure where a boat may be moored.

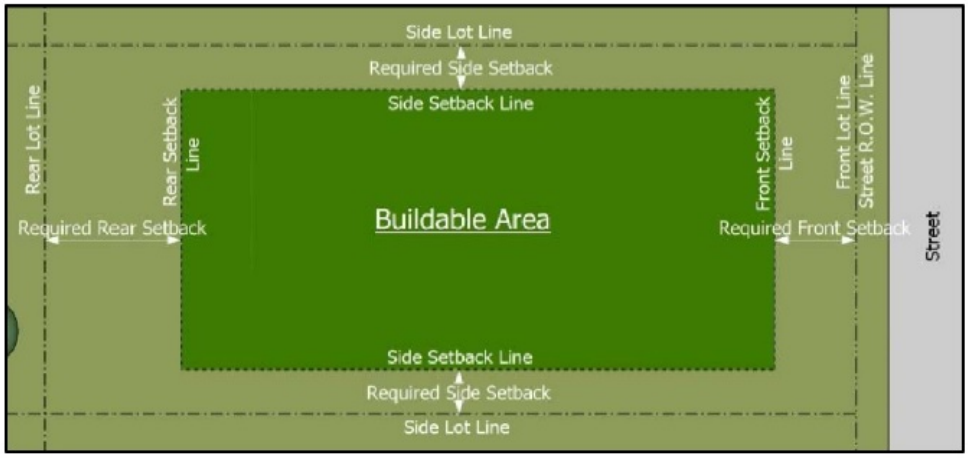
BOATHOUSE. A building or enclosed structure used for the docking and/or storage of boats, marine equipment and associated uses. (See § 153.116(E) of this chapter.)

BOAT, RECREATIONAL. Any vessel used primarily for non-commercial use, or leased, rented or chartered to another for the latter's non-commercial use.

BREWPUB. A facility where beer is produced, stored and sold for consumption on or off the premises that meets the requirements of the state's Liquor Control Commission, where no more than 5,000 barrels of beer are produced per year.

BUFFER. An undeveloped, open area that does not contain structures, parking, pavement or buildings, but which may include landscaping, a screen wall or berm, used to physically separate and screen one land use or property from another.

BUILDABLE AREA. The portion of a lot or site, exclusive of required setbacks, landscaping or open space, within which buildings may be built.



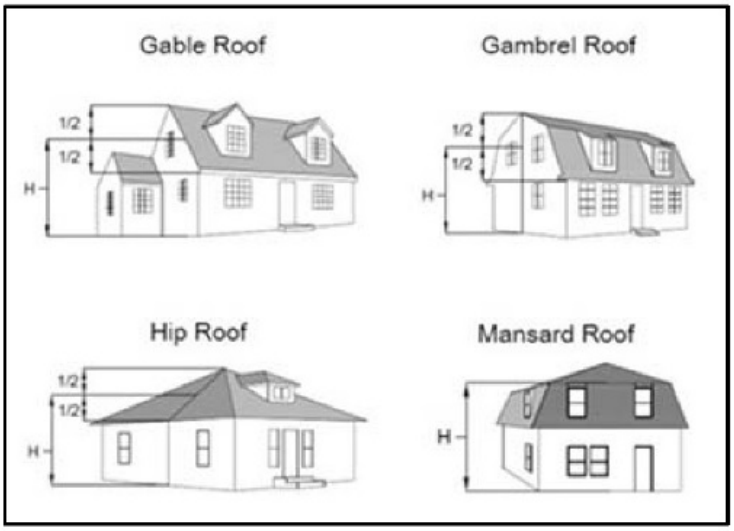
BUILDING. A temporary or permanent independent structure with a roof supported by columns, walls or other supports that is used to house people, animals, possessions or conduct business activities or other uses. A ***BUILDING*** may or may not have a permanent location on the ground.

BUILDING ELEVATION. All of that part of a building facade(s) which would be included in an elevation view rendering of the building drawn parallel to, and for the entire length of, a lot line.

BUILDING HEIGHT. The vertical distance measured from the average finished grade around the building to the highest point of a flat roof; to the deck line of a mansard roof; when there is a dormer built into the roof, the height is measured to the midpoint of the dormer roof if the dormer(s) exceeds 50% or more of the width of any side of the building; to the average height between the eaves and ridge for a gable, hip and gambrel roof; or to an equivalent point on any other roof, excluding structural elements not intended for habitation and not exceeding six feet above the maximum building height including antenna arrays, smoke and ventilation stacks, flag poles, mechanical and elevator equipment, and parapet walls designed solely to screen mechanical and elevator equipment (See § 153.146 of this chapter.)

BUILDING OFFICIAL or ***BUILDING INSPECTOR.*** The county's Department of Building Safety.

BUILDING ROOF. A structure that covers or forms the top of a building. Roof styles include, but are not limited to, gable, gambrel, hip, mansard and flat.



CAMPGROUND. A property with two or more campsites that is established or maintained for commercial occupancy as temporary living quarters for recreation, education or vacation purposes.

CANOPY (BUILDING). A permanent rigid structure covered with fabric, metal, shingles or other material and supported by a building at one or more points.

CANOPY (FREESTANDING). A permanent, rigid structure covered with fabric, metal or other material and supported by columns, posts or other forms of support not a part of a building.

CARPORT. A partially open structure providing shelter for one or more vehicles.

CARRY-OUT SERVICE. A service that is ancillary to a permitted use involving the sale of pre-ordered and ready-to-consume food or beverages, which are packaged and intended for consumption off the premises. These items are delivered to a customer who is either waiting in the premises or in a motor vehicle parked in a space designated and used for ***CARRY-OUT SERVICE***.

CERTIFICATE OF OCCUPANCY. A document issued by the county's Department of Building Safety certifying that a structure or use has been constructed and will be used in compliance with all applicable regulations and, therefore, occupancy or use of the building can occur.

CHANGE OF USE. Any use of a building, structure or property different from the previous use in the way it is classified in this chapter or in the state's Building Code, as amended.

CHILD CARE CENTER. See ***DAY CARE FACILITY***.

CHURCH. A building, structure or other facility used for public worship where organized services are held by persons of similar beliefs.

CLINIC. An establishment that admits patients on an outpatient basis for examination and treatment by physicians, dentists or similar professionals. ***CLINIC*** does not include a marijuana collective, cooperative or dispensary, or the business of a primary caregiver or other business or use involved in the medical use of marijuana.

CLUB/LODGE. An organization of persons for special purposes or for the promulgation of sports, arts, sciences, literature, politics or the like, but not typically operated for profit.

COLLECTOR STREETS. Streets that serve as a link between local and arterial streets. Examples include West Carpenter, May Street and Park Avenue.

COMMISSION. The city's Planning Commission.

COMPOSTING FACILITY. A facility where organic matter is delivered, degraded and then transported elsewhere.

CONDITIONAL REZONING. A rezoning that is conditioned by a specific use and approved site plan voluntarily proposed by the applicant.

CONDOMINIUM, SITE.

(a) ***BUILDING ENVELOPE.*** The area of a condominium unit within which the principal building or structure may be constructed, together with any accessory structures, as described in the master site condominium deed.

(b) ***CONDOMINIUM ACT.*** Public Act 59 of 1978, being M.C.L.A. §§ 559.101 through 559.272, as amended.

(c) ***CONDOMINIUM UNIT.*** That portion of the condominium project designed and intended for separate ownership and use, as described in the master deed of the condominium project, within which a building or other improvements may be constructed by the condominium unit owner. A ***SITE CONDOMINIUM UNIT*** is considered a lot by this chapter.

(d) ***CONDOMINIUM PROJECT.*** A plan or project consisting of not less than two condominium units, established in conformance with the Condominium Act.

(e) ***LIMITED COMMON ELEMENT.*** An area that is appurtenant to a site condominium unit and that is reserved in the master deed for the site condominium development for the exclusive use of the owner(s) of the site condominium unit.

(f) ***MASTER DEED.*** The condominium document recording the condominium project which is attached as exhibits and incorporated by reference the approved by-laws for the project and the approved condominium subdivision plan for the project.

(g) ***SITE CONDOMINIUM.*** A condominium development in which each condominium unit consists of an area of vacant land and a volume of vacant air space, within which a building or other improvements may be constructed.

(h) ***SITE CONDOMINIUM DEVELOPMENT.*** A development consisting of not less than two site condominium units, established in compliance with the Condominium Act, Public Act 59 of 1978, being M.C.L.A. §§ 559.101 through 559.272.

(i) ***SITE CONDOMINIUM DEVELOPMENT PLAN.*** The plans, drawings and information prepared for a site condominium development, as required by § 66 of the Condominium Act and this chapter, for review by the Planning Commission.

CONVALESCENT HOME or ***NURSING HOME.*** A facility licensed as a "nursing home" by the state's Department of Public Health under Art. 17 of the Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.2010 et seq., as amended, where residents generally require 24-hour care and monitoring to meet their health and security needs. A ***NURSING HOME*** shall include an extended care facility, hospice and convalescent home.

COUNCIL. The Charlevoix City Council.

CUL-DE-SAC. The vehicle turn-around area constituting the terminus of a street that has only one outlet to another street. A ***CUL-DE-SAC LOT*** has frontage on such a turn-around area.

DAY CARE FACILITY. A facility licensed under the Child Care Organizations Act, Public Act 116 of 1973, being M.C.L.A. §§ 722.111 through 722.128. ***DAY CARE FACILITIES*** include the following.

(a) ***DAY CARE CENTER*** or ***NURSERY.*** A facility other than a private residence in which one or more preschool or school age children are given care, and where the parents or guardians are not immediately available to the child. A ***CHILD CARE CENTER*** or ***DAY CARE CENTER*** includes a facility that provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a ***CHILD CARE CENTER***, ***DAY CARE CENTER***, ***DAY NURSERY***, ***NURSERY SCHOOL***, ***PARENT COOPERATIVE PRESCHOOL***, ***PLAY GROUP***, ***BEFORE- OR AFTER-SCHOOL PROGRAM*** or ***DROP-IN CENTER***.

(b) ***FAMILY DAY CARE HOME.*** A private home in which one or more, but fewer than seven, minor children are received for care, unattended by a parent or legal guardian, excluding children related to an adult member of the family by blood, marriage or adoption. ***FAMILY DAY CARE HOMES*** include a home in which care is given to an unrelated minor child for more than four weeks during a calendar year.

(c) ***GROUP DAY CARE HOME.*** A private home in which more than six, but not more than 12, minor children are given care and supervision, unattended by a parent or legal guardian, excluding children related to an adult member of the family by blood, marriage or adoption. A ***GROUP DAY CARE HOME*** includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year.

DECK. A structure, which may be directly attached to a dwelling, without a roof or walls, except for railings, that is constructed on piers or an above-grade foundation wall and used as an outdoor living area.

DECK, ROOF TOP. A finished surface constructed above any top plate of a structure without a roof or walls, except for railings, and which is designed to function as useable outdoor area for human activity.

DENSITY, NET. The number of dwelling units per net acre of land. Net acreage is calculated by subtracting the land area in rights-of-way or private easements for streets and roads from the total gross acreage, unless otherwise specified in this chapter.

DREDGING. The process of cleaning out the bed of a harbor, river or other water bodies or waterways by scooping out sand, mud or other materials with a dredge.

(a) ***UPLAND DREDGING.*** Removing material from above the ordinary high water mark in order to allow for water body access.

(b) ***INLAND DREDGING.*** Removing material from inland water bodies to maintain watercraft navigability or increase water depth.

DRIVE-THROUGH FACILITY. A facility designed to serve patrons of a business while in their motor vehicles, either exclusively or in addition to service within a building or structure.

DRIVEWAY. A privately controlled and maintained easement, right-of-way or other interest in land providing vehicular access from a public or private street to a lot.

DWELLING UNIT. A building or portion of a building, designed for use and occupancy by individuals, or one family, for living, kitchen and bathing facilities. A recreational vehicle, vehicle chassis or tent is not considered a ***DWELLING***.

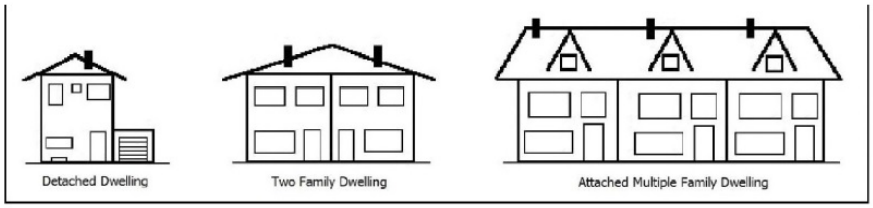
(a) ***DWELLING, MULTIPLE-FAMILY.*** A building containing three or more dwelling units where each unit may have access to a common hallway, stairs or elevator, or where each unit may have individual access to a street or common courtyard.

(b) ***DWELLING, SINGLE-FAMILY.***

1. ***DETACHED.*** A single-family dwelling unit that is separate and distinct from any other dwelling. A single-family dwelling that does not share a party wall with any other dwelling is a ***DETACHED SINGLE-FAMILY DWELLING***.

2. ***ATTACHED.*** A dwelling designed for occupancy by one family in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another, and each unit is separated from any other unit by one or more vertical common fire-resistant walls. (Also known as a ***TOWNHOUSE*** or ***ROWHOUSE***.)

(c) ***DWELLING, TWO-FAMILY.*** A single-family dwelling unit attached to one other single-family dwelling by a common wall or floor. (Also known as a ***DUPLEX***.)



(d) ***DWELLING, ACCESSORY (ADU).*** An accessory building that incorporates one dwelling unit.

EASEMENT. A grant of one or more rights over, across or under land which benefits and/or burdens other land or which grants rights to the public, a utility or third party.

ESSENTIAL SERVICES.

(a) The erection, construction, alteration or maintenance by a public utility or municipal department of underground, surface or overhead gas, communication, telephone, electrical, steam, fuel or water, transmission, distribution collection, supply or disposal systems.

(b) This includes related poles, wires, pipes, conduit, cables, public safety alarm and communication equipment, traffic signals, hydrants and similar accessories that are necessary to furnish adequate service addressing general public health, safety, convenience or welfare.

(c) These do not include wireless telecommunication towers (unless located on public property and used as part of a municipal emergency communications network), wind energy conversion systems, office buildings, substations or structures that are enclosures or shelters for service equipment or maintenance depots.

EXCAVATION. The process of altering natural grade by cutting or filling earth, or any activity by which soil or rock is cut, dug, quarried, uncovered, removed, displaced or relocated.

FAMILY. Either of the following defines a ***FAMILY***:

(a) An individual or group of two or more persons related by blood, marriage or adoption, together with foster children and servants of the principal occupants who are domiciled together as a single, domestic, housekeeping unit in a dwelling unit; or

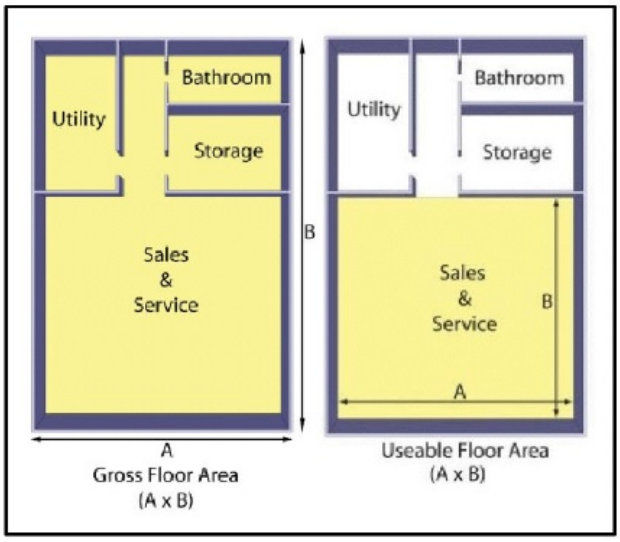
(b) A collective number of individuals, domiciled together in one dwelling unit whose relationship is of a continuing, domestic character, and who cook and live as a single non-profit housekeeping unit. This does not include a society, club, fraternity, sorority, association, halfway house, lodge, organization, group of students or other individuals whose domestic relationship is of a transitory or seasonal nature, such as a school term, a period of rehabilitation or treatment or is otherwise not intended to be of a permanent nature.

FENCE. A permanent outdoor partition, structure or gate erected as a barrier or enclosure.

FILLING. Depositing or dumping any matter into or onto the ground.

FLOOR AREA, GROSS. The sum of the horizontal area of all building floors, measured from the interior faces of exterior walls, excluding porches, patios, terraces, breezeways, carport garages, unfinished attic areas and basements.

FLOOR AREA, USABLE. The sum of the total horizontal area of all building floors that are used or intended to be used for the sale of merchandise or to serve clients or customers, and all areas devoted to employee work space. ***FLOOR AREA*** is measured from the interior faces of exterior walls. Excluded from ***USABLE FLOOR AREA*** are those parts of a building principally used or intended to be used to store or process merchandise, and hallways, elevators, stairs, bulkheads or utility or sanitary facilities.



FOSTER CARE.

(a) ***ADULT FOSTER CARE FACILITY.*** A facility defined by the Adult Foster Care Facility Licensing Act, Public Act 218 of 1979, being M.C.L.A. §§ 400.701 et seq., as an establishment providing foster care to adults. Included are foster care facilities and family homes for adults that are aged, mentally ill, developmentally disabled or physically disabled, and that require supervision on an ongoing basis, but do not require continuous nursing care.

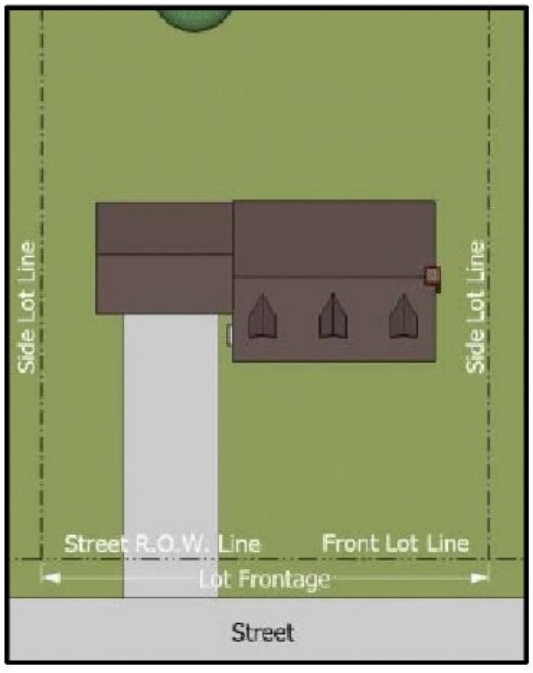
1. ***ADULT FOSTER CARE FAMILY HOME.*** A private residence with an approved capacity of six or fewer adults, where foster care is provided 24 hours per day, five or more days per week, and for two or more consecutive weeks. It is licensed and regulated under the Adult Foster Care Facility Licensing Act, Public Act 218 of 1979, being M.C.L.A. §§ 400.701 et seq., as amended. The person issued the adult foster care family home license is a member of the household and an occupant of the residence.

2. ***ADULT FOSTER CARE GROUP HOME.*** A private residence where adults are provided with foster care 24 hours a day, five or more days per week, and for two or more consecutive weeks. A ***FOSTER CARE GROUP HOME*** with an approved capacity of at least seven, but not more than 12 adults is a “small group home”. A ***GROUP HOME*** with an approved capacity of at least 13, but not more than 20 adults is a “large group home”. An ***ADULT FOSTER CARE FACILITY*** is licensed under the Adult Foster Care Facility Licensing Act, Public Act 218 of 1979, being M.C.L.A. §§ 400.701 et seq., as amended, and the person issued the adult foster care group home license is a member of the household and an occupant of the residence.

(b) ***FOSTER FAMILY HOME.*** A private home, licensed under Public Act 116 of 1973, being M.C.L.A. §§ 722.111 through 722.128, in which at least one, but not more than four minor children, who are not related to an adult member of the house by blood or marriage, or who are not placed in the household pursuant to the Adoption Code (Public Act 288 of 1939, M.C.L.A. §§ 701.1 to 713.6, as amended), are given care and supervision 24 hours per day, four or more days per week for two or more consecutive weeks, unattended by a parent or guardian. The person issued the license is a permanent resident of the home.

(c) ***FOSTER FAMILY GROUP HOME.*** A private home, licensed under Public Act 116 of 1973, being M.C.L.A. §§ 722.111 through 722.128, in which more than four, but fewer than seven minor children, who are not related to an adult member of the house by blood or marriage, or who are not placed in the household pursuant to the Adoption Code (Public Act 288 of 1939, as amended), are given care and supervision 24 hours per day, four or more days per week for two or more consecutive weeks, unattended by a parent or guardian. The person issued the license is a permanent resident of the home.

FRONTAGE. The linear distance where a property line coincides with a street right-of-way line.



GARAGE, PRIVATE. An accessory building or portion of a principal building designed for the parking or storage of automobiles, boats, house trailers or similar vehicles owned and used by the occupants of the building to which it is accessory.

GARAGE, PUBLIC. Any garage that is not private.

GRADE. The elevation of the ground adjacent to a structure; existing or natural grade is the elevation that exists or existed prior to manmade alterations. Finished

grade is the elevation established after filling or excavation. For a sloping site, ***FINISHED GRADE*** is the average between the highest and lowest elevation of the ground adjacent to each face of a building, wall or other structure being measured. (See § 153.144 of this chapter.)

GOOD VISITOR GUIDELINE MATERIALS.

(a) Materials prepared by the city's Planning and Zoning Department that may include, but are not limited to, the following:

1. A summary of the city's noise ordinance, fireworks ordinance, trash disposal ordinances and applicable offenses against the public peace;
2. A reminder that the rental property is located in a residential neighborhood and that neighbors may not be vacationing;
3. Information regarding amenities and regulations regarding pets;
4. Parking rules and designated areas;
5. Street address;
6. Safety features; and
7. A statement informing the renters that neighboring property owners may contact the local agent and local police to report any issues relating to the property.

(b) The ***GOOD VISITOR GUIDELINE MATERIALS*** may be revised by the city's Planning and Zoning Department from time to time.

GREENBELT. A strip of land providing visual relief between properties reserved for landscaping, berms, walls or fencing; often between abutting uses of differing intensities.

HOME OCCUPATION (MAJOR). A vocational activity conducted as an accessory use in a dwelling, which is accessory and incidental to the principal residential use of the dwelling. ***MAJOR HOME OCCUPATIONS*** are vocational activities that do not meet the definition of minor home occupations.

HOME OCCUPATION (MINOR). A vocational activity conducted as an accessory use in a dwelling unit by a member or members of the resident family, which is accessory and incidental to the principal residential use of the dwelling. ***MINOR HOME OCCUPATIONS*** have two or less employees, have no exterior signage, and conduct business in a manner not known to the general public.

HOSPITAL. A building, structure or institution in which sick or injured persons are given medical or surgical treatment, operating under license by the Health Department and the state, and which is used primarily for inpatient services, including related facilities such as laboratories, outpatient departments, central service facilities and staff offices.

HOUSEHOLD. A house, apartment, group of rooms or a single room occupied as separate living quarters, that includes a bathroom(s), sleeping quarters and area to prepare food.

HOTEL. See ***MOTEL/HOTEL***.

IMPERVIOUS SURFACE. Any material that substantially reduces or prevents the infiltration of storm water into the earth.

INOPERABLE VEHICLE. An unlicensed, uninsured motor vehicle that is incapable of being operated under its own power.

JUNK. Including, but not limited to, inoperable vehicles; solid waste; motor vehicles, machinery, appliances, products or merchandise with missing parts; scrap metals or materials that are damaged or deteriorated; or vehicles or machines in a condition preventing them from being used as manufactured.

JUNK YARD or ***SALVAGE YARD.*** An area used for any of the following: collection, storage, dismantling, dumping, display, resale, exchange, baling, cleaning or handling of secondhand, salvaged or used waste materials, machinery, vehicles, trailers, equipment or furnishings; but excluding vehicle, boat, truck or trailer sales areas.

KENNEL. A lot or facility on which four or more dogs, cats or other household pets, three months of age or older, are either permanently or temporarily kept for sale, boarding, breeding, training, competition or showing, whether for commercial or non-commercial purposes.

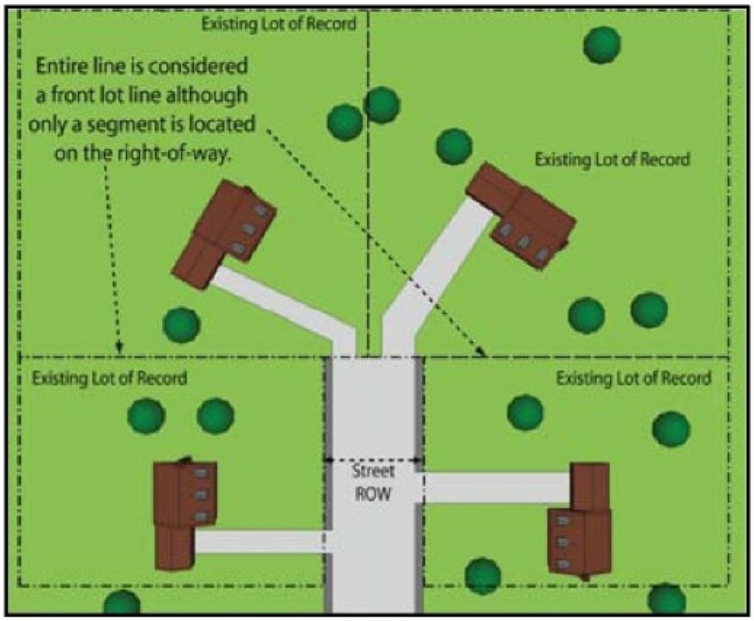
LIFE-SAFETY FEATURES. A necessary component of a building whose primary use is to eliminate or reduce danger and hazards to occupants and users of a building, including but not limited to enclosed stairwells on a roof, or enclosed elevator systems on a roof, railings on a roof, or fire suppression systems on a roof.

LOADING SPACE. An off-street space on the same lot as a building or group of buildings, used to temporarily park a commercial vehicle while loading and unloading merchandise or materials.

LOCAL AGENT. An individual designated to oversee the short-term rental of a dwelling unit in accordance with this chapter and to respond to calls from renters, concerned citizens, law enforcement and representatives of the city. The ***LOCAL AGENT*** must be available to accept telephone calls on a 24-hour basis at all times that the short-term rental is rented and occupied. The ***LOCAL AGENT*** must have a key to the rental unit and be able to respond to the short-term rental within 60 minutes to address issues or must have arranged for another person to address issues within the same timeframe.

LOCAL STREETS. Streets that primarily access individual properties and homes.

LOT. A parcel of land intended for individual ownership and use, separately described on a deed or other instrument recorded in the office of the Register of Deeds, whether by metes and bounds, as part of a platted subdivision or a site condominium.



(a) ***LOT, CORNER.*** A lot with at least two contiguous sides abutting two intersecting streets, and where the interior angle of the intersecting streets is less than 135 degrees. Also, a lot located on a curved street or streets if tangents of the curve, at the points of beginning with the lot or the points of intersection of the side lot lines with the street line, intersect at an interior angle of less than 135 degrees.

(b) ***LOT, CUL-DE-SAC.*** A lot having more than one-half of its required lot frontage on a cul-de-sac. The cul-de-sac shall be determined to begin at the intersection of the radius of the cul-de-sac with the right-of-way or easement line.

(c) ***LOT, DOUBLE-FRONTAGE.*** An interior lot having frontage on two more or less parallel streets. (Also known as a ***THROUGH LOT***.)

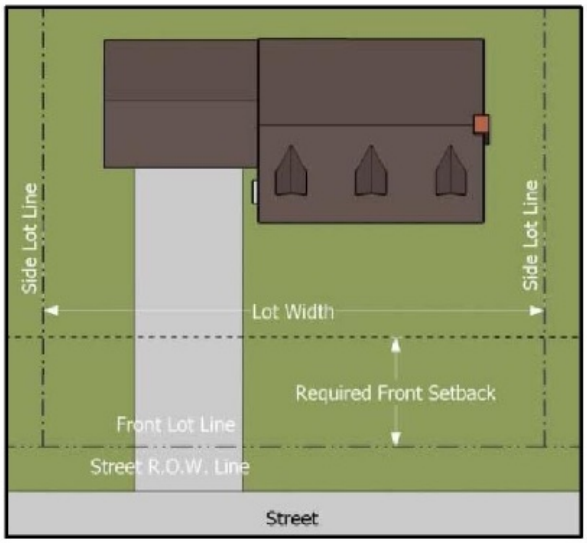
(d) ***LOT, INTERIOR.*** A lot other than a corner or through lot.

LOT AREA. The area of land included within a lot as defined by property lines, but excluding any public or private rights-of-way.

LOT COVERAGE. The lot area, stated as a percentage of the total, covered by all buildings and impervious surfaces such as asphalt or concrete driveways, stone patios and sidewalks.

LOT FRONTAGE. The length of the front lot line measured at the road right-of-way.

LOT LINES.



(a) ***FRONT LOT LINE.*** In the case of an interior lot, the line separating the lot from the street right-of-way or road easement. For a corner lot, the ***PRINCIPAL FRONT LOT LINE*** shall be the location of the traditional front entrance of the structure. In the case of a through lot, the ***FRONT LOT LINE*** shall be determined by the Zoning Administrator based on the dominant orientation of abutting and facing lots.

(b) ***REAR LOT LINE.*** The lot line opposite and most distant from the front lot line. In the case of an irregular, triangular or flared lot, the rear lot line shall be a line at least ten feet in length entirely within the lot, parallel to and at the maximum distance from the front lot line. An undeveloped through lot does not have a ***REAR LOT LINE***.

(c) ***SIDE LOT LINE.*** A lot line that is neither a front lot line, nor a rear lot line.

(d) ***STREET SIDE LOT LINE.*** A side lot line abutting a street on a corner lot.

LOT OF RECORD. A parcel of land separately described on a plat, condominium document or metes and bounds description recorded in the office of the county's Register of Deeds. When an owner has combined two or more lots into a single building site, or combined two or more lots contained in any recorded plat, the combination of lots shall be deemed to be a ***SINGLE LOT OF RECORD***.

LOT WIDTH. The horizontal distance between side lot lines measured at the two points where the required front setback intersects the side lot lines.

MANUFACTURED HOME. A structure (formerly known as a mobile home) used as a single-family dwelling, and built to the Manufactured Home Construction and Safety Standards (HUD Code) and which displays a red certification label on the exterior of each transportable section. ***MANUFACTURED HOMES*** are built in the controlled environment of a manufacturing plant and are transportable in one or more sections on a permanent chassis.

MANUFACTURED HOME COMMUNITY. A property that has been planned, designed, improved and maintained for the placement of manufactured homes and permitted accessory uses.

MANUFACTURED HOME SITE. A property within a manufactured home community designed to accommodate a single manufactured home.

MARQUEE. A permanent structure of rigid materials supported by and extending from, or above, the facade of a building.

MASTER PLAN. A physical plan adopted by the Planning Commission and/or the City Council, including graphic and written proposals indicating the general location for streets, parks, schools, public buildings and existing and future land use within the city, including any unit or part of the plan, and any amendment to the plan or parts thereof.

MINOR ARTERIALS. Streets whose primary function is to move traffic between principal arterials and local streets and between major parts of the city such as neighborhoods, employment and shopping. These provide important roadway links into the city and to major activity areas and are considered secondary gateways. Examples include Ferry and Belvedere Avenues, State Street and Division.

MOBILE HOME. A factory built single-family dwelling manufactured prior to the Manufactured Home Construction and Safety Standards (HUD Code). See ***MANUFACTURED HOME***.

MOTEL/HOTEL. A building or group of buildings on the same lot, containing sleeping or dwelling units in which lodging is provided for compensation on a transient basis. The term includes tourist cabins, motor courts, motor lodges and similar facilities.

MOTOR HOME. See ***RECREATIONAL VEHICLE***.

NON-CONFORMING STRUCTURE. A building or any of its parts lawfully existing on the effective date of this chapter or its subsequent amendment that does not conform to the current provisions of the district in which it is located.

NON-CONFORMING LOT. A lot lawfully existing on the effective date of this chapter or its subsequent amendment that does not meet the current area and/or dimensional requirements of the zoning district in which it is located.

NON-CONFORMING USE. A use or activity lawfully existing on the effective date of this chapter or its subsequent amendment that does not conform to the current use provisions of this chapter.

NURSERY SCHOOL. See ***DAY CARE FACILITY***.

NURSING HOME. See ***CONVALESCENT HOME OR NURSING HOME***.

OFFICE, PROFESSIONAL. A room, suite of rooms or building in which a person transacts the affairs of a business, profession, service, industry or government.

OPEN SPACE. A parcel or area of land or water that may or may not be improved and that is reserved for public or private use.

ORDINARY HIGH WATER MARK. The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is common or recurrent so that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the soil and the vegetation. On an inland lake which has had a level established by law, it means the high established level. On a river or stream, the ***ORDINARY HIGH WATER MARK*** shall be the ten year flood limit line. The ***ORDINARY HIGH WATER MARK*** shall be at elevation 581.5 feet (International Great Lake Datum, IGLD-1985) for Lake Michigan, the Pine River Channel, Round Lake and Lake Charlevoix.

OUTDOOR DISPLAY, SALES. The outdoor placement, storage or keeping, for display purposes, of equipment, vehicles, trailers and other similar goods for sale on a premises.

OUTDOOR STORAGE. The outdoor placement of goods such as building or construction materials, equipment, vehicles, trailers and other supplies for future use, production, assembly, preservation or disposal.

PARCEL. See ***LOT***.

PARKING LOT. A facility providing parking spaces, along with adequate drives, aisles and maneuvering space, to allow unrestricted ingress and egress to at least two vehicles.

PARKING SPACE. A space used to park one motor vehicle.

PATIO. An uncovered at-grade courtyard or outdoor platform.

PENNANT. A small, often triangular, flag used in multiples.

PERSONAL TRAILER. A wheeled vehicle that is not self-propelled, but capable of transporting contents. It is designed to be towed by a motor vehicle, but not designed or intended to be used as a living quarters.

PLANNED UNIT DEVELOPMENT (PUD). A use which allows a development to be designed and built as a unit and which is designed to encourage quality land development and site design outside the typical zoning standards through flexible design and use standards and a greater latitude in the mix or uses resulting in more efficient and effective use of the land and infrastructure.

PLANNING COMMISSION. The city's Planning Commission.

PLANTS.

(a) ***GROUND COVER.*** Low-growing plants such as perennial flowers, grasses and vines. Chipped wood, bark mulch, concrete, gravel and similar materials or artificial plants are not considered ***GROUND COVER***.

(b) ***SHRUBS.*** Woody plants with several stems arising from the base.

PLAT. A map of a subdivision of land, recorded with the Register of Deeds pursuant to the Subdivision Control Act, Public Act 288 of 1967, being M.C.L.A. §§ 560.101 through 560.293, and the Land Division Act, Public Act 591 of 1996, being M.C.L.A. §§ 560.101 et seq., as amended.

PRINCIPAL ARTERIALS. Roads that generally carry long distance, through-travel. They also provide access to important traffic generators, such as employment centers and shopping areas. These are important routes through the city and are also primary entrances or gateways from outlying areas. (Examples include U.S. 31 and M-66.)

PRINCIPAL BUILDING. The building in which a principal use is located.

PRINCIPAL USE. The primary use to which a premises is devoted.

RECREATION FACILITY, INDOOR. A facility open either to the general public or to members and their guests, located in an enclosed building that is designed to

accommodate sports, recreational activities, training or related enterprises such as racquet clubs, fitness clubs, skating rinks and the like. Also included are accessory uses that are clearly in support of the primary use, such as sporting goods shops, food service and party/banquet facilities serving patrons of the indoor recreation use, spectator accommodations, changing/locker rooms and employee offices.

RECREATION FACILITY, OUTDOOR. A recreation facility that is operated primarily for outdoor recreation uses, as well as related buildings and structures that are accessory to the primary outdoor nature of the activities. Included are golf courses and related support facilities, court games, field sports, shooting ranges, winter sports, swim clubs, campgrounds and resorts, or a combination of such uses.

RECREATIONAL VEHICLE. A travel, camping or tent trailer, motor home or pickup camper intended for mounting on a truck or similar vehicle designed primarily as temporary living quarters for recreational, camping or travel use, not including a manufactured home; or a boat, snowmobile, all-terrain vehicle or similar vehicle designed for recreational use, including any trailer and equipment used to transport the vehicle.

RENTALS.

(a) ***LONG-TERM RENTALS.*** Any dwelling or condominium or portion thereof, that is available for use for a fee or other compensation for a term of 30 consecutive days or more.

(b) ***SHORT-TERM RENTALS.*** Any dwelling or condominium or portion thereof, that is available for use for a fee or other compensation for a term of less than 30 consecutive days, but not including hotel rooms, transitional housing operated by a non-profit entity, group homes such as nursing homes and adult foster care homes, and hospitals or other health care related facilities.

RESIDENCE. The act of living in a given place for a period of time.

RESIDENTIAL DISTRICTS. The R1, R2, R2A, R4 and PC Zoning Districts.

RETAINING WALL. A permanent structure used to secure dirt, sand, rock or other materials to prevent downslope movement or erosion.

SANITARY LANDFILL. Land designed, developed and operated for the disposal of solid waste in a manner consistent with criteria established by Public Act 451 of 1994, being M.C.L.A. §§ 324.11501 et seq., as amended, and any related rules and regulations.

SCREENING or ***BUFFERING.*** A way of visually shielding or obscuring an abutting or nearby structure or use from another, using a fence, wall, berm and/or vegetation.

SCREEN WALL. A solid wall or fence erected to shield, buffer and/or screen incompatible uses.

SELF-STORAGE FACILITY. A building or a group of buildings in a controlled-access compound where individual compartments, stalls or lockers are rented out to tenants to store goods.

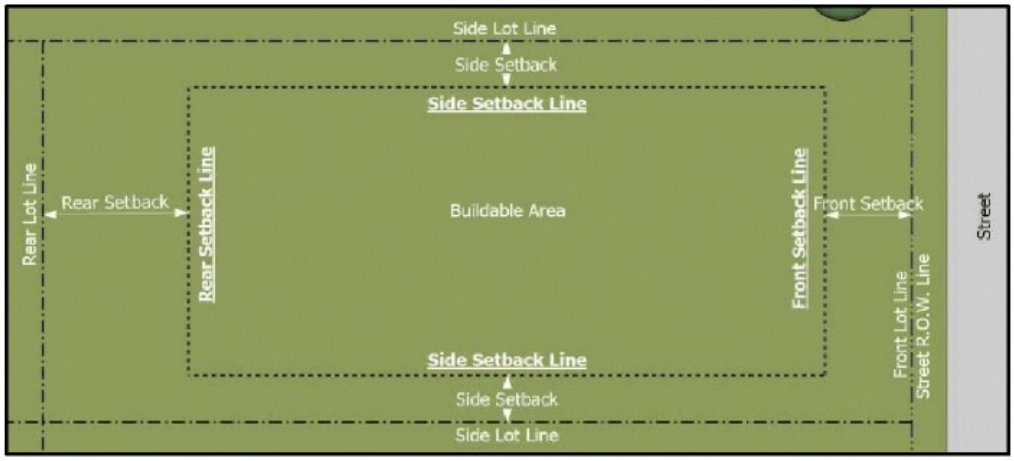
SENIOR HOUSING. See also ***CONVALESCENT HOME OR NURSING HOME***.

(a) ***INDEPENDENT LIVING.*** A housing development consisting of attached or detached single-family, two-family or multiple-family dwellings designed for and generally limited to housing of persons over 62 years of age who maintain a degree of physical independence, and thus shared medical services and congregate meals are generally not provided.

(b) ***ASSISTED LIVING.*** A housing development consisting of attached or detached single-family, two-family or multiple-family dwellings designed for and generally limited to housing of persons over 62 years of age, who because of physical or other limitations, need access within the development to medical and other services and where congregate meals are provided; however, 24-hour care and monitoring is not necessary.

SERVICE AREA. An outdoor area related to a non-residential use that is used for loading and unloading operations and to receive and temporarily store goods, materials and equipment.

SETBACK. The minimum required horizontal distance, measured from the lot lines to a building or structure as designated for a zoning district.



(a) ***FRONT SETBACK LINE.*** The line marking the required setback from the front lot line, which establishes the required front yard setback.

(b) ***REAR SETBACK LINE.*** The line marking the required setback distance from the rear lot line, which establishes the required rear yard.

(c) ***SIDE SETBACK LINE.*** The lines marking the required setback distance from the side lot lines, which establishes the required side yards.

SHORT-TERM RENTAL. Any dwelling or condominium or portion thereof, excepting boat docks, that is available for use for a fee or other compensation for a term of less than 30 consecutive days, not including bed and breakfasts, hotel rooms, transitional housing operated by a non-profit entity, group homes such as nursing homes and adult foster care homes, and hospitals or other health care related facilities.

SIGN. A structure, including its base, foundation and erection supports upon which is displayed any words, letters, figures, emblems, symbols, designs or trademarks by which any message or image is afforded public visibility from outdoors on behalf of, or for the benefit of, any product, place, activity, individual, firm, corporation, institution, profession, association, business or organization. (See below for detailed definitions.)

(a) ***SIGN, AIRBORNE DEVICES.*** A sign supported by aerodynamic forces or propelled through the air by force including, but not limited to, air filled balloons, signs animated by forced air and lighter than air signs.

(b) ***SIGN, AWNING.*** A sign painted, printed, attached flat against or integrated within the surface of an awning.

(c) ***SIGN, BANNER.*** A sign made of a non-rigid material; however, not including pennants or flags.

(d) ***SIGN, BILLBOARD-HIGHWAY ADVERTISING.*** An off-premises sign owned by a person, corporation or other legal entity that engages in the business of utilizing and/or selling the space on that sign. See ***OFF-PREMISES SIGN***.

(e) ***SIGN, BUSINESS CENTER.*** An on-premises sign which identifies or gives directions to a business complex or group of contiguous stores which may contain the names of the individual stores, businesses, institutions, or other organizations located within the complex or group. See ***ON-PREMISES SIGN***.

(f) ***SIGN, CANOPY.*** A sign affixed, applied to or part of a canopy.

(g) ***SIGN, ELECTRONIC SIGN FACE.*** The portion of a sign face capable of changing its message or image electronically.

(h) ***SIGN, FLAG.*** A sign made of non-rigid material having a distinctive size, color and design used as a symbol or emblem.

(j) ***SIGN, GROUND.*** A sign supported by one or more uprights, poles, braces or some other structure, placed in the ground surface and not attached to any building.

(k) ***SIGN, ILLUMINATED.*** A sign that includes artificial light by either emission, reflection or refraction.

(l) ***SIGN, INTERNALLY LIGHTED.*** A sign having an internal lighting source which allows light to be visible through the sign face.

(m) ***SIGN, MARQUEE.*** Any sign attached to or supported by a marquee.

(n) ***SIGN, OFF-PREMISES.*** A sign which contains a message regarding a land use, service or activity provided on property other than the premises where such sign is located.

(o) ***SIGN, ON-PREMISES.*** A sign which contains a message regarding a land use, service or activity provided on the property where such sign is located.

(p) ***SIGN, PORTABLE.*** A freestanding sign, often with a changeable message, that is not permanently anchored or secured to either a building or the ground.

(q) ***SIGN, PROJECTING.*** A sign which is affixed to any building or structure other than a marquee or canopy and projects in such a way that the sign face is not parallel to the wall to which it is attached.

(r) ***SIGN, ROOF.*** Any sign or part of a sign which is erected on, or as a part of, the roof of a building.

(s) ***SIGN, TEMPORARY.*** A sign, often with a non-changeable message, with or without a structural frame, intended for a limited period of display.

(t) ***SIGN, WALL.*** A sign which is attached directly to, or painted upon, a building wall, the exposed face of which is essentially in a plane parallel to the building wall or structure.

(u) ***SIGN, WINDOW.*** A sign, picture, symbol or combination thereof that is placed on the interior of a window pane or glass with the intent to be visible from the outdoors.

SIGN FACE. The portion of a sign excluding its base, foundation and erection supports.

SINGLE OWNERSHIP. A parcel of land in separate and distinct ownership from adjacent parcels.

SITE PLAN. A plan of a proposed project that shows all relevant features necessary to determine if it meets the requirements of this chapter.

STORY. The part of a building, except a mezzanine level, that is between the surface of one floor and the surface of the next floor. If there is no floor above, then a ***STORY*** is the space between the floor and the above ceiling. See also ***BASEMENT***.

STORY, HALF. The uppermost habitable story under a sloped roof with a usable floor area that does not exceed 75% of the floor area of the story immediately below.

STREAMERS. A long narrow wavy strip resembling or suggesting a banner floating in the wind.

STREET. A public or private thoroughfare, used or intended to be used for passage or travel by motor vehicles. ***STREET*** also includes the term ***ROAD***.

(a) ***STREET, PRIVATE.*** A privately owned and maintained street serving three or more lots, parcels, buildings or dwellings, and constructed on a privately owned easement.

(b) ***STREET, PUBLIC.*** An easement, right-of-way or other interest that has been conveyed to and accepted by a governmental body for the purpose of providing access to abutting land.

STRUCTURE. Anything constructed or erected requiring a permanent location in or on the ground, or that must be attached to something having such a permanent location. ***STRUCTURES*** include, but are not limited to, houses, buildings, accessory structures or buildings, fences, signs, decks, retaining walls, parking lots, access drives and swimming pools.

STRUCTURE, ACCESSORY. An attached or detached structure on the same lot and of a customarily incidental nature that is subordinate to the principal use or building/structure (see § 153.116).

SWIMMING POOL. A basin or structure designed to hold water for aquatic recreation; not including temporary, portable pools located upon the ground and holding less than 300 gallons of water, or decorative pools less than two feet deep.

TELECOMMUNICATION TOWER. A freestanding structure or one that is attached to another structure, supporting one or more antennas for telephone, radio or other communication.

TRAILERS. See ***RECREATIONAL VEHICLE***.

TREE.

(a) ***CANOPY TREE.*** A deciduous shade tree.

(b) ***EVERGREEN TREE.*** A tree with foliage that persists and remains green throughout the year.

(c) ***ORNAMENTAL TREE.*** A small deciduous tree grown for its foliage and/or flowers.

TRUCK STOP. A facility intended to provide services to the trucking industry including, but not limited to, the following activities, dispensing of fuel, repair shops, automated washes, restaurants and motels all as part of the facility.

USE. Any purpose for which land or a structure is designed, arranged, intended, used, maintained or occupied.

(a) ***ACCESSORY USE.*** A use customarily incidental and subordinate to the principal use of the structure or premises.

(b) ***USE PERMITTED BY RIGHT.*** A principal or accessory use that, because of its nature, is allowed as regulated within a specified zoning district.

(c) ***PRINCIPAL USE.*** The primary purpose for which land or a structure may be used.

(d) ***TEMPORARY USE.*** A use or activity that may be permitted for a limited time.

VARIANCE. An allowed modification to the requirements of this chapter, as authorized by the Zoning Board of Appeals under the provisions of this chapter and Public Act 207 of 1921, being M.C.L.A. §§ 125.3101 to 125.3702, as amended.

VEHICLE SERVICE STATION. An establishment where motor vehicle fuel is sold and/or where charging services are provided for electric vehicles. Minor vehicle repair services may be offered, including the sale of related vehicle products and accessories. The facility may also sell convenience retail items, including such items as snacks, food, beverages and small household items.

VEHICLE REPAIR.

(a) ***MAJOR.*** The repair, rebuilding or reconditioning of motor vehicles or parts thereof, including powertrain and suspension repair or rebuilding, body work, frame alignment, undercoating, painting, tire recapping, engine rebuilding, dismantling upholstery, auto glass work and other vehicle repair work creating noise, glare, fumes or smoke, but not including vehicle wrecking, junking or salvaging.

(b) ***MINOR.*** The services related to general routine maintenance of motor vehicles, including the sale and installation of oil and other fluids (other than fuel), tires, batteries, belts, windshield wipers, mufflers and exhaust systems, brakes and shock absorbers, air conditioners and wheel alignment and balancing.

VEHICLE SALES. The use of a building, property or other premises for the display and sale of vehicles, trucks, boats, trailers, farm equipment or other similar mobile equipment in operable condition, whether new or used. It may also include vehicle preparation, washing or minor repair conducted in association with the sale of vehicles.

VEHICLE WASH ESTABLISHMENT. All or part of a building, premises or property regularly used for washing vehicles. (Also referred to as a ***CAR WASH***.)

VETERINARY CLINIC. A veterinary establishment that admits animals on an outpatient basis for examination and treatment and that does not usually lodge animals overnight.

VETERINARY HOSPITAL. A place where animals are given medical care and their boarding is limited to short-term care incidental to the hospital use.

WAREHOUSE.

(a) A building primarily used to store goods, materials and commodities including associated driveway, vehicle circulation and parking areas and also a self-storage warehouse where customers deliver and store goods and remove them when storage is terminated.

(b) A ***WAREHOUSE*** may include goods, materials and commodities stored on a wholesale basis before being distributed for retail sale.

WIND ENERGY CONVERSION SYSTEM (WECS).

(a) A ***WIND ENERGY CONVERSION SYSTEM*** is a combination of:

1. A surface area (typically a blade, rotor or similar device), either variable or fixed, for utilizing the wind for electrical power;

2. A shaft, gearing, belt or coupling utilized to convert the rotation of the surface area into a form suitable for driving a generator, alternator or other electricity-producing device;

3. The generator, alternator or other device to convert the mechanical energy of the surface area into electrical energy, generally housed in a nacelle;

4. The tower, pylon, building mount or other structure upon which any, all or some combination of the above are mounted;

5. Other components not listed above, but that are associated with the normal construction, operation and maintenance of a WECS; and

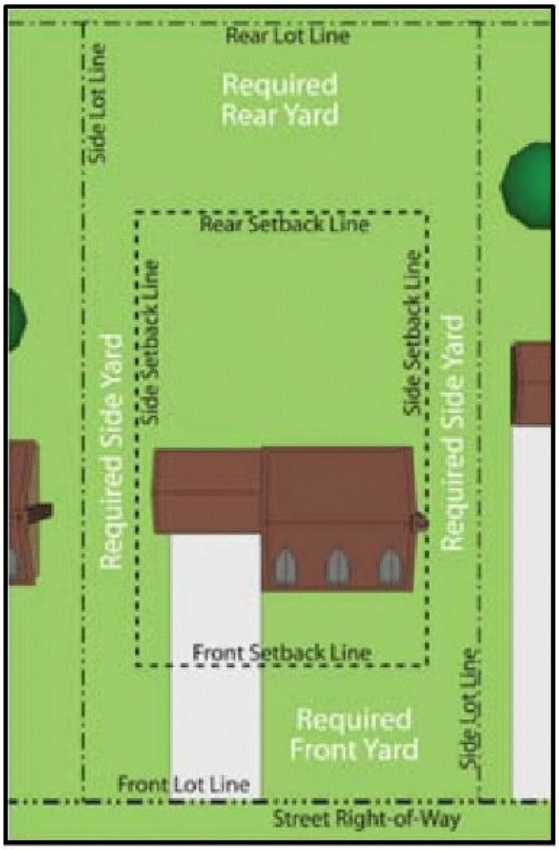
6. A WECS may have a horizontal axis with a rotor that spins perpendicular to the ground or a vertical axis with a rotor that spins parallel to the ground.

(b) ***WECS HEIGHT.*** The distance measured between the ground (at normal grade) and the highest point of a WECS (for a horizontal axis WECS, the measurement shall be to the tip of the rotor blade when the blade is in the full vertical position). The height of a building mounted WECS shall be measured from the grade of the building upon which it is attached.

(c) ***SINGLE ACCESSORY WECS.*** A single WECS placed upon a lot or parcel with the primary intent to service the energy needs of only the structures and uses on the same lot or parcel.

WINE TASTING ROOM. The retail premises of a winemaker or winemaker licensee, as defined by the state's Liquor Control Commission, where wine is not produced, but is offered for tasting and for sale, including the retail sale of wine-related items and pre-packaged and prepared food items.

YARD. The open spaces on a lot located between a building and a lot line. The term ***REQUIRED YARD*** refers to the portion of the yard lying between the lot lines and required setback lines.



(a) ***YARD, FRONT.*** The space extending the full width of the lot, the depth of which is the furthest horizontal distance between the front lot line and the building line of the principal building.

(b) ***YARD, REAR.***

1. The space extending the full width of the lot, the depth of which is the furthest horizontal distance between the rear lot line and the building line of the principal building.

2. A through lot is not considered to have a ***REAR YARD***.

(c) ***YARD, SIDE.*** The space between a principal building and the side lot line, extending from the front yard to the rear yard, the width of which is the furthest horizontal distance from the side lot line to the nearest building line of the principal building.

(d) ***YARD, STREET SIDE.*** A side yard located between a principal building and a street side lot line on a corner lot.

(e) ***YARD, REQUIRED.*** The area within the required setback, on all sides of a building.

ZONING ACT. The state's Zoning Enabling Act, Public Act 110 of 2006, being M.C.L.A. §§ 125.3101 to 125.3702 as amended.

ZONING ADMINISTRATOR. The person designated by the City Manager to administer this chapter.

ZONING BOARD OF APPEALS (ZBA). The city's Zoning Board of Appeals.

ZONING DISTRICT (ZONE). A portion of the city within which certain uses of land or buildings are permitted and within which certain regulations and requirements apply under the provisions of this chapter.

ZONING PERMIT. A standard form issued by the Zoning Administrator upon application and declaration by the owner or his or her duly authorized agent regarding proposed construction and use of land and buildings and structures thereon granting approval for the construction or use applied for.

(Prior Code, §§ 5.5—5.16) (Ord 784, passed 10-16-2017; Ord. 791, passed 3-19-2018; Ord. 794, passed 9-17-2018; Ord. 795, passed 11-5-2018; Ord. 801, passed 4-15-2019; Ord. 805, passed 9-3-2019; Ord. 821, passed 10-19-2020; Ord. 823, passed 1-4-2021; Ord. 835, passed 1-2-2023)

§ 153.006 AMENDMENTS.

(A) *Initiation of rezoning and chapter text amendments.* The city may from time to time amend, modify, supplement or delete any provision of this chapter (text amendment) or change the zoning district boundaries shown on the Official Zoning Map (rezoning) pursuant to the provisions of the state's Zoning Enabling Act (Public Act 110 of 2006, being M.C.L.A. §§ 125.3101 to 125.3702).

(1) *Initiation of rezoning.* An amendment to the zoning district boundaries contained on the Official Zoning Map (rezoning) may be initiated by the City Council, the Planning Commission, the owner or owners of property or with permission of the owner which is the subject of the proposed amendment.

(2) *Initiation of text amendment.* Amendments to the text provisions of this chapter may be initiated by the City Council, the Planning Commission or by petition of one or more residents or property owners of the city.

(Prior Code, § 5.190)

(B) *Application procedure.* A rezoning or text amendment request, except those initiated by the City Council or Planning Commission, shall be initiated by submission of a completed application on a form supplied by the city, including an application fee to cover publication, administrative costs and fees for any consultant reviews. Such fees and escrow amounts shall be established from time to time by resolution of the City Council.

(1) *Application for rezoning.* The following information shall accompany the rezoning application form:

(a) A legal description and street address of the subject property;

(b) A map identifying the subject property in relation to surrounding properties;

(c) The name, signature and address of the owner of the subject property; a statement of the applicant's interest in the subject property, if not the owner in fee simple title, and proof of consent from the property owner;

(d) The existing and proposed zoning district designation of the subject property;

(e) A site analysis at a scale not less than one inch equals 100 feet or aerial photography illustrating existing conditions on the site and adjacent properties such as woodlands, wetlands, soil conditions, topography, drainage patterns, existing buildings, adjacent land uses, any sight distance limitations and access points on both sides of the streets within 200 feet of the subject site;

(f) A written evaluation to support that the request addresses consistency with the city's Master Plan, demonstrates all uses in the requested zoning district will be compatible with the surrounding area and other similar factors; and

(g) The Planning Commission and/or City Council may require a traffic impact analysis for a rezoning that results in potential uses that would be expected to have 50 or more peak hour directional trips or 500 or more vehicle trips daily.

(2) *Application for text amendment.* An application for a text amendment shall include a general description and indication of the purpose of the proposed amendment.

(Prior Code, § 5.191)

(C) *Rezoning and chapter amendment procedure.*

(1) *Pre-application conference (optional).* An optional pre-applicant conference with the Zoning Administrator to review the amendments, discuss the level of environmental information, land uses and the need for a traffic study may be requested by the applicant.

(2) *Public hearing.* Upon initiation of a rezoning or zoning ordinance text amendment, a public hearing on the proposed amendment shall be scheduled before the Planning Commission. Notice of the hearing shall be provided in accordance with the Zoning Act.

(3) *Planning Commission review and recommendation.* Following the public hearing, the Planning Commission shall identify and evaluate all factors relevant to the petition and shall report its findings and recommendation to the City Council. In the case of a rezoning request, the Planning Commission shall consider the criteria in making its finding and recommendation.

(4) *City Council review and action.* Following receipt of the findings and recommendation of the Planning Commission, the City Council shall consider the proposed amendment.

(a) In the case of a rezoning request, the City Council shall approve or deny the request, which may be based on the consideration of the criteria for amendment of the Official Zoning Map (rezoning).

(b) In the case of a text amendment, the City Council may modify or revise the proposed amendment prior to enactment.

(5) *Notice of adoption.* Following adoption of a zoning map amendment (rezoning) or text amendment by the City Council, a notice will be published in accordance with the provisions of the Zoning Act and the city.

(6) *Resubmittal.* A petition for a rezoning or zoning ordinance text amendment that has been denied by the City Council shall not be resubmitted for a period of one year from the date of denial except on the grounds of new evidence or proof of changed conditions relating to all of the reasons noted for the denial found to be valid by the Planning Commission.

(Prior Code, § 5.192)

(D) *Criteria for amendment of the official zoning map (rezoning).*

(1) In considering a rezoning application, the Planning Commission and the City Council shall consider the following criteria in making their findings,

recommendations and decisions:

(a) Consistency with the goals, policies and future land use map of the Charlevoix Master Plan, including all applicable subarea and corridor studies. If conditions have changed since the Master Plan was adopted, then consistency with recent development trends in the area shall be evaluated;

(b) Whether development under current zoning is impractical or less reasonable than the requested or desired zoning district given factors such as development trends;

(c) Capability of the site's physical, geological, hydrological and other environmental features to accommodate the potential uses allowed in the proposed zoning district;

(d) Compatibility of all the potential uses allowed in the proposed zoning district with surrounding uses and zoning in terms of land suitability, impacts on the environment, noise, density, nature of use, traffic impacts, aesthetics, infrastructure, impact on the ability to develop adjacent properties under existing zoning and potential influence on property values;

(e) Capacity of city infrastructure and services sufficient to accommodate the uses permitted in the requested district without compromising the health, safety and welfare of the city;

(f) The apparent need for the types of uses permitted in the requested zoning district in the city in relation to the amount of land in the city currently zoned to accommodate that need; and

(g) Other factors as determined by the Planning Commission and the City Council.

(2) Where a rezoning is reasonable given the above criteria, a determination shall be made that the requested zoning district is more appropriate than another or by amending the list of permitted or special land uses within a district.

(Prior Code, § 5.193)

(E) *Amendments required to conform to court decree.* An amendment for the purpose of conforming to a decree of a court of competent jurisdiction shall be adopted by the City Council and published without necessity of a public hearing or a referral to any other commission or agency.

(Prior Code, § 5.194)

(Ord. 795, passed 11-5-2018)

§ 153.007 CONDITIONAL ZONING.

(A) An applicant requesting a rezoning may voluntarily offer a conditional zoning agreement along with an application for rezoning before, or following, the public hearing for a proposed rezoning. A decision to submit a conditional zoning agreement shall be pursuant to the Zoning Act and this chapter.

(B) The conditional zoning agreement shall be in writing, executed by the applicant and the city and recorded with the county's Register of Deeds.

(C) The conditional zoning agreement may include limitations on the uses permitted on the property in question, specification of lower density or less intensity of development and use; may impose greater restrictions on the location, size, height or other measure for buildings, structures, improvements, setbacks, landscaping, buffers, design, architecture and other features; or may provide for financing and installation of public works necessary to serve the proposed project.

(D) (1) The conditional zoning agreement shall not authorize uses or developments of greater intensity or density, or uses and developments that are not permitted in the proposed zoning district.

(2) The conditional zoning agreement may not permit variations from height, area, setback or similar dimensional requirements that are less restrictive than the proposed zoning district; however, any variance approved by the Zoning Board of Appeals in accordance with §§ 153.035 through 153.042 of this chapter may be allowed as part of a conditional rezoning agreement.

(3) If a special land use or site plan review is required by this chapter for the use proposed or subject to conditions within the rezoning agreement, the use(s) shall comply with the review and approval requirements as applicable prior to establishing or commencing the use(s).

(E) The conditional zoning agreement shall include conditions that bear a reasonable and rational relationship and/or benefit to the property in question. The conditional zoning agreement may include conditions related to the use and development of the property that are necessary to:

(1) Serve the property with improvements including, but not limited to, the extension, widening or realignment of streets; construction or extension of utilities and other infrastructure improvements serving the site; or the construction of recreational facilities serving the site or uses thereon;

(2) Minimize the impact of the development on surrounding properties and the city overall; or

(3) Preserve natural features and open space beyond what is normally required.

(F) In addition to any limitations on use or development of the site, preservation of site features or improvements described above, the conditional zoning agreement shall also include the following:

(1) An acknowledgment that the conditional zoning agreement was proposed voluntarily by the applicant;

(2) A statement that the property shall not be developed or used in any manner that is not consistent with the conditional zoning agreement;

(3) A statement that the approval of the rezoning and the conditional zoning agreement shall be binding upon and inure to the benefit of the property owner and the city, and also their respective heirs, successors, assigns, receivers or transferees. Where the applicant for rezoning is acting on behalf of the landowner through some form of purchase agreement or other mechanism, then the landowner must also consent and sign the agreement;

(4) A statement that, if a rezoning with a conditional zoning agreement becomes void in accordance with this section, that no further development shall take place and no permits shall be issued unless and until a new zoning district classification for the property has been established;

(5) A statement that no part of the conditional zoning agreement shall permit any activity, use or condition that would otherwise violate any requirement or standard that is otherwise applicable in the new zoning district;

(6) A legal description of the land to which the agreement pertains; and

(7) Any other provisions as are agreed upon by the parties.

(G) The conditional zoning agreement shall be reviewed concurrently with the petition for rezoning following the process in§ 153.006(C) above and the following.

(1) The conditional zoning agreement may be submitted prior to or following the Planning Commission public hearing. If the agreement is provided following the public hearing it must be reviewed by the Planning Commission prior to the Planning Commission making its recommendation on the rezoning to the City Council. The conditional zoning agreement shall be reviewed by the City Attorney to determine that the conditional zoning agreement conforms to the requirements of this section and the Zoning Act and shall confirm that the conditional zoning agreement is in a form acceptable for recording with the county's Register of Deeds.

(2) Following the public hearing for a proposed zoning amendment, the Planning Commission shall make a recommendation to the City Council based upon the criteria listed in division (D)(1) above. In addition, the Planning Commission shall consider whether the proposed conditional zoning agreement:

(a) Is consistent with the intent of this section;

(b) Bears a reasonable and rational connection or benefit to the property being proposed for rezoning;

(c) Is necessary to ensure that the property develops in such a way that protects the surrounding neighborhood and minimizes any potential impacts to adjacent properties;

(d) Is necessary to allow the rezoning to be approved, in that the property could not or would not be rezoned without the proposed conditional zoning agreement;

(e) Leads to a development that is more compatible with abutting or surrounding uses than would have been likely if the property had been rezoned without a conditional zoning agreement or if the property were left to develop under the existing zoning classification; and

(f) Is clearly in the public interest and not inconsistent with the recommendations of the city's Master Plan.

(3) If a conditional zoning agreement has been offered by the applicant and recommended for approval by the Planning Commission, the City Council may approve the conditional zoning agreement as a condition to the rezoning if it meets all requirements of division(G)(2) above. The conditional zoning agreement shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the City Council to accomplish the requested rezoning.

(4) If the rezoning and conditional zoning agreements are approved, the zoning classification of the rezoned property shall consist of the district to which the property has been rezoned and a reference to the conditional zoning agreement. The Official Zoning Map shall specify the new district, plus a parenthetical "CZ" to indicate that the property is subject to a conditional zoning agreement (i.e., "R1 (CZ)"). The City Clerk shall maintain a listing of all properties subject to conditional zoning agreements and shall provide copies of the agreements upon request.

(5) The approved conditional zoning agreement shall be recorded with the county's Register of Deeds.

(6) Any uses proposed as part of a conditional zoning agreement that would otherwise require approval of a special land use or site plan approval shall be subject to the applicable review and approval requirements of §§ 153.230 through 153.239 and 153.243 through 153.257 of this chapter.

(H) (1) The rezoning and conditional zoning agreement shall expire one year after adoption of the rezoning and conditional zoning agreement, unless substantial construction on the approved development of the property pursuant to building and other required permits issued by the city commences within the one-year period and proceeds diligently to completion, unless extended by the City Council for good cause.

(2) In the event that substantial construction on the approved development has not commenced within one year, the conditional zoning agreement shall be void.

(3) Should the conditional zoning agreement become void, all development on the subject property shall cease and no further development shall be permitted. Until action satisfactory to the city is taken to bring the property into compliance with the conditional zoning agreement, the city may withhold or, following notice to the applicant and being given an opportunity to be heard, revoke permits and certificates, in addition to, or in lieu of, any other lawful action to achieve compliance.

(4) Notwithstanding the above, if the property owner applies in writing for an extension of the conditional zoning agreement at least 30 days prior to the expiration date, the City Council may grant an extension of up to one year. Further extensions may be granted by the City Council, although the number of previous extensions granted to a particular conditional zoning agreement shall be considered in relation to the diligent effort of the land owner to satisfy the conditions of the agreement.

(I) If the rezoning and conditional zoning agreement becomes void as previously outlined, then the land shall revert back to its prior zoning classification as set forth in the Zoning Act. The Zoning Administrator or designee shall initiate the rezoning to the prior zoning classification and notify the land owner and/or developer of the reversion of zoning by registered letter.

(J) Provided that, all development and/or use of the property in question is in compliance with the conditional zoning agreement, an authorized use or development may continue indefinitely; provided that, all terms of the conditional zoning agreement continue to be met.

(K) The conditional zoning agreement may be amended by the city with the landowner's consent in the same manner as was prescribed for the original rezoning and conditional rezoning agreement.

(L) Nothing in the conditional zoning agreement, nor any statement or other provision shall prohibit the city from later rezoning all or any portion of the property that is the subject of the conditional zoning agreement to another zoning classification. Any rezoning shall be conducted in compliance with this chapter and the Zoning Act.

(M) The city shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect the owner's rights under this chapter.

(N) The city is not required or obligated to accept any or all conditions offered by a developer on a rezoning application. In no way is an offer of a conditional zoning agreement the basis for requiring the city to approve a rezoning application.

(Ord. 795, passed 11-5-2018)

ADMINISTRATION AND ENFORCEMENT

§ 153.020 ADMINISTRATIVE OFFICER.

The City Manager shall appoint a Zoning Administrator who shall be authorized to enforce the provisions of this chapter. Such official shall, for the purpose of this chapter, have the powers of a police officer.

(Prior Code, § 5.160)

§ 153.021 ZONING PERMITS.

(A) No building or structure shall be erected or installed on any lot unless, or until, a zoning permit has been issued by the city for such building or structure. No permit shall be issued by the city or any official thereof for the construction, erection, alteration, placing or moving of any building or structure on any parcel of land unless such building or structure is designed and the proposed location on its lot, or its intended lot, is arranged to conform with the provisions of this chapter; except that, no permit shall be required for alterations which do not result in change in height, floor area, lot coverage, location of walls or other structural alterations.

(B) All applicants for zoning permits shall pay the City Treasurer a fee according to the schedule as shall be prescribed by the City Council.

(C) The Zoning Administrator may require applicants to post approved zoning permits in a location easily visible to the public and adjoining property owners based on one or more of the following conditions:

(1) The permit authorizes a construction project requiring substantial excavation;

(2) The permit authorizes a construction project that has been controversial in the area it is located in or with the general public;

(3) The permit authorizes a major construction project; and

(4) The permit authorizes a construction project for a new primary building or use.

(D) Exempted from the zoning permit requirements are facial alterations, installation of siding, windows, doors, shingles and replacements of existing or deteriorated materials and ordinary maintenance repairs made on all dwellings and their related outbuildings. This exemption does not eliminate the necessity for compliance with other county, state or federal permitting requirements.

(E) Zoning permits shall expire two years from the date of issuance, unless substantial construction has begun.

(Prior Code, § 5.161)

§ 153.022 PROJECT STAKING AND INSPECTION.

(A) Prior to the issuance of a zoning permit, the applicant or their representative shall accurately stake the location of the parcel property lines and the location of the proposed construction such that the Zoning Administrator may, by use of a tape measure and horizontal measurements, confirm that the construction as staked is as represented on the applicant's site plan which accompanies their application. On sloping sites, the lowest finished grade level shall be established on a grade stake which is offset from the construction such that it remains undisturbed during the course of the construction and may be used to check the final grade by the Zoning Administrator by means of a string line level.

(B) After issuing a zoning permit, the Zoning Administrator shall from time to time conduct inspections of construction for which a permit has been issued, as may be required to determine compliance with the permit.

(C) Prior to commencing any construction of improvements which are a part of a project approved with a special use permit such improvements shall be staked both horizontally and vertically such that the Zoning Administrator may verify that the improvements are located as shown on the approved site plan.

(D) At a minimum, inspections may be required at the following times:

(1) Prior to issuance of a zoning permit;

(2) Prior to commencement of construction of any site improvements which are a part of a special use permit; and

(3) After site preparation, but prior to construction of any foundation system.

(E) It shall be the duty of the applicant or its agent to notify the Zoning Administrator when work is ready for inspection. Such inspection shall be made within a reasonable time following notification giving due consideration to the Zoning Administrator's work schedule and work load. Required inspections shall be deemed a requirement of a zoning permit or a special use permit even though the inspection requirement is not listed on the permit document.

(F) In the event the Zoning Administrator is unable to determine if parcel boundaries are accurately located or that proposed or actual construction is properly located on a parcel, the Administrator may require that the applicant have a survey of the parcel of proposed or actual work prepared by a registered land surveyor, at the applicant's cost. Such survey shall be submitted to the Zoning Administrator for review and as a part of the applicant's zoning file.

(G) Inspections on the part of the Zoning Administrator shall in no way absolve the applicant of responsibility for properly locating and undertaking construction in a manner which meets the requirements of this section of any permit issued in accord with this section, nor making any corrections to the construction which are necessary to meet the requirements of this section.

(Prior Code, § 5.162)

§ 153.023 ENFORCEMENT.

Any land, dwellings, buildings or structures used, erected, altered, razed or converted in violation of this chapter or in violation of any regulations, conditions, permits or other rights granted, adopted or issued pursuant to this chapter are hereby declared to be a nuisance per se.

(Prior Code, § 5.163)

§ 153.024 FEES AND ESCROW.

(A) To defray costs, which can reasonably be anticipated to exceed those normal costs covered by the application fee, related to the processing of applications for any type of discretionary decision authorized by this chapter, an escrow account with the city must be established and funded as provided in this section. Examples of these discretionary decisions include, but are not limited to, special use permits, planned unit developments, appeals to or requests for interpretations by the Zoning Board of Appeals, rezoning requests from individual property owners, variance applications and site plan review. Applications initiated by an employee or any board, commission or branch of the city shall not be subject to this section.

(B) If the Zoning Administrator determines that the application fee will not cover the actual costs of processing the application to a final decision or if the body reviewing the application determines that review of the application and/or participation in the review process or appeal by qualified professional planners, engineers, attorneys or other professionals is necessary, then the applicant shall deposit with the City Treasurer such additional zoning fees in an amount determined by the Zoning Administrator equal to the estimated additional costs. Any determination regarding whether additional zoning fees are needed shall consider the following factors:

(1) The complexity of the application, including all documents submitted with the application;

(2) The complexity of the subject matter of the application;

(3) Whether the application involves interpretations of this chapter for which there is no established interpretation;

(4) Whether the application involves legal issues or is of a complexity such that the assistance of legal counsel would be reasonably prudent; and

(5) Whether the application involves planning, engineering, traffic or other issues such that the assistance of a qualified professional would be reasonably prudent.

(C) The additional zoning fees shall be held in escrow in the applicant's name and shall be used solely to pay these additional costs. If the amount held in escrow becomes less than 10% of the initial escrow deposit, or less than 10% of the latest additional escrow deposit, and review of the application or decision on the appeal is not completed, then the Zoning Administrator shall require the applicant to deposit additional fees into escrow in an amount determined by the Zoning Administrator to be equal to the estimated costs to complete processing the application to a final decision. Failure of the applicant to make any escrow deposit required under this chapter shall be deemed to make the application incomplete or the appeal procedurally defective and thereby cause the denial of the application or the dismissal of the appeal. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application or the final decision on the appeal. Any actual costs incurred by the city in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the issuance of any permit or the release of a final decision on an appeal. The applicant, who has placed funds in escrow pursuant to this section, shall be entitled to an accounting of the expenditure of funds from the escrow account if an additional escrow deposit has been requested, if any, and at the time of the return of any unexpended funds. The request for an accounting shall be made in writing to the City Treasurer. The accounting shall consist of a listing of all expenditures made from the escrow fund and shall include the name of the payee, a summary of the services or costs included in the expenditures and the date of the services.

(Prior Code, § 5.164)

ZONING BOARD OF APPEALS (ZBA)

§ 153.035 CREATION AND MEMBERSHIP.

(A) *General.* A Zoning Board of Appeals (also referred to hereafter as "ZBA") is hereby established, having the powers authorized by the Zoning Act, as amended, and in accordance with the City Charter.

(B) *Membership.* The ZBA shall consist of five members appointed by the City Council, one of whom may be a member of the Planning Commission, and two alternate members.

(C) *Terms.*

(1) Members shall be appointed for a term of three years; except that, the terms for the Planning Commission members shall be the same as that for their office.

(2) All vacancies for unexpired terms shall be filled for the remainder of the term.

(D) *Alternates.* The City Council shall appoint two alternate members to serve on the ZBA, appointed by the City Council to serve a three-year term. The alternate members shall have the same voting rights as a regular member of the ZBA and shall:

(1) Sit as regular members of the ZBA in the absence of a regular member or for the purpose of reaching a decision on a case in which the regular member has abstained due to conflict of interest; and

(2) Once an alternate has been called to serve in a particular case, he or she shall continue to participate in that case until a decision has been rendered.

(E) *Removal.* Members of the ZBA or alternates shall be removable by the City Council for malfeasance, misfeasance or non-feasance in office, upon filing of written charges and after a public hearing.

(F) *Conflict of interest.* A member shall disqualify themselves from a vote in which the member has a conflict of interest. Failure of a member to disqualify themselves from a vote in which the member has a conflict of interest constitutes malfeasance in office. Any Planning Commissioner or City Council member on the ZBA shall abstain

from any vote on an issue which they have previously voted upon as a member of the Planning Commission. ZBA members shall also follow the city's adopted Ethics and Conflict of Interest Policy, as amended.

(Prior Code, § 5.175) (Ord. 795, passed 11-5-2018)

§ 153.036 OFFICERS.

The Board shall elect from its membership a Chairperson, a Vice-Chairperson and such other officers as it may deem necessary.

(Prior Code, § 5.176)

§ 153.037 RULES OF PROCEDURE.

(A) The Board shall adopt rules and regulations. Copies of such regulations shall be made available to the public at the Office of Planning and Zoning.

(B) Meetings of the Board shall be held at such times as the Board may determine but, at least one time annually. There shall be a fixed place of meeting, and all meetings shall comply with the Open Meetings Act, Act 267 of the Public Acts of 1976, being M.C.L.A. §§ 15.261 through 15.275, as amended.

(C) The presence of four members shall constitute a quorum. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass by this chapter, or to grant variation from the requirements of the chapter, except that a concurring vote of four members shall be necessary to grant a land use variance.

(D) The ZBA shall keep minutes of its proceedings showing the action of the Board and the vote of each member upon each question or, if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be filed promptly with the office of the City Clerk and shall be public record.

(E) The ZBA may call on other city departments or contracted city consultants for assistance in the performance of its duties and it shall be the duty of such other city departments or consultants to render such assistance to the Board as may be reasonably required.

(F) The ZBA may appoint an investigating committee of not more than three members of the Board to review an application and the affected site(s).

(G) Applications submitted to the ZBA shall consist of the following, as applicable:

(1) Signed and dated application form, as provided by the city;

(2) A scaled drawing with sufficient detail to indicate the nature and necessity of the request;

(3) Payment of a fee, as may be prescribed from time to time by the City Council, by resolution; and

(4) The city or ZBA, in furtherance of decisions related to the application, may request other materials deemed necessary including, but not limited to, traffic impact studies, market studies or environmental assessments.

(Prior Code, § 5.177) (Ord. 795, passed 11-5-2018)

§ 153.038 POWERS AND DUTIES.

The ZBA shall have jurisdiction and powers granted by the Zoning Act, jurisdiction and powers prescribed in other subchapters of this chapter and the following specific jurisdiction and powers.

(A) *Powers.*

(1) The ZBA shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this chapter.

(2) The decision of the ZBA shall be final. However, a person having an interest affected by this chapter may appeal to the Circuit Court for review pursuant to the Zoning Act.

(3) In granting a variance, the ZBA may attach thereto such conditions regarding the location, character and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this chapter.

(B) *Appeals of administrative decisions.*

(1) *General.* The ZBA shall hear and decide appeals where it is alleged by the appellant that there is error in any order, interpretation, requirement, permit, decision or refusal made by any administrative official or body in enforcing any provision of this chapter. Appeals may be taken by a person aggrieved or by an officer, department, board or bureau of the state or city. In order to be aggrieved by a decision of the city, the person or other entity making the appeal must have a property interest and sufficient standing as recognized under the law to challenge the decision.

(2) *Filing and hearing of appeal.*

(a) Appeals shall be filed with the Zoning Administrator within 30 days of the action being appealed.

(b) The Zoning Administrator or designee and any person from whom the appeal is taken shall transmit to the ZBA all of the documents and records related to the appeal.

(c) The ZBA shall fix a reasonable time for the hearing of the appeal and shall provide notice as required by the Zoning Act.

(d) The applicant, or his, her or their duly authorized agent, must appear in person at the hearing in order for the ZBA to take action. Failure to appear may result in tabling or denial of the application.

(3) *Decisions on appeal.*

(a) An appeal to an administrative decision may be reversed by the ZBA only if it finds that the action or decision appealed meets one or more of the following requirements:

1. Was arbitrary or capricious;
2. Was based on an erroneous finding of a material fact;
3. Constituted an abuse of discretion;
4. Was based on an erroneous interpretation of this chapter or zoning law.

(b) If a determination is made that the administrative official or body making the decision did so improperly, the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make an order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the administrative official or body from whom the appeal was taken.

(C) *Interpretation.* Upon request of the Planning Commission, City Council, Zoning Administrator or designee, or applicant, the ZBA may interpret and clarify the meaning of ordinance text. The ZBA may also be requested to interpret boundaries of zoning districts where the zoning district classification cannot be clearly discerned on the zoning map.

(D) *Special land uses and planned unit developments (PUDs).*

(1) The ZBA may grant dimensional or other site plan related variances for special land uses; however, the ZBA shall not have the power to reverse or modify the Planning Commission's decision to approve or deny a special land use permit nor grant variances to any conditions placed on special land use approval.

(2) The ZBA shall not have the authority to grant variances to the PUD regulations of §§ 153.270 through 153.278 of this chapter or any requirements placed on PUD approval. However, the ZBA shall have the authority to hear and decide appeal requests by individual lot owners for variances from other sections of this chapter following final approval of the PUD; provided, such variances do not affect the terms or conditions of the original PUD approval or constitute a variance to the PUD regulations of §§ 153.270 through 153.278 of this chapter.

(E) *Approvals.* To hear and decide requests for other decisions that this chapter specifically authorizes the ZBA to pass.

(F) *Dimensional variances.*

(1) The ZBA, after holding a public hearing in accordance with the requirements of the Zoning Act, shall have the power to grant requests for dimensional variances from the provisions of this chapter where it is proved by the applicant that there are practical difficulties in the way of carrying out the strict letter of this chapter relating to the construction, equipment or alteration of buildings or structures, or of storm water management requirements so that the spirit of this chapter shall be observed, public safety secured and substantial justice done.

(2) A dimensional variance may be allowed by the ZBA only in cases where the applicant has shown a practical difficulty in the official record of the hearing. The applicant must prove that all of the following conditions have been met:

(a) *Extraordinary circumstances.* There are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions may include:

1. Exceptional narrowness, shallowness, small size or shape of a specific property on the effective date of this chapter;

2. Exceptional topographic conditions or other extraordinary situation on the land, building or structure; and

3. The use or development of the property immediately adjoining the property in question, whereby the literal enforcement of the requirements of this chapter would involve practical difficulties.

(b) *Substantial justice.* Compliance with the strict letter of the restriction's governing area, setbacks, frontage, height, bulk, density or other dimensional provisions would unreasonably prevent the use of the property. Granting of a requested variance or appeal would do substantial justice to the applicant as well as to other property owners in the district and such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. Any variance granted shall be the minimum necessary to allow the preservation of these substantial property rights. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

(c) *Impact on the surrounding neighborhood.* The variance will not be detrimental to adjacent property and the surrounding neighborhood or interfere with or discourage the appropriate development, continued use or value of adjacent properties and the surrounding neighborhood as compared to other uses in the neighborhood.

(d) *Public safety and welfare.* The granting of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the inhabitants of the city.

(e) *Not self-created.* The immediate practical difficulty causing the need for the variance request was not self-created by the applicant or previous owners of the subject property.

(G) *Use variances.*

(1) *Application requirements.* In addition to the information required for other variance requests, an application for a use variance shall include a plan drawn to scale detailing the specific use and improvements proposed by the applicant and a summary of the facts which support each of the following conclusions:

(a) Applicant's property cannot be used for the purposes permitted in the zoning district;

(b) Applicant's plight is due to unique circumstances peculiar to his property and not to general neighborhood conditions;

(c) Applicant's suggested use would not alter the essential character of the area;

(d) Applicant's problem has not been self-created;

(e) Unavailability of administrative relief which may afford reasonable use of the applicant's property; and/or

(f) At the end of each of divisions (G)(1)(a) through (G)(1)(e) above, identify all persons who will testify at the hearing with respect to each of the facts and, separately, identify all persons who will testify at the hearing relative to the respective conclusion (and if any person is to be offered as an expert witness, include with the application a resume which shows the education and experience of such person within the particular area of expertise).

(2) *Use variance; pre-hearing conference.*

(a) Prior to the scheduling of a hearing, the applicant shall contact the Zoning Administrator or designee for the purpose of scheduling a pre-hearing conference.

(b) The purposes of the pre-hearing conference shall be to:

1. Review the procedure for the hearing and identify all persons who will testify (directly or through affidavit) and the evidence to be offered on behalf of the applicant;

2. Attempt to secure a statement of agreed-upon facts to be used to narrow the matters of dispute and shorten the hearing;

3. Explore a means of providing relief to the applicant by way of a non-use variance from the ZBA, or other relief which may require action by persons or bodies other than the ZBA which will afford an adequate remedy for the applicant; and

4. Discuss the need, desirability and the terms of providing a verbatim record of the hearing.

(c) The Zoning Administrator or designee shall determine who should be present at the pre-hearing conference based upon the application submitted and taking into consideration the discussion with the applicant or the applicant's representative.

(d) The pre-hearing conference shall be scheduled and conducted on an expeditious basis so as to avoid unreasonable delay to the applicant. Sufficient time shall be taken, however, to achieve the purposes of the pre-hearing conference stated above.

(3) *Use variance; hearing procedure.*

(a) The applicant will have the burden of proof. In order to be entitled to relief, the applicant must demonstrate each of the five factors in division (G)(1) above.

(b) Manner of presentation.

1. Community representatives shall present an overview of the zoning regulations involved. This may include an indication of the objectives sought to be achieved in the zoning district, and any planning, engineering, financial, environmental or other considerations which are generally relevant within the zoning district and/or in the general area of the property at issue.

2. The applicant may present witnesses, including the applicant, or may submit affidavits for the purpose of attempting to prove facts or conclusions. The applicant shall be provided with the opportunity to present all testimony and evidence proposed to be presented at the pre-hearing conference, either through witnesses or affidavits; however, the Chairperson of the ZBA may restrict testimony and evidence which would result in unreasonable duplication. In addition, by motion made on its own or at the request of a person at the hearing, the ZBA may require the presence of any witness who has offered either testimony by affidavit on a material question of fact or testimony of an expert nature, with the view of permitting members of the ZBA to ask questions of such witnesses.

3. At the conclusion of the applicant's presentation, interested persons attending the hearing shall be provided with the opportunity to present testimony and evidence in the same manner, and subject to requiring the presence and questioning of witnesses as provided above for the applicant.

(c) When interested persons have completed their presentations, at the same meeting and/or at an adjourned meeting date, testimony and evidence may be presented on behalf of the community in the same manner, and subject to requiring the presence and questioning of witnesses, as provided above for the applicant. The purpose of such presentation shall be to ensure that a full picture, including all relevant information, is before the ZBA for consideration as it relates to the specific application presented.

(d) If testimony or evidence has been offered by or on behalf of interested persons and/or the community, the applicant shall have the opportunity to make a responsive presentation, restricted to answering the points raised by interested persons and community representatives. The manner of presenting witnesses, and requirement of their presence and questioning, shall be the same as provided above for the applicant's principal case.

(e) If a hearing is not completed at a given meeting within the time period allowed by the ZBA, the Board shall adjourn the hearing to a date certain for continuation.

(4) *Use variance; decision of the Zoning Board of Appeals.*

(a) The ZBA may deem it appropriate in any given case to provide an opportunity for anyone presenting testimony or evidence to submit proposed findings of facts and conclusions.

(b) At the conclusion of the hearing, the ZBA may make its decision at that meeting, or it may adjourn the hearing to a new date for the purpose of reviewing the testimony and evidence, and reviewing proposed findings and conclusions submitted by hearing participants in preparation for making its decision.

(c) If the ZBA determines to grant variance relief, it shall be the minimum relief required to allow reasonable use of the property while maintaining the essential character of the area. Such relief may be in the form of one or more non-use variances and/or in the form of a use variance. Conditions which are designed to ensure compliance with the intent of this chapter and other regulations of the city may be imposed on a use variance. Conditions imposed shall be based on the following criteria:

1. Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected;

2. Ensure that the use is compatible with adjacent land uses and activities;

3. Protect natural resources, the health, safety, welfare and social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole;

4. Ensure compatibility between the proposed use or activity and the rights of the city to perform its governmental functions;

5. Meet the intent and purpose of the zoning ordinance, be related to the regulations and standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards;

6. Ensure compliance with the intent of other city ordinances that are applicable to the site plan; and

7. Ensure compatibility with the other uses of land in the vicinity.

(d) If the ZBA adopts a motion to grant variance relief, such a motion may be made as a tentative grant of relief, subject to review by the Planning Commission, Zoning Administrator/consultant, engineer or other person or official with expertise with a view of obtaining recommendations on any conditions that may be relevant and authorized by law, and for the further purpose of ensuring that the grant of relief would not violate applicable law. If such a tentative grant of relief is approved, the ZBA shall request the completion of all reviews by other boards or persons by a specific date so that relief may be expeditiously finalized.

(5) *Use variance standards for review.* A use variance may be allowed by the ZBA only in cases where the applicant has shown an unnecessary hardship in the official record of the hearing. The applicant must prove that all of the following conditions have been met:

(a) *Hardship.* The applicant has demonstrated that the site cannot reasonably be used for any of the uses allowed within the current zoning district designation. The ZBA may require professionals or certified experts to submit documents to substantiate this finding;

(b) *Unique circumstances.* The condition or situation of the specific parcel of property or the intended use of such property for which the variance is sought is unique to that property and not commonly present in the general vicinity or in the zone district. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to reasonably use the property. Such unique conditions or situations include:

1. Exceptional narrowness, shallowness, small size or shape of a specific property on the effective date of the ordinance from which this chapter is derived;

2. Exceptional topographic conditions or other extraordinary situation on the land, building or structure;

3. The use or development of the property immediately adjoining the property in question; and

4. Any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary.

(c) *Character of neighborhood.* The use variance will not alter the essential character of the neighborhood or the intent of the comprehensive development plan, or be a detriment to adjacent properties;

(d) *Capacity of roads, infrastructure and public services.* The capacity and operations of public roads, utilities, other facilities and services will not be significantly compromised; and

(e) *Not self-created.* The immediate practical difficulty causing the need for the variance request was not self-created by the applicant or previous owners of the subject property.

(Prior Code, § 5.178)

§ 153.039 PROCEDURE.

The following procedures shall be followed.

(A) An application for decision for all matters delegated to the Board by this chapter, or for interpretation of the provisions herein, or of the zoning map, may be filed with the Zoning Administrator for a hearing by the ZBA.

(B) The appeal or application shall be accompanied by the required fees, established by resolution of the City Council, payable to the City Treasurer.

(C) A request for a variance that has been denied by the Board shall not be re-submitted within one year of the decision by the Board, unless the applicant can show that conditions have changed to the extent that reconsideration is merited, and the ZBA agrees to rehear the case.

(Prior Code, § 5.179)

§ 153.040 DECISION OF THE BOARD.

(A) After a final hearing, the ZBA shall make a decision on an application or appeal. A copy of the Board's decision shall be transmitted to the applicant or appellant. Such a decision shall be binding upon the Zoning Administrator and observed by them, and they shall incorporate its terms and conditions in a permit to the applicant or appellant whenever a permit is authorized by the Board.

(B) Zoning Board of Appeals decisions shall expire one year from the date of issuance, unless substantial construction has begun.

(Prior Code, § 5.180) (Ord. 823, passed 1-4-2021)

§ 153.041 STAY OF PROCEEDINGS.

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator or designee certifies to the Board after notice of appeal

shall have been filed with them, that by reason of fact stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may, with due cause shown, be granted by the Board or by the Circuit Court, on application, after notice to the Zoning Administrator.

(Prior Code, § 5.181)

§ 153.042 HEARINGS.

When an application for a hearing or appeal has been filed with the required data in proper form, and the fee paid, the Zoning Administrator shall immediately schedule the application or appeal for a hearing and serve notices stating the time, date, place and purpose of the hearing. The notice shall be given to all property owners and to the occupants of residential dwellings within 300 feet of the subject property. The names of owners shall be determined from the last assessment roll. If a tenant's name is not known, the term "occupant" may be used. The notices shall be served by first-class mail or by personal delivery and shall be served at least three days prior to the hearing. Any interested party may appear and be heard at the hearing in person or by agent or attorney. The Board may adjourn the hearing in order to obtain additional information, or to provide further notice as it deems proper. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the resumption of the hearing.

(Prior Code, § 5.182)

MAPPED DISTRICTS

§ 153.055 ZONING MAP.

(A) The city is hereby divided into the following zoning districts as shown on the Official Zoning Map:

(1) *Residential districts.*

(a) R1 - Low Density Single-Family Residential;

(b) R2 - Medium Density Single-Family Residential;

(c) R2A - Two-Family Residential;

(d) R4 - Planned High Density Residential;

(e) PC - Private Club Residential; and

(f) R-4 - Conditional Rezone.

(2) *Non-residential districts and mixed-use districts.*

(a) GC - General Commercial;

(b) CBD - Central Business District;

(c) CM - Commercial Mixed Use;

(d) MC - Marine Commercial;

(e) CH - Commercial Hospitality;

(f) PO - Professional Office;

(g) SR - Scenic Reserve;

(h) I - Industrial; and

(i) P - Public Facilities.

(B) For the purposes of this chapter, the zoning districts as provided in this chapter are bounded and defined as shown on a map entitled "Official Zoning Map of the City of Charlevoix", a copy of which accompanies this chapter and is incorporated into and made a part of this chapter by reference.

(C) Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the City Hall, shall be the final authority as to the current zoning status of any land, parcel, lot, zoning district, use, building or structure in the city.

(D) Where uncertainty exists as to the boundaries of land use districts as shown on the Official Zoning Map, the following rules of interpretation shall apply.

(1) A boundary indicated as approximately following the centerline of a highway, street, alley or easement shall be interpreted as following such line.

(2) A boundary indicated as approximately following a recorded parcel line or a property line shall be interpreted as following such line.

(3) A boundary indicated as approximately following the corporate boundary line of the city shall be interpreted as following such line.

(4) A boundary indicated as following a railroad line shall be interpreted as being the centerline of the railroad right-of-way.

(5) A boundary indicated as following a shoreline shall be interpreted as following such shoreline, and in the event of change in a shoreline shall be interpreted as following the actual shoreline.

(6) A boundary indicated as following the centerline of a water body shall be interpreted as following such centerline at the time of interpretation.

(7) A boundary indicated as parallel to, or an extension of, a feature indicated in divisions (D)(1) through (D)(6) above shall be interpreted as such.

(8) A distance not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

(Prior Code, § 5.20) (Ord. 816, passed 4-13-2020)

§ 153.056 ZONING OF VACATED AREAS.

Whenever all or part of a street, alley or other public way is vacated, it shall automatically become a part of the zoning district to which it attaches. If a vacated area is bordered by two different zoning districts, the area is divided along a line halfway between them, according to the adjacent zone, unless the City Council shall designate otherwise.

(Prior Code, § 5.21)

§ 153.057 ZONING OF ANNEXED AREAS.

Where land is annexed into the city, it shall be automatically zoned R1, Residential, upon annexation, unless or until the City Council initiates action to classify it as another zoning district in accordance with the procedures specified in § 153.006(C) of this chapter.

(Prior Code, § 5.22)

RESIDENTIAL DISTRICTS

§ 153.070 INTENT.

(A) *R1, Low Density Single-Family Residential District.* This district is intended to provide stable, low density neighborhoods of predominantly single-family dwellings. This district also permits non-residential uses that contribute to the culture and well-being of single-family neighborhoods, such as parks, schools and churches.

(B) *R2, Medium Density Family Residential District.* The R2 District is intended to provide for residential neighborhoods where a mix of single-family residential, accessory dwelling units, single multiple-family dwellings, and attached dwellings are located.

(C) *R2A, Two-Family Residential District.* The R2A District allows for both single-family and two-family (duplex) dwellings in order to allow higher densities in appropriate locations and to provide expanded housing choices. This district also recognizes the existence of older residential areas in the city, where single-family homes have been or can be converted to two-family residences, in order to extend the economic life of these structures and allow the owners to justify the expenditures, repairs and modernization.

(D) *R4, Planned High Density Residential.* This district allows for higher density developments such as condominiums, apartment buildings, site condominiums, townhouses and clustered housing units.

(E) *PC, Private Club Residential District.*

(1) This district is intended to accommodate established single-family residential developments that are generally seasonal in nature, governed by a private club association, and in which the homes are privately owned, but the land is in common ownership.

(2) In addition, the district may include facilities for the common use and benefit of the members such as clubhouses, boathouses and other recreation related uses such as athletic courts, trail systems and beach cabanas.

(Prior Code, § 5.25) (Ord. 802, passed 4-15-2019; Ord. 805, passed 9-3-2019)

§ 153.071 SCHEDULE OF USES.

Uses permitted in the R1, R2, R2A, R4 and PC Districts are listed in Table 153.071 of this chapter. Additional requirements related to a specific use, if any, are referenced in the “Specific Requirements” column.

Table 153.071: Allowed Uses in Residential Zones

P = Permitted Use by Right

S = Special Land Use

	R1	***R2***	***R2A***	***R4***	***PC***	***Specific Requirements***
ACCESSORY						
Accessory uses, buildings and structures	P	P	P	P	P	§ 153.116(A)
Bed and breakfast establishment	S	S	-	-	-	§ 153.116(D)
Boathouses, upland dredging	S	-	-	-	S	§ 153.116(E)
Day care						
Family day care home	S	S	-	-	-	
Group day care home	S	S	-	-	-	§ 153.116(F)
Foster care						
Adult foster care family home	S	S	-	-	-	
Foster family home and foster family group home	S	S	-	-	-	
Major home occupation	S	S	S	S	-	§ 153.116(H)
Minor home occupation	P	P	P	P	P	§ 153.116(H)
Solar panels	P	P	P	P	P	§ 153.116(J)
Wind energy conversion systems, single accessory	P	P	P	P	P	§ 153.116(K)
RESIDENTIAL						
Adult foster care large group home	-	-	-	S	-	
Adult foster care small group home	S	S	-	-	-	
Convalescent and nursing homes	-	-	-	S	-	
Dwellings						
Single-family, detached	P	P	P	P	P	§ 153.117(A)
Single-family, attached	-	P	P	P	P	§ 153.117(A)
Two-family	-	P	P	P	P	
Multiple-family	-	-	-	P	P	
Single Multiple Family building	-	P	-	-	-	§ 153.117(G)
Accessory dwelling unit	P	P	P	-	-	
Home Conversion	-	P	-	-	-	

Senior housing: independent living, assisted living and similar facilities	-	-	-	S	-	§ 153.117(B)
Rentals	P	P	P	P	P	§ 153.158
Boarding/rooming house	S	S	-	-	-	
OFFICES AND SERVICES						
Day care center/nursery	S	S	-	-	-	§ 153.121(A)
RECREATION AND OPEN SPACE						
Public parks/playgrounds	P	P	P	P	-	
Athletic courts	P	P	-	P	P	§ 153.125(A)
PUBLIC/INSTITUTIONAL						
Churches and customary related uses	P	P	P	P	P	
Colleges and universities	-	-	-	S	-	
Community centers	-	-	-	S	-	
OTHER USES						
Essential service, publicly owned	P	P	P	P	P	
Site condominium	P	P	P	P	P	§ 153.117(C)

(Prior Code, § 5.26) (Ord. 791, passed 3-19-2018; Ord. 802, passed 4-15-2019; Ord. 805, passed 9-3-2019; Ord. 840, passed 6-19-2023)

§ 153.072 AREA, HEIGHT AND PLACEMENT REQUIREMENTS.

(A) *Lot and width requirements.* All lots in the residential districts shall conform to the requirements of Table 153.072(a) of this chapter:

Table 153.072(a): Lot and Width Requirements in Residential Districts		
Zoning District	***Minimum Lot Area (sq. ft.)***	***Minimum Lot Width (ft.)***
Table 153.072(a): Lot and Width Requirements in Residential Districts		
Zoning District	***Minimum Lot Area (sq. ft.)***	***Minimum Lot Width (ft.)***
R1	9,000	70
R2	6,000	50
R2A	9,000[1]	80 (new construction)
		70 (conversion of existing homes)
R4	15,000	80
PC[2]	NA	NA

(B) *Dimensional requirements, single-family and two-family districts.* Building height, setbacks, lot coverage and minimum floor area for development of a principal structure in the R1, R2, R2A, R4, and PC Districts shall conform to the requirements of Table 153.072(b) of this chapter.

Table 153.072(b): Dimensional Requirements in Single-Family, Two-Family, Private Club Residential									
Zoning District	***Max. Building Height (ft.)***[7]	***Minimum Yard Setbacks (ft.)***				***Maximum Lot Coverage (%)***	***Min. Gross Floor Area (sq. ft.)***		***Principal Structure Minimum Width (ft.)***
		Front[3]	***Side***		***Rear***		***1 story***	***2 stories***	
			Interior	***Street Side***					
Table 153.072(b): Dimensional Requirements in Single-Family, Two-Family, Private Club Residential									
Zoning District	***Max. Building Height (ft.)***[7]	***Minimum Yard Setbacks (ft.)***				***Maximum Lot Coverage (%)***	***Min. Gross Floor Area (sq. ft.)***		***Principal Structure Minimum Width (ft.)***
		Front[3]	***Side***		***Rear***		***1 story***	***2 stories***	
			Interior	***Street Side***					
R1	26	15[4]	10	15	25	40[5]	800	1,200	20
R2	26	15	8	15	25	40[6]	800	1,200	20
R2A	26	15	10	20	30	40	400	800	20
PC	26	0	0	0	0	NA	0	0	20

NOTES TO TABLES 153.072(a) and 153.072(b)

[1] This minimum square footage applies to 2-family dwellings; for a single-family dwelling, the minimum allowable area of the R2 Zone, 7,000 square feet, shall apply.

[2] No minimum lot size or width is required; provided, the land is in common ownership. If the land is subdivided, the requirements of the R1 District shall apply.

[3] The Zoning Administrator may determine that front yards may be the opposite of the yard fronting a public street or right-of-way on lots with sloping topography or facing water bodies.

[4] Setbacks within the C&O Club Development shall be 35 feet for front yard, 15 for side yard and 25 for rear yard.

[5] Maximum lot coverage shall be 50% for lots less than 7,000 square feet.

[6] Maximum lot coverage shall be 50% for lots less than 6,000 square feet.

[7] See § 153.005 Definitions for the definition of building height.

(C) Dimensional requirements: square footage for accessory dwelling units and home conversion units. Square footage for accessory dwelling units and home conversion units shall conform to the requirements of Table 153.072(c).

Table 153.072(c): Dimensional Requirement: Square footage for Accessory Dwelling Units and Home Conversion Units

Zoning District	*Minimum*	*Maximum*
R1, R2 and R2A	300	900

(D) *Dimensional requirements, R4 District.* Building height, setbacks, lot coverage and minimum floor area for multiple-family developments in the R4 District shall conform to the requirements of Table 153.072(d).

Table 153.072(d): Dimensional Requirements in Multiple-family Dwellings in the R4 Zone

Max. Building Height (ft.) [2]	*Minimum Yard Setbacks (ft.)*				*Lot Coverage (%)*	*Min. Floor Area (sq. ft.), based on number of bedrooms*[1]			*Distance Between Buildings*
	Yard Adjacent to:	*Front*	*Side*	*Rear*		*1 bedroom/ efficiency*	*2 bedrooms*	*3 bedrooms*	
35	All districts	15	20	35	50	660	780	900	30

NOTES TO TABLE:

[1] For 1- and 2-family units, the floor area requirements of the R2A District shall apply.

[2] See § 153.005 Definitions for the definition of building height.

(E) *R4 District; additional requirements for multiple-family dwellings.*

(1) *Development standards.* The general plan for multiple-family dwellings shall include evidence and facts showing that it has considered and made provisions for, and the development shall be executed in accordance with, the following essential conditions.

(a) The proposed development shall be constructed in accordance with an overall plan and shall be designed as the unified architectural unit (each building, excluding accessory structures, shall have consistent roof lines, roof pitch, architectural features and building materials) with appropriate landscaping meeting the requirements of § 153.171 of this chapter.

(b) If the development of the R4 Zone is to be carried out in stages, each stage shall be so planned that the foregoing requirements and the intent of this subchapter shall be fully complied with at the completion of any stage and the development of each stage shall take place in sequential order as designated by the plan.

(2) *Development requirements.*

(a) *Distance between buildings.* The horizontal distance measured between buildings, forming courts and courtyards, shall not be less than 40 feet.

(b) *Parking.* A parking area shall be placed so that it does not interfere with any recreation or service area and shall be set back at least 20 feet from property lines.

(c) *Paving.* All areas provided for use by vehicles and all pedestrian walks shall be surfaced with bituminous asphalt, concrete or similar materials and be properly drained.

(d) *Service.* Areas for loading and unloading delivery trucks and other vehicles and for the servicing of refuse collection, fuel and other services shall be provided, shall be adequate in size and shall be so arranged that they may be used without interference with the use of access ways or parking facilities.

(e) *Access.* Provision shall be made for safe and efficient ingress and egress to the public streets and highways servicing the R4 Zone without undue congestion to, or interference with, normal traffic flow.

(f) *Utilities.* All buildings within the R4 Zone shall be serviced by a public sanitary sewer disposal system and public water supply system. All utility lines within the subject property including, but not limited to, power, water, sewer and telephone shall be placed underground by the developer for new developments. Each unit will be considered as a separate dwelling for the purpose of utility connections.

(g) *Open space.* The developer shall be required where possible to preserve or incorporate natural features such as wooded areas, streams and open space areas, which add to the overall cohesive development of the R4 Zone and overall community development.

(F) *Dimensional requirements, clustered housing.* Building height, setbacks, lot coverage and minimum floor area for single-family attached, single-family detached, two-family dwellings or any combination in an R4 District clustered housing development shall conform to the requirements of Table 153.072(f).

Table 153.072(f) Dimensional Requirements: Single-Family Attached, Single-Family Detached and Two-Family Dwellings in an R4 Clustered Housing Development Zone

Max. Building	*Minimum Yard Setbacks (ft.)*	*Lot Coverage*	*Min. Floor Area (sq. ft.)*	*Distance*

Height (ft.)[2]	Yard Adjacent to:	Front	Side	Rear	(%)	1 story	2 stories	Between Buildings
30	All districts	25	10	25	NA[1]	800	1,100	10

NOTES TO TABLE:

[1] Applicants are required to submit a grading and drainage plan, in accordance with the requirements of §§ 153.230 through 153.243 of this chapter, demonstrating stormwater can be contained and managed on the subject property if no municipal stormwater system exists. If a municipal stormwater system exists, the Director of Public Works or consulting engineer representing the city shall review the grading and drainage plan to determine if the existing infrastructure can adequately handle the stormwater runoff. Applicants may be required to install stormwater management features to mitigate impacts to the municipal stormwater system.

[2] See § 153.005 Definitions for the definition of building height.

(G) *Additional requirements for single-family attached, single-family detached and two-family dwellings in the R4 District.*

(1) *Development standards.* The general plan for the development shall include evidence and facts showing that it has considered and made provisions for, and the development shall be executed in accordance with, the following essential conditions: if the development is to be carried out in stages, each stage shall be so planned that the foregoing requirements and the intent of this subchapter shall be fully complied with at the completion of any stage and the development of each stage shall take place in sequential order as designated by the plan.

(2) *Development requirements.*

(a) *Parking.* Parking areas shall be placed so that they do not interfere with any recreation or service areas.

(b) *Paving.* All areas provided for use by vehicles and all pedestrian walks shall be surfaced with bituminous asphalt, concrete or similar materials and be properly drained.

(c) *Service.* Areas for loading and unloading delivery trucks and other vehicles and for the servicing of refuse collection, fuel and other services shall be provided, shall be adequate in size and shall be so arranged that they may be used without interference with the use of access ways or parking facilities.

(d) *Access.* Provision shall be made for safe and efficient ingress and egress to the public streets and highways servicing the R4 zone without undue congestion to, or interference with, normal traffic flow.

(e) *Utilities.* All buildings within the development shall be serviced by a public sanitary sewer disposal system and public water supply system. All utility lines for new developments within the subject property including, but not limited to, power, water, sewer and telephone shall be placed underground by the developer. Each unit will be considered as a separate dwelling for the purpose of utility connections.

(Prior Code, § 5.27) (Ord. 794, passed 9-17-2018; Ord. 795, passed 11-5-2018; Ord. 802, passed 4- 15-2019; Ord. 835, passed 1-2-2023; Ord. 840, passed 6-19-2023)

NON-RESIDENTIAL AND MIXED USE DISTRICTS

§ 153.085 INTENT.

(A) *GC, General Commercial District.* This district accommodates retail and service establishments within the city, particularly along major corridors leading into and out of the city. The uses permitted in the GC District are intended to provide convenient and attractive retail, professional office and service establishments for the community and its rural trade area. This district is intended to accommodate larger scale commercial development and associated uses, due to larger lot sizes and consistency with the existing built commercial environment.

(B) *CBD, Central Business District.* This zone regulates land within the area traditionally considered to be Downtown Charlevoix. Its purpose is to support the central activity area of the city by accommodating a mix of retail, office, service, entertainment and residential uses in a walkable, pedestrian-friendly environment. Business uses which are inconsistent with this purpose or which detract from the convenience of this district are not permitted.

(C) *CM, Commercial Mixed Use.* This zone is intended to provide a transitional area between the GC and CBD districts on the south side and the CBD and R1 Districts north of the Bridge. This area south of the CBD includes a mix of residential and homes that have been converted to offices or mixed use buildings. Due to smaller lot sizes and structures with residential appearances, the area is intended for professional offices, mixed use buildings, retail and service establishments. This zone is intended to restrict larger scale commercial development, better suited for the outer north and south ends of the city.

(D) *MC, Marine Commercial District.* The MC District is established at locations in the community with water frontage to protect and promote the historic and unique heritage of the city. The historic marine use of the waterfront is a keystone to the ambiance of the “fishing village” feeling of the city. This district is intended to accommodate a mix of land uses including single-family, condominiums, marine related commercial and professional offices.

(E) *CH, Commercial Hospitality District.* The CH District provides for overnight lodging and complementary facilities and services, such as gift shops and restaurants. By precluding larger scale retail and other relatively intense commercial uses, it is intended to be limited to lodging and associated uses to complement the city as a vacation and wedding destination area.

(F) *PO, Professional Office.* This district is intended to accommodate uses that are administrative and/or professional in nature in appropriate areas, without adverse impacts to adjacent residential land uses.

(G) *SR, Scenic Reserve District.* The purpose of this district is to protect the scenic attributes of certain properties along the shores of the city’s abutting lakes where development has not occurred and views to and from the water remain relatively unspoiled. The visual connection to the water and the views from the lakes are considered essential elements of the city’s character that bring economic health and vitality to the community. Scenic reserve areas may also be forested lands or natural areas intended to be protected from future development because of their community or environmental value. Any uses permitted within this district must be undertaken in a manner that will respect the environment and the scenic or visual value of the designated areas. The SR District includes both public and private lands that are also highly valued for recreational activities.

(H) *I, Industrial District.* This zone is intended to accommodate the industrial needs of the entire community in such a manner that unreasonable noise, dust, vibration or any other like nuisance shall not affect adjoining properties.

(I) *P, Public Facilities.* This zone is intended to accommodate municipal, county and federal government related buildings and uses. Public facilities also include schools, public parking lots and the Charlevoix Public Library.

(Prior Code, § 5.30)

§ 153.086 SCHEDULE OF USES.

Uses permitted in non-residential/mixed use districts are listed in Table 153.086. Additional requirements related to a specific use, if any, are referenced in the “Specific Requirements” column. The requirements in footnotes are an integral part of this subchapter and shall apply in all instances.

Table 153.086: Allowed Uses, Non-Residential and Mixed Use Zones
P = Permitted Use by Right
S = Special Land Use

	PO	GC	CBD	CH	MC	SR	I	P	CM	Specific Requirements
Table 153.086: Allowed Uses, Non-Residential and Mixed Use Zones										
P = Permitted Use by Right *S = Special Land Use*										
	PO	*GC*	*CBD*	*CH*	*MC*	*SR*	*I*	*P*	*CM*	*Specific Requirements*
ACCESSORY										
Accessory uses, buildings and structures	P	P	P	P	P	P	P	P	P	§ 153.116(A)
Boathouses	-	-	-	-	P	S	-	-	-	§ 153.116(E)
Dock, boat launch; accessory	-	-	-	-	P	P	-	-	-	
Drive-through facility, except those serving a restaurant	-	P	P	-	-	-	-	-	P	§ 153.116(G)
Outdoor display and sales	-	P	P	-	S	-	P	-	P	§ 153.116(I)
Outdoor seating area for restaurants, taverns and similar uses serving food and beverages	-	P	P	P	P	P	-	-	P	
Recreation and meeting facilities accessory to a motel/ hotel	-	P	P	P	-	-	-	-	-	
Restaurant or retail store accessory to a motel/hotel	-	P	P	P	-	-	-	-	P	
Solar panels	P	P	P	P	P	-	P	P	P	§ 153.116(J)
Wind energy conversion system, single accessory	S	S	S	S	S	-	S	P	P	§ 153.116(K)
RESIDENTIAL										
Adult foster care group home	-	S[1]	-	-	-	-	-	-	-	
Dwellings above the first floor	P[2]	P[3]	P	-	P	-	-	-	P	
Convalescent and nursing homes	-	P	-	-	-	-	-	-	-	
Dwellings										
Multiple-family	-	P	P	P	P[4]	-	-	-	P	
Single-family, attached	-	-	-	-	P	-	-	-	P	§ 153.117 (A)
Single-family, detached	-	-	-	-	P	-	-	-	P	§ 153.117(A)
OFFICES AND SERVICES										
Bank/financial institution	P	P	P	-	-	-	-	-	P	
Barber shop or beauty salon	-	P	P	P	P	-	-	-	P	
Contractor's shop, indoor only	-	P	-	-	-	-	P	-	-	
Day care center/nursery	-	P	-	-	-	-	-	-	P	§ 153.121 (A)
Dry cleaning pick up/delivery	-	P	-	-	-	-	-	-	P	
Kennel, commercial	-	-	-	-	-	-	P	-	-	§ 153.121 (B)
Laundry, self-service	-	P	-	-	-	-	-	-	P	
Office/Professional	P	P	P	-	P	-	-	-	P	
Medical and dental	P	P	P	-	P	-	-	-	P	
Photography studio	P	P	P	-	P	-	-	-	P	
Veterinary clinic or hospital	-	S	-	-	-	-	S	-	-	§ 153.121(C)
RECREATION AND OPEN SPACE										
Dock, boat launch, public	-	-	P	-	P	P	-	-	-	
Dock, private non-commercial	-	-	P	-	P	P	-	-	-	
Health club and fitness center	-	P	P	P	-	-	P	-	P	
Marina, public or private	-	-	-	-	P	-	-	-	-	
Park, playground, beach; private	-	-	P	P	P	P	-	-	-	
Park, playground, beach; public	-	P	P	P	P	P	P	P	P	
Recreation facility/Athletic courts — Indoor	-	P	P	-	-	-	P	-	-	
Recreation facility/Athletic courts — Outdoors	-	-	-	-	-	P	S	-	P	§ 153.119(A)
LODGING, DINING AND ENTERTAINMENT										
Bakery and baked goods	-	P	P	P	P	-	-	-	P	
Bed and breakfast	-	-	P	P	P	-	-	-	S	§ 153.116 (D)
Billiards, pool hall	-	P	-	-	-	-	-	-	-	

Bowling alley	-	P	-	-	-	-	-	-	-	
Brewpub	-	P	P	-	P	-	-	-	P	
Fishing charter service	-	-	P	-	P	P	-	-	-	
Lodges and private clubs	-	P	P	-	P	-	-	-	P	
Motel or hotel	-	P	P	P	-	-	-	-	P	
Restaurant with drive-through	-	P	-	-	-	-	-	-	-	§ 153.118 (B)
Restaurant without drive-through	-	P	P	P	P	-	P	-	P	
Wine tasting room	-	P	P	P	P	-	-	-	P	
Tavern	-	P	P	P	P	-	-	-	-	
Theater, indoor	-	P	P	-	-	-	-	-	-	
RETAIL										
Any retail establishment with a gross leasable area greater than 15,000 sq. ft. (60,000 sq. ft. maximum)	-	P	-	-	-	-	P	-	-	§ 153.120
Building material, lumber, bulk storage yard	-	-	-	-	-	-	P	-	-	
Convenience store	-	P	P	-	-	-	P	-	P	
Floral shop/florist	-	P	P	-	P	-	-	-	P	
Furniture and appliance sales	-	P	-	-	-	-	-	-	-	
Grocery, meats, delicatessen	-	P	P	-	P	-	-	-	P	
Nursery/garden shop	-	P	-	-	-	-	P	-	P	
Retail sales of durable and dry goods: apparel, hardware, pharmaceuticals, books, gifts, jewelry, etc.	-	P	P	-	-	-	-	-	P	
VEHICLE RELATED USES										
Boat fuel/gasoline sales	-	P	-	-	S	-	-	-	-	
Boat service and repair	-	P	-	-	P	-	P	-	-	
Boat/marine sales and related retail (e.g., fishing equipment, etc.)	-	P	P	-	P	-	P	-	P	
Public garages, parking lots/structures as a principal use	-	-	P	-	-	-	-	S	-	
Vehicle service station with convenience retail, in conjunction with a bulk petroleum distribution facility	-	S	-	-	-	-	S	-	-	
Vehicle service station, including accessory service/repair and/or convenience retail	-	P	-	-	-	-	P	-	-	§ 153.123 (C)
Vehicle parts sales, indoor only	-	P	-	-	-	-	P	-	-	
Vehicle sales	-	P	-	-	-	-	P	-	-	
Vehicle repair, major	-	-	-	-	-	-	P	-	-	§ 153.123 (A)
Vehicle repair, minor	-	S	-	-	-	-	P	-	-	§ 153.123 (B)
Vehicle wash establishment	-	S	-	-	-	-	P	-	-	§ 153.123(D)
PUBLIC/INSTITUTIONAL										
Churches and customary related uses	P	P	P	P	P	P	P	P	P	
Colleges and universities	-	S	S	-	-	-	S	S	S	
Community centers	P	P	P	-	-	-	P	P	P	
Hospital, clinic	P	P	P	-	-	-	-	-	P	
Publicly owned building	P	P	P	P	P	P	P	P	P	
School (elementary, middle and high)	-	-	P	-	-	-	-	P	S	
INDUSTRIAL AND STORAGE										
Boat/marine construction and maintenance equipment use and storage	-	-	-	-	P	-	P	-	-	
Boat storage, indoor, in a permanent structure	-	-	-	-	P	-	P	-	-	
Boat storage, outdoor (permanent)	-	-	-	-	-	-	P	-	-	
Boat storage, outdoor (off season)	-	P	-	P	P	P	P	P	-	
Manufacture, compounding, assembly and treatment of articles from prepared materials, such as metal, plastics, fiber and wood	-	S	-	-	S	-	P	-	-	
Manufacturing, compounding, processing and packaging products, such as candy, cosmetics, pharmaceuticals and food products (but not refining or rendering)	-	S	-	-	-	-	P	-	-	
Self-storage facility	-	-	-	-	-	-	P	-	-	§ 153.124 (A)

Warehousing, truck terminal, logistics and transportation equipment storage	-	-	-	-	-	-	P	-	-	
OTHER USES										
Essential services	P	P	P	P	P	P	P	P	P	
Similar use	P	P	P	P	P	P	P	P	P	§ 153.125 (C)
Wireless telecommunication towers	-	S	-	-	-	-	S	S	-	§ 153.125(D)

NOTES TO TABLE:

1 Subject to any use restrictions and the area, height and setback requirements of the GC District.

2 Mixed use developments where dwelling units are proposed above professional offices shall comply with the area, height and placement requirements of the PO District.

3 Mixed use developments where dwelling units are proposed above GC structure shall comply with the area, height and placement requirements of the GC District.

4 Developments of a single multiple-family dwelling may be developed to the requirements of the R2 District, while Developments of more than one Multiple-family dwellings shall be developed to the requirements of the R4 District.

(Prior Code, § 5.31) (Ord. 805, passed 9-3-2019)

§ 153.087 AREA, HEIGHT AND PLACEMENT REQUIREMENTS.

All lots in the non-residential districts shall conform to the requirements of the Table 153.087. The requirements in footnotes are an integral part of this subchapter and shall apply in all instances.

Table 153.087: Dimensional Requirements, Non-Residential and Mixed Use Districts

Zoning District	*Min. Lot Area (sq. ft.)*	*Min. Lot Width (ft.)*	*Max. Building Height (ft.)* [7]	*Minimum Yard Setbacks (ft.)*				*Lot Coverage (%)*
				Front	*Side*		*Rear*	
					Interior	*Street Side*		

Table 153.087: Dimensional Requirements, Non-Residential and Mixed Use Districts

Zoning District	*Min. Lot Area (sq. ft.)*	*Min. Lot Width (ft.)*	*Max. Building Height (ft.)* [7]	*Minimum Yard Setbacks (ft.)*				*Lot Coverage (%)*
				Front	*Side*		*Rear*	
					Interior	*Street Side*		
PO	NA	75	26	15	10	15	25	NA
GC	20,000	100	26	15	10	15	25	NA
CBD	NA	NA	40	0	0	0	0[1]	NA
CH	43,560	150	30	25	20[2]	20	30[1]	50/80[3]
MC	10,000	50	35[4]	20	0	0	0	NA
SR	NA	NA	§ 153.088 (A)	25	20/50[5]	20/50	50	30
I	43,560	150	30	30	20[6]	20	25	60
P	NA	100	35	20	10	15	15	NA
CM	9,000	60	35	15	10	15	20	NA

NOTES TO TABLE:

1 The minimum rear yard in the CBD District when adjacent to the Pine River Channel or Round Lake shall be 50 feet.

2 In the CH District, the minimum side or rear yard adjacent to any residential district shall be 50 feet.

3 In the CH District, lot coverage of buildings shall not exceed 50%; lot coverage of all impervious surfaces shall not exceed 80%.

4 Maximum height in the MC District for residential structures shall be 26 feet.

5 The minimum side yard shall be 20 feet and the total of both side yards shall be at least 50 feet.

6 The minimum side and rear yards in the I District when adjacent to property in a residential district shall be 40 feet.

7 See § 153.005 Definitions for the definition of building height.

(Prior Code, § 5.32) (Ord. 835, passed 1-2-2023)

§ 153.088 ADDITIONAL SR, SCENIC RESERVE, DISTRICT REQUIREMENTS.

(A) No building shall exceed 25 feet in height to the peak of the roof.

(B) Any path, road or similar passage within the setback shall be constructed and surfaced to effectively control erosion, and shall meet the requirements of this chapter and any other applicable regulations.

(Prior Code, § 5.33) Penalty, see § 153.999

OVERLAY DISTRICTS

§ 153.100 INTENT AND SCOPE.

(A) *Intent.* The intent of the overlay districts is to establish regulations in addition to the applicable regulations of the existing (underlying) zoning district that either supplement or replace those existing regulations. The overlay districts are applied in specific locations based on the environmental features, historic assets, scenic qualities, traffic conditions or other unique characteristics of the area, regardless of the established zoning districts.

(B) *Scope.* Several overlay districts are established, as described in this subchapter, to address the varied and unique needs of specific locations within the city. The boundaries of these districts shall be as described in this subchapter and shown on the zoning map. The requirements of this article are in addition to and shall supplement those imposed on the same lands by any underlying zoning provisions of this chapter or other ordinances of the city. These regulations supersede all conflicting regulations of the underlying districts to the extent of such conflict.

(Prior Code, § 5.40)

§ 153.101 CENTRAL BUSINESS DISTRICT OVERLAY DISTRICT.

(A) *Purpose.* To create a vibrant downtown district fronting Bridge Street consisting of primarily retail and food service businesses that enhance the city's economy by defining specific uses intended to increase consumer traffic.

(B) *Applicability.* This overlay district shall include all buildings with store entrances facing Bridge Street from Antrim Street north to the Pine River Channel.

(C) *Permitted uses.*

(1) Food and beverage services, including: grocery stores, restaurants, cafés (including internet cafes), coffee shops, bars, taverns, wine bars, breweries, bakeries, delicatessens, bistros and specialty shops;

(2) Retail stores having a gross area of less than 5,000 square feet; (Appliance, furniture and similar stores selling large scale consumer products are not considered retail.)

(3) Art galleries, frame shops, photography and art studios; and

(4) Beauty salons and barber shops as the primary use. Secondary uses may include tanning beds, pedicure or manicure services in the same location.

(D) *Other regulations.* The Planning Commission, upon request, may determine if a proposed use not listed above is similar to, or comparable to, the permitted uses in division (C) above. If the Planning Commission determines a proposed use is not similar or comparable to the permitted uses, the applicant may apply for a special use permit. The Planning Commission may issue a special use permit provided that the proposed use is found to generate commercial activity in accordance with the purpose of this section and it meets the requirements for special land use permits in §§ 153.250 through 153.257 of this chapter.

(E) *Outdoor displays and merchandise.* Merchandise or similar goods, and associated displays shall not be permitted on the exterior buildings, entryways or sidewalks, except during sidewalk sales.

(Prior Code, § 5.41)

§ 153.102 WEST GARFIELD AVENUE GENERAL COMMERCIAL OVERLAY DISTRICT.

(A) *Purpose.* The purpose of this district is to support the future development of the 200 block of W. Garfield (north side) and the 200 block of W. Lincoln (south side) where industrial uses have been present in the past and commercial development currently exists, surrounded by residential uses.

(B) *Applicability.* This overlay district shall include the following addresses (see Zoning Map):

(1) 204 and 208 W. Lincoln; and

(2) 205 and 207 W. Garfield.

(C) *Permitted uses.* The following uses shall be permitted as special land uses, in accordance with the procedures of §§ 153.250 through 153.257 of this chapter:

(1) Restaurants, not including drive-through establishments;

(2) Convenience stores;

(3) Grocery stores;

(4) Storage buildings not to exceed 3,000 square feet;

(5) Single-family residential;

(6) Furniture, carpet, appliance or similar use stores; and

(7) Retail stores.

(D) *Other regulations.* The Planning Commission, upon request, may determine if a proposed use not listed above is similar to, or comparable to, the permitted uses in Table 153.086. If the Planning Commission determines a proposed use is not similar or comparable to the permitted uses, the applicant may apply for a special use permit. The Planning Commission may issue a special use permit provided that the proposed use is found to generate commercial activity in accordance with the purpose of this section and it meets the requirements for special land use permits in §§ 153.250 through 153.257 of this chapter.

(E) *Dimensional requirements.*

(1) *Setbacks.* The minimum setback requirements are as follows:

(a) Front: 15 feet;

(b) Sides: ten feet; and

(c) Rear: 20 feet.

(2) *Height.* The maximum permitted building height shall be 26 feet.

(3) *Lot coverage.* The maximum lot coverage shall not exceed 50% of the total lot.

(Prior Code, § 5.42)

§ 153.103 WEST CARPENTER/STATE STREET INDUSTRIAL OVERLAY DISTRICT.

(A) *Purpose.* The purpose of this district is to support the continued use of, and future development of, larger lots adjacent to the Municipal Airport without negative impacts to the adjacent residential areas.

(B) *Applicability.* This overlay district shall include the following addresses (see zoning map):

(1) 210A W. Carpenter Avenue;

(2) 1209 State Street;

(3) 1213 State Street; and

(4) 1217 State Street.

(C) *Permitted uses.* The following uses shall be permitted as special land uses, in accordance with the procedures of §§ 153.250 through 153.257 of this chapter. Uses normally applied to the I District are prohibited.

(1) Light manufacturing operations with ten or fewer employees;

(2) Attached or detached single-family dwellings;

(3) R2A multiple-family dwellings;

(4) Landscaping/nursery related; and

(5) Storage buildings.

(D) *Dimensional requirements.*

(1) *Setbacks.* The minimum setback requirements of the underlying zoning district shall apply.

(2) *Height.* The maximum permitted building height shall be 26 feet.

(3) *Lot coverage.* The maximum lot coverage shall not exceed 40% of the total lot.

(Prior Code, § 5.43)

§ 153.104 NORTH SIDE PROFESSIONAL OFFICE OVERLAY DISTRICT.

(A) *Purpose.* The purpose of this district is to continue to allow the conversion of homes to offices fronting U.S. 31/Bridge Street while having a minimal impact on the residential character of the neighborhood.

(B) *Applicability.* This overlay district shall include the lots zoned R1 Single-Family Residential that lie on the east side of Michigan Avenue between East Dixon Avenue and Petoskey Avenue, as well as all lots zoned R1 Single-Family Residential that lie on Petoskey Avenue between Michigan Avenue and Fairway Drive. The overlay district does not apply to the site occupied by the Charlevoix Community Reformed Church at 100 Oak Street. (See Zoning Map.)

(C) *Permitted uses.* The conversion of homes to professional offices shall be permitted as special land uses, in accordance with the procedures of §§ 153.250 through 153.257 of this chapter.

(D) *Other regulations.* The use of a gabled roof is required, with a minimum roof pitch of 8:12 for new construction. Conversion of existing structures may utilize the existing roof pitch and roof design at the time of application. Rooflines shall be consistent with the established character of the surrounding neighborhood relative to height, pitch, configuration and materials. Parking shall meet the requirements of §§ 153.185 through 153.190 of this chapter.

(E) *Dimensional requirements.* The dimensional requirements of the R1 Zone shall be required.

(Prior Code, § 5.44)

USE REQUIREMENTS

§ 153.115 SPECIFIC USE REQUIREMENTS.

(A) Certain uses, because of their unique locational needs or operational characteristics are subject to additional requirements beyond those of the zoning district in which they are located. Those added conditions or requirements are specified in this subchapter.

(B) Requirements listed for any use that is a special land use shall be considered additional standards of approval, along with the general standards of review in § 153.253 of this chapter for all special land uses.

(Prior Code, § 5.45)

§ 153.116 ACCESSORY BUILDINGS AND USES.

(A) *Accessory buildings and structures.*

(1) Authorized accessory buildings and structures may be erected as part of the principal building, may be connected to the principal building by a roofed breezeway or similar structure or may be completely detached from the principal building.

(2) Where an accessory building is attached to the principal building, it shall be considered part of the principal building for purposes of determining setback dimensions and building height. If, however, the attached accessory building is connected to the principal building by a roofed porch, breezeway or similar covered structure, it shall not exceed 16 feet in height, shall not be closer than 20 feet to the rear lot line and shall meet the front and side yard setback requirements of that zone district.

(3) In the R1, R2, and R2A Residential Districts, if the principal building has an attached accessory building, only one detached accessory building shall be permitted.

(4) Lots in the R1, R2, and R2A Zones shall be permitted to have a secondary detached accessory building, such as a storage shed. Secondary accessory buildings shall meet all the requirements of this section and not exceed 200 square feet in area.

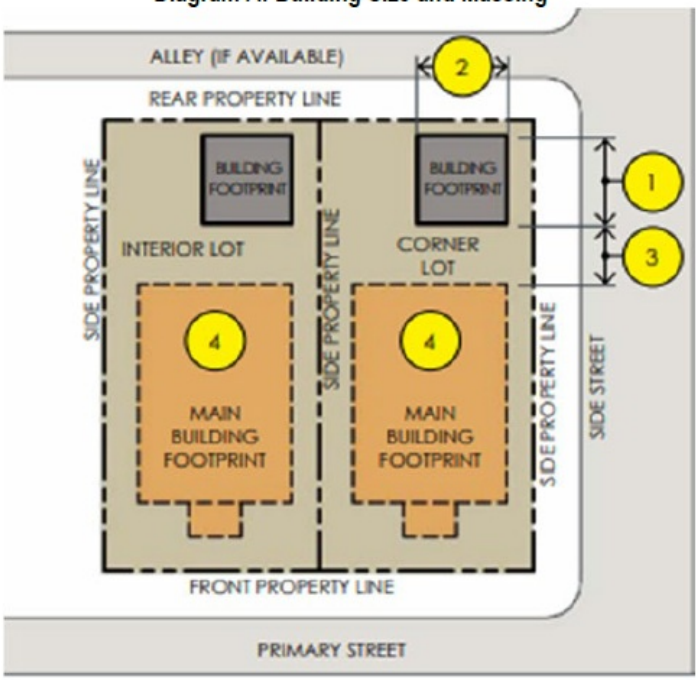
(5) *Building size and massing.* Accessory buildings and structures shall meet the following requirements and Diagram A:

(a) No accessory building shall have a building footprint (length x width) (Diagram A: 1, 2) greater than 900 square feet, with no side to exceed 30 feet. An accessory building shall not be larger than the main structure (Diagram: A: 4).

(b) The minimum distance between a principal building and detached accessory buildings shall be ten feet (Diagram A:3), and a minimum of ten feet shall be provided between the sides of adjacent single-family buildings and and/or accessory structures.

Diagram A: Building Size and Massing

Diagram A: Building Size and Massing



(6) Detached accessory buildings and structures shall meet the following minimum setbacks.

(a) Rear yard: six feet from a rear lot line. Detached accessory structures that store vehicles adjacent to alleys or sidewalks shall not be closer than 15 feet from the edge of the alley or sidewalk surface.

(b) Side yards: an accessory building shall conform to the side yard setback requirements of the principal building; unless it is located in a street side yard, the minimum setback shall be 15 feet from the street side lot line.

(c) Front yard: an accessory structure shall not be located within any front yard.

(7) *Design standards.* The following standards shall apply to buildings larger than 200 square feet:

(a) Detached garages on corner lots shall face side streets. Detached garages on the corner side with driveways extending from the front street are prohibited. When an alley is available, access will come from the alley.

(b) The structure shall be designed so that the appearance maintains that of a single-family dwelling. In determining whether a structure is so designed, the structure shall meet the following requirements and Diagram C:

1. Buildings with a flat roof shall have a cornice expression line. A pitched (sloped) roof shall be compatible with the architecture of the main building (1).

2. *Transparency upper floor.* Building facades facing streets shall have minimum 10% of the façade be glass between the finish floor line of the second story and bottom of the cornice expression line or bottom eave (2).

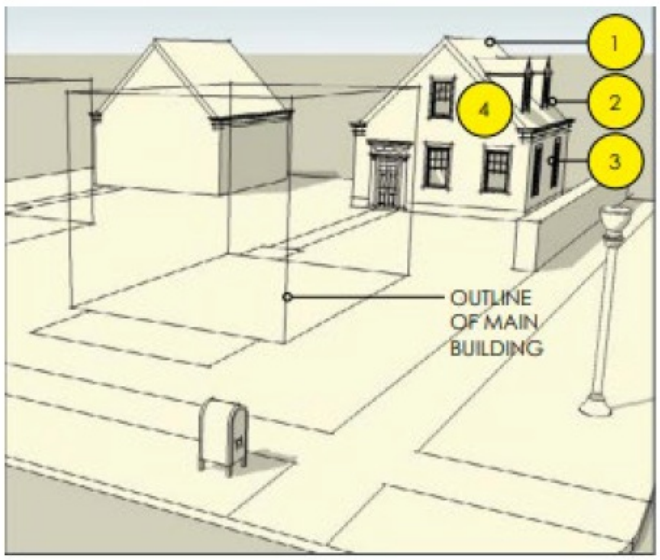
3. *Transparency ground floor.* Building facades facing streets shall have minimum 10% of the façade be glass between the adjacent grade and the finish floor line of the second story (3).

4. Window color and finish should complement the color and architectural style of the principal building (4).

5. Exterior finish should be constructed of similar materials as the principal building or traditional materials such as wood, wood lookalike, brick, or stone.

Diagram C Façade Composition Requirements

DIAGRAM C Façade Composition Requirements



(c) Driveways, see § 153.189.

(d) Design standards do not apply to residences that may be built in the General Commercial (GC), Professional Office (PO) and Commercial Mixed Use (CM) Districts on lots fronting U.S. 31 (Bridge Street and Michigan Avenue) and M-66. (See § 153.170 Building Appearance).

(8) Detached accessory structures shall not exceed 16 feet in height. See § 153.005 Definitions for the definition of building height.

(9) Prohibited uses within detached accessory structures or accessory structures connected by a breezeway or similar structure in all districts except the R1, R2, and R2A Zones:

(a) May not contain features that form a habitable dwelling unit or create a second dwelling unit;

(b) These structures may contain utility sinks, one bathroom, and refrigeration units. Full kitchen facilities that include a range or stove are prohibited; and

(c) Rooms within accessory structures may be used for additional sleeping quarters for the owner, or resident, and their immediate family provided that these rooms may not be rented out as short-or long-term rentals for any length of time.

(10) Stand-alone carports are prohibited in all zones. Carports attached to existing structures shall meet the requirements of this chapter. Tents, wall tents, garages in a box and similar enclosures are prohibited.

(11) Permanent greenhouses shall be considered an accessory structure and meet the requirements of this section.

(B) *Accessory Dwelling Units (ADUs).*

(1) All of the requirements of division (A) above apply in addition to the ADU-specific requirements of this section.

(2) ADUs shall be permitted as a single use or combined with another accessory use.

(3) ADUs shall be permitted as a second-story use above a first-floor accessory use.

(4) *Examples of ADUs.* The following images are intended as examples only and should be used for inspiration in the creation of ADU projects.



(5) *Ground floor pedestrian access and activation.* Accessory dwelling unit building type ground floor entrances shall meet the following requirement of Diagram B.

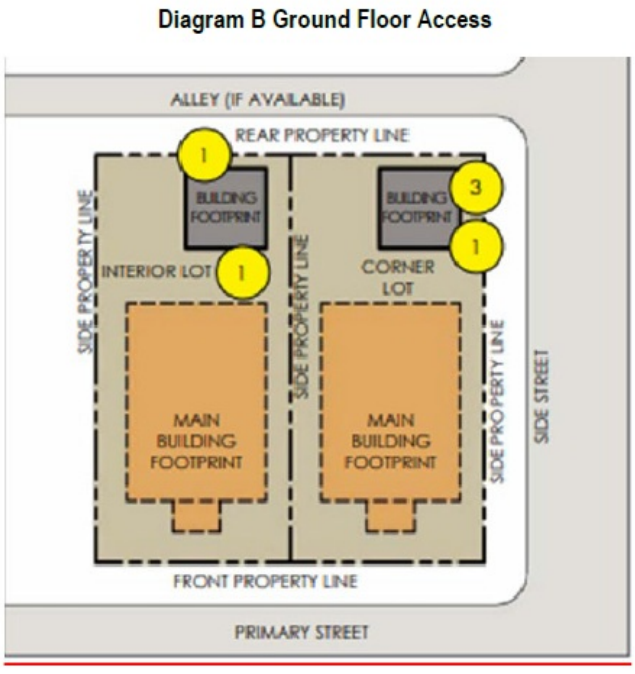
(a) Entrance for upper unit is required to be accessed from the alley, side street, or internal to the lot.

(b) Entrance for upper unit shall not be through a garage.

(c) Parking may be accessed from the alley, side street, or primary street per the requirements for off-street parking access in the zoning district.

(d) Parking may be accessed from the front street only when there is no adjacent alley or side street.

Diagram B Ground Floor Access



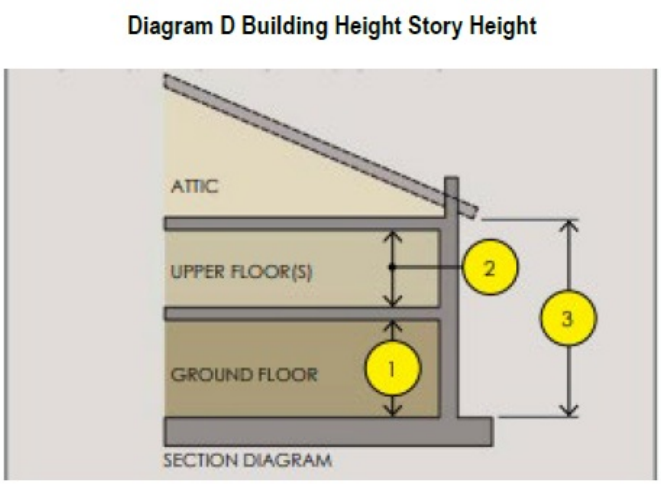
(6) *Building type floor height requirements.* Building type floor heights shall meet the following requirements and Diagram D.

(a) Ground floor: Floor to ceiling height shall be eight feet minimum.

(b) Upper floors: floor to ceiling height shall be required by Building Code.

(c) Overall height of building type is regulated by zoning district; refer to § 153.072.

Diagram D Building Height Story Height



(C) *Additional requirements for swimming pools and hot tubs.*

(1) Any pool over 24 inches deep with a surface area of more than 250 square feet shall comply with the requirements of this division (B) and shall not be constructed, installed, enlarged or altered until a building permit has been obtained.

(2) The outside edge of the pool wall and/or the deck and any other appurtenances shall not be located closer than ten feet from any rear or side property line, nor less than ten feet from the principal building. Swimming pools shall not be located in the front yard.

(3) (a) Each pool shall be enclosed by a minimum four-foot high fence, wall, or other structure or device, sufficient to make the pool inaccessible to small children. This enclosure, including gates, shall not be less than four feet above the underlying ground; all gates must be self-latching with latches placed at least four feet above the underlying ground or otherwise made reasonably inaccessible from the outside to small children. The fence may be located around the perimeter of a deck surrounding an above ground pool; provided that, the total height of the deck and the fence does not exceed ten feet. Above ground pools may have gates, removable or swing-up steps or other means to limit entry in lieu of a fence.

(b) Except for hot tubs and spas, a swimming pool cover shall not be allowed in lieu of a fence.

(4) All swimming pool and hot tub installations shall comply with the state's Construction Code and all standard codes referred to therein. All electrical installations or wiring in connection with swimming pools shall conform to the provisions of the National Electrical Code. If service drop conductors or other utility wires cross under or over a proposed pool area, the applicant shall make satisfactory arrangements with the utility involved for the relocation thereof before a permit shall be issued for the construction of a swimming pool. A no-fault ground unit shall be provided to protect against electrical shock.

(D) *Bed and breakfast establishments.*

(1) The bed and breakfast shall be located within a residence which is the principal dwelling unit on the property. Whenever the bed and breakfast is open for the renting of rooms, the residence shall be occupied by the owner or innkeeper at all times.

(2) The rental rooms within the establishment shall be part of the principal dwelling. Bed and breakfast establishments shall not contain more than five rental rooms, however the Planning Commission may approve additional rooms based on the following criteria:

(a) The existing single-family home has the capacity for more than five rental rooms;

(b) It is a single-family home which has been operated as a bed and breakfast establishment in the past;

(c) The Planning Commission finds that the additional rooms will not have an adverse impact to the residential character of the neighborhood.

(3) The residence shall have at least two exits to the outdoors.

(4) Signage shall be subject to the requirements of §§ 153.205 through 153.219.

(5) A bed and breakfast establishment shall be consistent with the essential character of the residential neighborhood in terms of use, traffic generation and appearance.

(6) A bed and breakfast establishment shall not be permitted on a lot or parcel, (including a non-conforming lot or parcel of record) which does not meet the established lot size requirements for the zoning district in which it is located.

(7) A minimum of one parking space per rental room is required. Parking may include street spaces in front of the property according to city parking rules. Off-street parking shall be subject to the requirements of §§ 153.185 through 153.190.

(E) *Boathouses and upland dredging.* Special land use approval for a boathouse and upland dredging without a boathouse in the R1 Zone shall be subject to the following requirements.

(1) Boathouses and upland dredging shall not be permitted on Lake Michigan or Lake Charlevoix;

(2) Boathouses shall have a gabled roof with a minimum roof pitch of 8:12 for new construction. Repair of existing structures may utilize the existing roof pitch and roof design at the time of application. Multiple peaks and a variety of rooflines or other architectural features consistent with the character of the neighborhood are encouraged. Eaves extending out greater than 24 inches shall be considered part of the building footprint;

(3) Boathouses are permitted over the water, but may not extend greater than 80 feet lake ward from the existing sea wall location, or ordinary high water mark if no sea wall is present;

(4) Where inland dredging is required, boathouses may not extend greater than 50 feet inland from the existing sea wall location or ordinary high water mark if no sea wall is present;

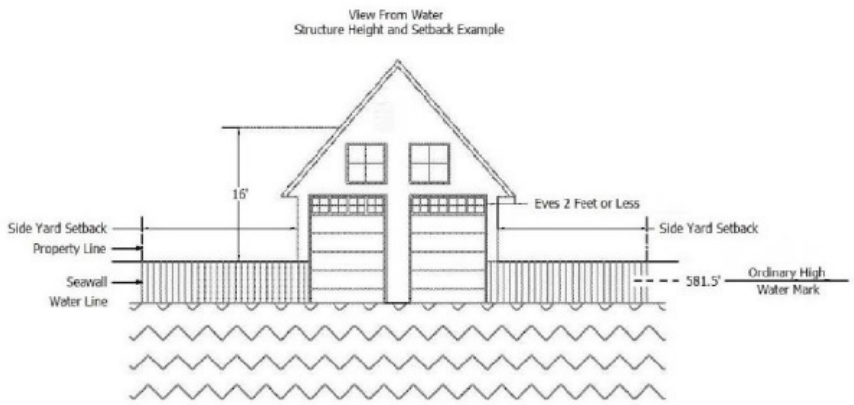
(5) Boathouses and upland dredging shall be located at least ten feet from side lot lines; no rear yard setback required;

(6) Boathouses shall not exceed a building footprint (length x width) of 2,000 square feet in area, exclusive of eaves;

(7) Boathouses and upland dredging shall not contain sleeping quarters, kitchens or bathrooms;

(8) In the R1 Zone, boathouses and upland dredging shall not exceed a height of 16 feet with the base elevation starting at the ordinary high water mark.

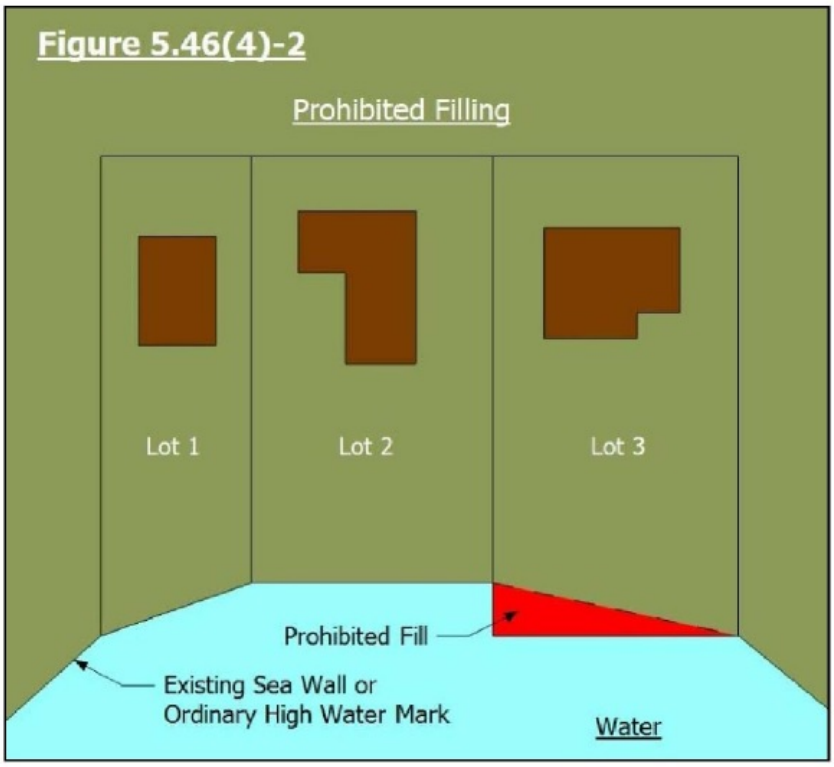
Figure 5.46(4)-1



(9) Existing sea wall locations shall be considered the rear lot line for the purposes of calculating lot area and coverage requirements.

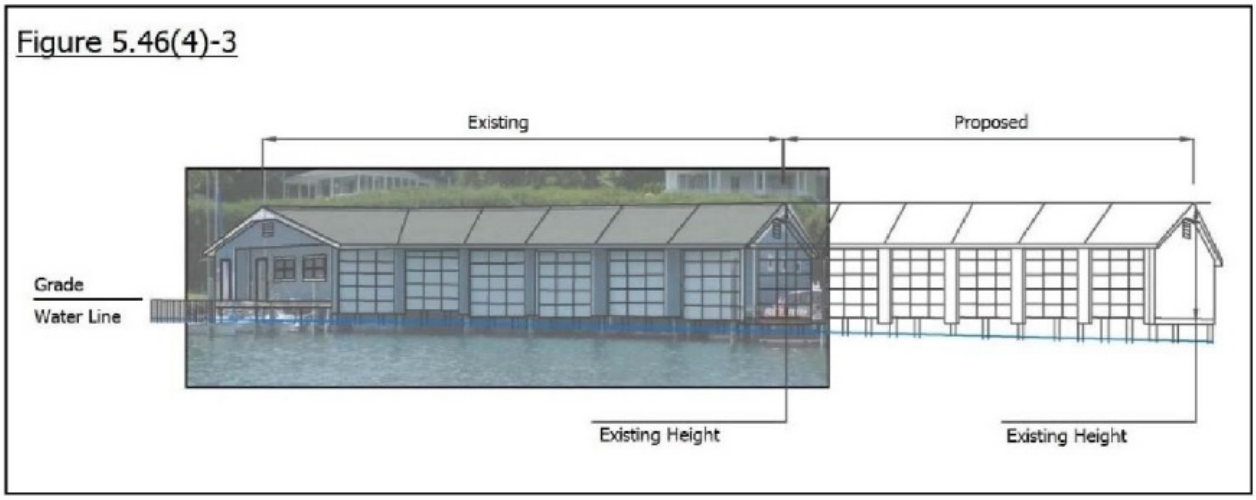
(10) Sea walls may not be extended lake ward, nor shall any filling take place for the purposes of increasing lot size or relocating the rear lot line.

Figure 5.46(4)-2



(11) Upland dredging that would result in permanent alteration of the shoreline requires a public hearing for a special use permit before the property owner applies for all applicable permits from relevant local, state and federal governments and agencies.

(12) Boathouses in the Belvedere Club and Chicago Club are excluded from the height requirements for accessory structures; provided that, they may be extended in the same building line elevation and size as the existing boathouses.



(F) *Day care; group day care home.* Special land use approval for a group day care home shall be subject to the following.

(1) A group day care home shall not be located within a 500-foot radius of any of the following:

(a) A facility offering substance abuse treatment and rehabilitation service to seven or more people licensed under Art. 6 of the Public Health Code, Public Act 368 of 1978, being M.C.L.A. §§ 333.6101 to 333.6523; or

(b) A community correction center, resident home, halfway house or other similar facility which houses an inmate population under the jurisdiction of the department of corrections.

(2) The outdoor recreation area shall be fenced and screened from any abutting residential district or use by a decorative fence or wall, or a landscaped equivalent.

(3) The applicant shall provide evidence of the ability to comply with all applicable state licensing requirements.

(G) *Drive-through facility (except those serving a restaurant).*

(1) Sufficient stacking capacity for the drive-through portion of the operation shall be provided to ensure that traffic does not extend into the public right-of-way, nor does it interfere with internal circulation of vehicles. A minimum of two stacking spaces for each drive-through station shall be provided.

(2) The parking and maneuvering areas of the site shall be fenced and screened from the view of any abutting residential district or use by a decorative fence or wall, a landscaped equivalent or a combination of both.

(3) Outdoor speakers for the drive-through facility shall be located in a way that minimizes sound transmission toward adjacent property. Amplified sound shall not be audible at the property line of any adjacent residential property.

(4) Access lanes shall be designed so service and stacking do not interfere with parking spaces or maneuvering on the site.

(H) *Home occupations.*

(1) Minor home occupations do not require a zoning permit. Major home occupations shall require special land use approval pursuant to §§ 153.250 through 153.257 of this chapter.

(2) Except for a sign, as allowed by §§ 153.205 through 153.219, the home occupation must not be evident from the street or any neighboring property.

(I) *Outdoor display and sales (accessory).* Outdoor Display and Sales are allowed in CBD Overlay only during district-wide sidewalk sale events. Outdoor display and sales that are accessory to a permitted or special land use shall be subject to the following requirements:

(1) *Required setbacks.*

(a) Outdoor display or sales located within a roofed enclosure shall be considered to be within an accessory building and subject to all applicable requirements of division (A) above.

(b) If the enclosure is attached in any way to the principal building, it shall be considered part of the principal building and subject to all requirements for the principal building.

(c) If the enclosure is not attached to the principal building, but is located within a yard adjacent to a residential district, it shall meet the minimum setback requirements for a principal building.

(d) Open sales, display or storage areas shall meet the minimum setback requirements for a principal building.

(2) *Outdoor storage.* Outdoor storage is not permitted in any parking area. Sales or display of merchandise may be permitted within a parking area; provided:

(a) The items displayed or sold are seasonal in nature and the display area is for a limited duration;

(b) The outdoor sales and displays shall not reduce the available parking spaces below the minimum required by this chapter; and

(c) Sales and display areas shall not interfere with safe and efficient traffic and pedestrian movements on the site.

(3) *Outdoor sales.* Outdoor sales and display areas adjacent to a building shall be situated so safe and convenient ingress/egress and emergency access to the building are maintained.

(4) *Outdoor display and sales.* Outdoor display and sales areas located within any yard adjacent to a residential district (except for a yard separated from the residential district by a street right-of-way) shall be screened with a solid fence or decorative wall with a maximum height of six feet.

(J) *Solar panels.*

(1) *General requirements.*

(a) If it is intended that a solar energy collector system be hooked to the electrical grid, then any single lot or parcel shall be limited to 20 kilowatts (kW) of total aggregated nameplate capacity.

(b) The exterior surfaces of a solar energy collector shall be generally neutral in color and substantially non-reflective of light. A unit may not be installed or located so sunlight or glare is reflected into neighboring residences or onto adjacent streets.

(c) A solar energy collector shall be permanently and safely attached to the building or structure. Proof of the safety and reliability of the means of attachment shall be submitted to the county's Department of Building Safety prior to installation.

(d) Solar energy collectors, and the installation and use thereof, shall comply with the county's Construction Code, the Electrical Code and other applicable city, county, state and federal requirements.

(e) There shall be no signs on the unit greater than three square feet or other than allowed in §§ 153.205 through 153.219.

(f) A building-mounted unit may only be attached to the principal building, or to an accessory building serving the principal use, such as a barn, garage or shed.

(2) *Ground-mounted units.* A ground-mounted solar energy collector shall be subject to the requirements for detached accessory structures, as required in division (A) above. No individual ground-mounted unit shall exceed 500 square feet in area or be greater than 15 feet in height.

(3) *Roof-mounted units.*

(a) A roof-mounted unit shall not project above the peak or beyond the eaves, gables or other edge of the roof on which it is mounted.

(b) Installation:

1. On a roof surface visible from the street, a roof-mounted unit shall not extend more than 18 inches above the roof surface. The panel(s) shall be mounted at the same angle as the roof upon which the unit is mounted.

2. On a roof surface that is not visible from the street, a roof-mounted unit shall not extend more than six feet above the roof surface. The unit need not be mounted at the same angle as the roof. No portion of the unit may be visible from the street.

3. A roof-mounted unit shall be only of such weight as can safely be supported by the structure. Proof, in the form of certification by a professional engineer or other qualified professional, shall be submitted to the county's Department of Building Safety prior to installation.

(4) *Wall-mounted units.*

(a) A wall-mounted solar energy collector shall not obstruct drives or other traffic ways and shall not extend further than eight feet from the building wall. No portion of the unit may extend above the building wall to which it is attached.

(b) A wall-mounted unit may not extend into a required yard.

(c) Surface area:

1. On any wall visible from a street, the surface area of the wall-mounted unit shall not exceed 30% of the area of the wall onto which it is mounted and shall not obscure any window or door.

2. On any other wall, the surface area of the unit shall not exceed 50% of the area of the facade. The unit may be located in front of windows or other openings.

3. For the purpose of this section, the area of the facade wall shall include all of the area bounded by the height and width of the wall, including any windows, doors or other openings.

(K) *Wind energy conversion systems, single accessory.* This division (K) establishes standards and procedures by which the installation and operation of a single accessory wind energy conversion systems (WECS) shall be governed within the city.

(1) *Prohibited use.* Only single accessory WECS shall be allowed. A WECS with the primary purpose of providing power to the utility grid or any other use not on the same site is prohibited.

(2) *Review requirements.*

(a) A WECS may only be authorized upon approval of a special land use, according to §§ 153.250 through 153.257 of this chapter.

(b) In addition to any submittal requirements for special land uses in §§ 153.250 through 153.257 of this chapter or site plan review submittal requirements in §§ 153.230 through 153.243 of this chapter, the application and site plan for a single accessory WECS shall include the following information:

1. Name of applicant, name of site plan preparer (if different), name of WECS manufacturer and name of WECS installer, with contact information;

2. A scaled drawing of the property, showing dimensions of all property lines and the area of the lot in square feet;

3. Location and setback of all structures on the site, including any overhead utility lines;

4. Proposed location of the WECS equipment on the site or on the building;

5. Setbacks of the WECS, in accordance with the setback requirements of this division (K), from property lines and (if ground-mounted) from structures;

6. A scaled elevation drawing of the WECS installation (including the building, if the WECS is building-mounted) showing the WECS height, rotor diameter and all other applicable elements to confirm conformance with the requirements of this division (K); and

7. Certification that the WECS system and mount meets any current standards developed by one of the following: the IEC (International Electrotechnical Commission), ANSI (American National Standards Institute) or SWCC (Small Wind Certification Commission).

(3) *Single accessory WECS general requirements.*

(a) A property may have either ground-mounted or building-mounted WECS, but not both.

(b) Minimum lot area: A building-mounted WECS shall be allowed on any lot, except in the SR district, provided that all other requirements are met. The minimum lot area for installation of a ground-mounted WECS shall be 10,000 square feet.

(c) Power rating of the WECS turbine shall not be greater than 25 kilowatts (kW). If it is intended that the WECS be tied into the grid, the total aggregated nameplate capacity of all turbines shall not exceed 20 kilowatts (kW).

(d) The WECS shall provide energy only to the structures and uses on the same property upon which the tower is located and must be owned or leased by the owner of the same property; however, this does not prevent the distribution to the local utility company, through metering required by the utility, of any power that is generated beyond the needs of the structures or uses on the property.

(e) No sound attributed to the WECS in excess of 55 dBA (A-weighted decibels) shall be discernible at the property line.

(f) There shall be no signs on the unit greater than three square feet, other than allowed per §§ 153.205 through 153.219.

(g) There shall be no lighting on or directed at the WECS, except as may be required by the Federal Aviation Administration.

(h) The WECS shall be painted in a matte color, such as gray or light blue, intended to blend into the background. A building-mounted WECS may be painted in similar colors to those on the building.

(i) A WECS shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation or over-speeding. Emergency shut-off information shall be posted on the tower in an easily visible location, or for a building-mounted WECS, shall be in a location easily accessible and visible.

(j) A WECS shall employ an anti-climbing device or be designed to prevent climbing and other unauthorized access.

(k) A WECS shall not be installed in any location where its proximity to existing fixed broadcast, re-transmission or reception antenna for radio, television or wireless phone or personal communication systems would produce electromagnetic interference with signal transmission or reception.

(l) The applicant shall provide written evidence that the WECS complies with all applicable federal, state and county requirements, in addition to city ordinances.

(m) All WECS installations shall comply with applicable Electric and Building Code standards, as adopted by the state and the county's Department of Building Safety.

(n) A WECS shall be removed when the device or equipment is no longer operating or when it has been abandoned. A WECS shall be deemed abandoned when it has not produced electrical energy for 12 consecutive months.

(o) 1. An existing and approved WECS may be repaired and maintained; however, a WECS may only be replaced with a new WECS upon approval of the Zoning Administrator; provided that, the new WECS is of the same height, rotor diameter, setback and the like as the WECS it replaces.

2. For the purposes of this division (K)(3)(o), a ***NEW OR REPLACEMENT WECS*** shall mean all of the WECS, excluding the tower or support structure.

(4) *Ground-mounted single accessory WECS.*

(a) There shall be no more than one ground-mounted on-site service WECS per parcel or lot.

(b) A ground-mounted WECS shall not be located within a front yard.

(c) 1. The WECS shall be located on the property so that it is set back from all property lines a distance equal to the WECS height.

2. The setback shall be measured from the property line (considered as a plane extending from the ground to the highest point of the WECS) to the closest extension of the rotor relative to the property line.

(d) The WECS height shall be limited by available setbacks as required in division (K)(4)(c) above; however, no WECS shall exceed 50 feet high.

(e) The minimum rotor blade tip clearance from grade, any structure or utility line shall be 15 feet.

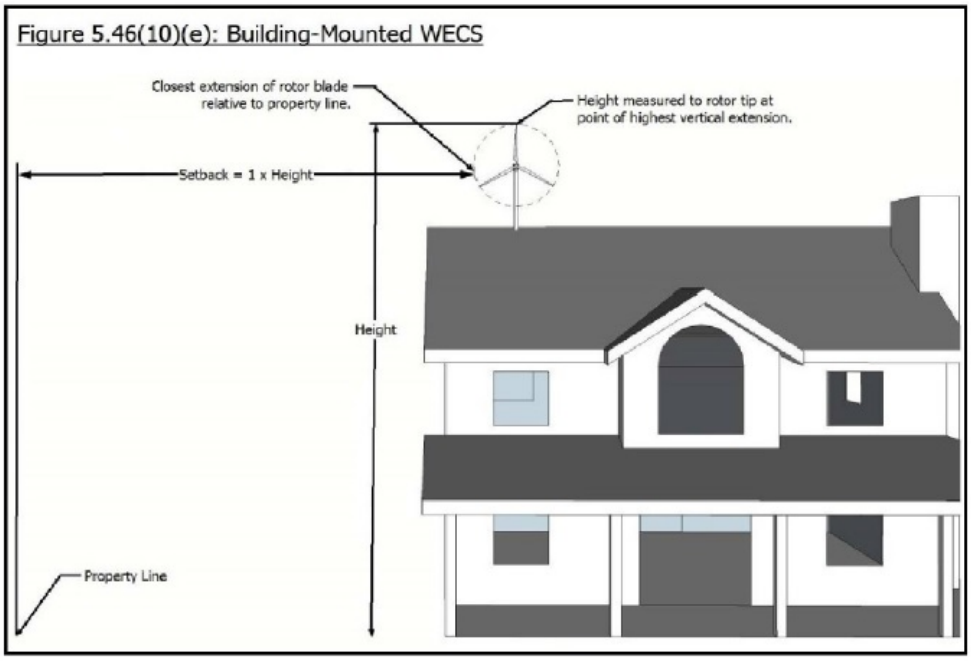
(f) The diameter of the rotor shall be dependent upon maximum WECS height and rotor blade tip clearance, but in no case shall it exceed 50 feet.

(5) *Building-mounted single accessory WECS.*

(a) There may be more than one building-mounted single accessory WECS on a single property; however, each individual WECS shall meet all of the requirements in this division (K)(5), and each WECS shall be separated from any other WECS no less than ten feet, measured between the maximum extension of the rotors.

(b) 1. The WECS shall be mounted so that it is set back from adjoining property lines a distance equal to the combined height of the WECS and the height of the portion of the building on which it is mounted.

2. The setback shall be measured from the property line (considered as a plane extending from the ground to the highest point of the WECS) to the closest extension of the rotor relative to the property line.



(c) The WECS height shall be limited by available setbacks as required in division (K)(5)(b) above; however, no building-mounted WECS shall exceed the maximum permitted height for principal buildings in the district, plus 20 feet.

(d) The diameter of the rotor shall not exceed 25 feet.

(e) The mount and the structure used to support a building-mounted WECS shall meet applicable standards, as certified by an engineer.

(6) *Conditions of approval.*

(a) Consistent with the purpose for which conditions of approval for a special land use may be imposed as provided in §§ 153.250 through 153.257 of this chapter, the conditions, among other purposes, may regulate the construction, installation, use, maintenance, repair and removal of any WECS.

(b) Such conditions may include, but are not limited to, the following:

1. The preservation of existing trees and other existing vegetation not required to be removed for installation of a WECS;

2. The reasonable replacement of trees or other vegetation removed or destroyed during the construction or installation of a WECS;

3. Altering the location of the WECS to prevent impacts on neighboring properties, provided that all other requirements of this section are met; and

4. Requiring a performance bond or letter of credit, in favor of the city, and conditioned upon the timely and faithful performance of all required conditions of the special land use, including, but not limited to, the timely and complete removal of a WECS, regulated under the terms of § 153.239 of this chapter, when required. Such performance bond or letter of credit shall remain in effect during and after the operation of a WECS until its operations have ceased and it has been removed.

(Prior Code, § 5.46) (Ord. 791, passed 3-19-2018; Ord. 795, passed 11-5-2018; Ord. 801, passed 4-15-2019; Ord. 823, passed 1-4-2021; Ord. 835, passed 1-2-2023; Ord. 839, passed 6-19-2023; Ord. 840, passed 6-19-2023)

§ 153.117 RESIDENTIAL USES.

(A) *Dwellings, single-family attached or detached (outside manufactured home communities).* All dwelling units located outside a licensed manufactured home community shall comply with the following.

(1) A dwelling unit shall conform to the minimum floor area requirements of the district in which it is located.

(2) The minimum width of a single-family dwelling unit shall be 20 feet.

(3) All dwelling units shall comply with the state's Construction Code as promulgated by the state's Construction Code Commission under provisions of Public Act 30 of 1972, as amended, being M.C.L.A. §§ 125.1501 et seq., or the *Mobile Home Construction and Safety Standards* , as promulgated by the United States Department of Housing and Urban Development, being 24 C.F.R. part 3280, and as from time to time such standards may be amended.

(4) A dwelling unit shall be attached to a permanent foundation constructed in accordance with the state's Construction Code and shall have the same perimeter dimensions as the dwelling. In the case of a manufactured home, it shall be installed per the manufacturer's set-up instructions and shall be secured to a foundation by an anchoring system or device complying with the rules and regulations of the state's Manufactured Housing Commission or the state's Construction Code, whichever is stricter.

(5) If provided, the wheels of a manufactured home shall be removed and the towing mechanism, undercarriage and chassis shall not be exposed.

(6) All dwellings shall be connected to city sanitary sewer and water utilities.

(7) Any addition to a dwelling shall meet all the requirements of this chapter.

(8) A dwelling may have either a roof overhang of not less than six inches on all sides or, alternatively, a roof drainage system that concentrates water at collection points and discharges it away from the dwelling.

(B) *Senior housing: independent living, assisted living and similar.*

(1) Developments or portions of developments designed as multiple-family buildings shall be subject to the requirements applying to multiple-family dwellings.

(2) Developments or portions of developments designed as single or two-family dwellings shall be subject to the requirements applying to single and two-family dwellings.

(C) *Site condominiums.* This chapter requires preliminary review of site condominium plans by the Planning Commission to ensure that site condominiums comply with this chapter and other applicable city ordinances.

(1) *Optional Planning Commission review of preliminary plans.*

(a) Prior to final review and approval of a site condominium development plan, a preliminary site condominium development plan may be reviewed by the Planning Commission in accordance with the procedures, standards and requirements provided by this section if requested by the applicant. Such review shall take place following a public hearing by the Planning Commission on the preliminary plan. At least 15-days' notice of the hearing shall be given by ordinary mail, sent to the owners of, or parties with interest in, the lands within 300 feet of the property to be included in the development, as listed in the current city tax assessment rolls.

(b) Application for review and approval of a site condominium development plan shall be initiated by submitting the following to the Zoning Administrator:

1. A minimum of ten copies of a preliminary site condominium development plan which complies with the requirements of Chapter 154 of this code of ordinances; and

2. An application fee in accordance with the fee schedule established by resolution of the City Council.

(c) The Planning Commission shall review the preliminary site condominium development plan in accordance with the standards and requirements contained in § 154.06 of this code of ordinances. All of the requirements for plats, as set forth in that section, shall apply to site condominium developments. In addition, the following standards and requirements shall apply.

1. In its review of a site condominium development plan, the Planning Commission may consult with the Zoning Administrator, City Attorney, City Engineer, City Fire Chief or other appropriate persons regarding the adequacy of the proposed common elements and maintenance provisions, use and occupancy restrictions, utility systems and streets, development layout and design, or other aspects of the proposed development.

2. Each site condominium unit shall comply with all applicable provisions of this chapter, including minimum area, minimum width, required front, side and rear yards, and maximum building height.

3. All streets shall be paved and developed to the minimum design, construction, inspection, approval and maintenance requirements for platted public streets, as required by the city.

4. If public water and sanitary sewer facilities are not available, each condominium unit shall be served by a private central system (designed for connection to a public system when and if a public system is made available).

5. The Planning Commission may require that portions of the plan, as relevant to the reviewing authority in question, be submitted to the county’s Drain Commissioner, the state’s Department of Natural Resources, the state’s Department of Public Health and other appropriate city, state and county review and enforcement agencies having direct approval or permitting authority over any aspect of the proposed site condominium development.

(d) After reviewing the preliminary site condominium development plan, the Planning Commission shall prepare a written statement of recommendations regarding the proposed site condominium development, including any suggested or required changes in the plan. The Planning Commission shall provide a copy of its written recommendations to the applicant.

(2) *Review and approval of final plans.*

(a) The final site condominium plan shall incorporate all of the recommendations, if any, made by the Planning Commission based on its prior review of the preliminary plan. If any of the Planning Commission's recommendations are not incorporated in the final plan, the applicant shall clearly specify, in writing, which recommendations have not been incorporated and the reasons why. Except for changes made to the plan as needed to incorporate the recommendations of the Planning Commission, the final plan shall otherwise be identical to the preliminary plan acted upon by the Planning Commission. Changes made to the plan other than those necessary to incorporate the recommendations of the Planning Commission shall be resubmitted to the Planning Commission for further review and recommendation prior to approval of the plan.

(b) After receiving the final site condominium development plan, the Planning Commission shall proceed to review and may approve, deny, or approve with conditions the plan in accordance with the standards and requirements provided the city parcel division ordinance and other applicable procedures, standards and requirements of this section.

(c) As a condition of approval of a final site condominium development plan the City Manager, with input from staff, may require that a financial guarantee, covering the estimated cost of improvements associated with the site condominium development for which approval is sought, be deposited with the city, as provided by the Michigan Zoning Enabling Act, Public Act 110 of the Public Acts of 2006, being M.C.L.A. §§ 125.3101 to 125.3702, as it may be amended from time to time.

(3) *Contents of site condominium project plans.* A condominium development plan shall include the documents and information required by § 66 of the Condominium Act, by § 154.05(A) of this code of ordinances and by the following:

(a) The use and occupancy restrictions and maintenance provisions for all general and limited common elements that will be included in the master deed;

(b) A storm drainage and storm water management plan, including all lines, swales, drains, basins and other facilities and easements granted to the appropriate jurisdiction for installation, repair and maintenance of all drainage facilities;

(c) A utility plan showing all water and sewer lines and easements granted to the appropriate jurisdiction for installation, repair and maintenance of all utilities;

(d) A narrative describing the overall objectives of the proposed site condominium development;

(e) A narrative describing the proposed method of providing potable water supply, waste disposal facilities and public and private utilities; and

(f) A street construction, paving and maintenance plan for all private streets.

(4) *Construction in compliance with approved plan.* No buildings or structures shall be constructed, nor shall any other site improvements or changes be made on the property in connection with a proposed site condominium development, except in compliance with a final site condominium development plan, as approved by the Planning Commission, including any conditions of approval.

(5) *Issuance of permits.* No building permit shall be issued, and no public sewer or public water service shall be provided for any dwelling or other structure located on a parcel established or sold in violation of this section. The sale or the reservation for sale of site condominium units shall be as regulated by the Condominium Act. No building in a site condominium development may be occupied or used until all required improvements have been completed and all necessary utilities installed.

(6) *Expandable or convertible condominium developments.* Approval of a final site condominium development plan shall not constitute approval of expandable or convertible portions of a site condominium development, unless the expandable or convertible areas were specifically reviewed and approved by the Planning Commission in compliance with the procedures, standards and requirements of this section.

(7) *Changes in condominium developments.* Any change proposed in connection with a development for which a final site condominium plan has previously been approved shall be regulated as follows:

(a) The following definitions shall apply:

1. ***EXEMPT CHANGE*** means a change to a site condominium project (other than a major or minor change) that is exempt from review and approval, as required for major or minor changes under this section. ***EXEMPT CHANGES*** shall be limited to the following:

a. A change in the name of the development, in the name of a street within the development or in the name of the developer;

b. A change in the voting rights of co-owners or mortgagees; or

c. Any other change in the site condominium development which, as determined by the Zoning Administrator, does not constitute a major or minor change or will not otherwise change the site configuration, design, layout, topography or any other aspect of a development which is subject to regulation under the zoning ordinance.

2. ***MAJOR CHANGE*** means a change in the site configuration, design, layout or topography of a site condominium development (or any portion thereof), including any change that could result in:

a. An increase in the number of site condominium units; or

b. Any other change in the site configuration, design, layout, topography or other aspect of the project which is subject to regulation under this chapter, including, without limitation, a change in the location of streets and utilities, or in the size, location, area, horizontal boundaries or vertical boundaries of a site condominium unit, or that which is determined by the Zoning Administrator to constitute a major change to the site condominium project.

3. ***MINOR CHANGE*** means a change in the site configuration, design, layout or topography of a site condominium development (or any portion thereof), that will result in:

a. A decrease in the number of site condominium units;

b. A reduction in the area of the building site for any site condominium unit;

c. A reduction of less than 10% in the total combined area of the general common elements of the site condominium;

d. A reduction in the total combined area of all limited common elements of the site condominium; or

e. Any other minor variation in the site configuration, design, layout, topography or other aspect of the development which is subject to regulation under this chapter, and which, as determined by the Zoning Administrator, does not constitute a major change.

(b) Any change which constitutes a major change shall be reviewed by the Planning Commission, at a public hearing and with the notice required for an original approval of a site condominium development, as provided in this chapter for the original review and approval of preliminary and final plans.

(c) Any change which constitutes a minor change shall be reviewed and approved by the Zoning Administrator.

(d) Any change which constitutes an exempt change shall not be subject to review by the city, but a copy of the exempt changes shall be filed with the Zoning Administrator.

(8) *Incorporation of approved provisions in master deed.* All provisions of a final site condominium development plan which are approved by the Planning Commission, as provided by this section, shall be incorporated by reference in the master deed for the site condominium project. Further, all major changes to a development shall be incorporated by reference in the master deed. A copy of the master deed, as recorded with the County Register of Deeds, shall be provided to the city within ten days after recording.

(9) *Commencement of construction.* Construction of an approved site condominium development shall commence within two years after final site condominium development approval and be diligently pursued to completion in accordance with the terms and conditions of the approval. The two-year period may be extended by the Planning Commission, at its discretion, for additional time periods as determined appropriate by the planning commission. Any extension shall be applied for, in writing, by the applicant prior to the expiration of the initial two-year period.

(10) *Variances.* Upon application, the Zoning Board of Appeals may permit a variance or variances which are reasonable and within the general policies and purposes of this section. A variance may be granted if the applicant demonstrates that literal enforcement of any of the provisions of this section is impractical or will impose practical difficulties in the use of the land because of special or peculiar conditions pertaining to the land. The ZBA may recommend, and may attach, conditions to the variance.

(D) *Accessory dwelling unit (ADU).*

(1) ADUs are subject to all applicable regulations of the zoning district in which they are located unless otherwise expressly stated in this section. ADUs are considered an accessory building and shall fit within the standards of § 153.116(A) which covers both attached and detached ADUs. All ADUs are required to obtain a zoning permit prior to construction.

(2) In districts that allow ADUs, they may be allowed on any legal parcel of record as of January 1, 2019, and there shall be an existing principal residential use on the parcel.

(3) At least one of the units on the parcel shall be occupied by a long-term renter or an owner with at least 50% interest in the subject property. The owner or renter shall occupy either the principal dwelling unit or the ADU as their permanent residence. An ADU shall not be sold independently of the primary dwelling on the parcel. Short-term rentals of ADUs shall be prohibited.

(4) A permanent foundation is required.

(5) The maximum lot coverage for parcels with an ADU may be increased to a maximum of 50% when stormwater runoff equivalent to 20% of the lot coverage area is collected in rain barrels, rain gardens, or is mitigated via porous concrete or other materials on the parcel. See § 153.152.

(6) Any exterior staircases that provide access to a second floor ADU shall not be on the front of either the principal dwelling or the ADU.

(7) *Dimensional requirement modifications.* Under some circumstances, certain dimensional requirements modifications may be granted by a special land use permit after a site plan review by the Planning Commission. Application for modifications may be applied for new construction or pre-existing structures built prior to 2019 that are located within the required setbacks of the district. In order to grant a special land use permit for any modifications, all of the following must be met:

(a) That any walls within the setback areas comply with applicable building and fire codes.

(b) That a setback requirement of a minimum of five feet from the side and rear property lines shall be required.

(c) The location and design of the ADU maintains a compatible relationship to adjacent properties and does not significantly impact the privacy, light, air, or parking of adjacent properties.

(d) Windows on the ADU that impact the privacy of the neighboring side or rear yards have been minimized or screened.

(E) *Boarding/rooming house.* There shall be not more than four rooms occupied by tenants, subject to the following:

(1) Parking meets the requirements of § 153.187.

(2) Occupancy by tenants shall be for expected durations longer than 30 days.

(3) Individual rooms shall not contain independent cooking facilities. This requirement shall not prohibit the serving of meals to tenants or the use of a single kitchen by tenants.

(4) Rooming and boarding houses shall be owner occupied and serve as the principal residence of the owner or a designated caretaker shall be one of the occupants.

(F) *Home conversions.* An existing detached single-family dwelling built prior to 2019 that is located within the required setbacks of the district may be converted to multiple permanent dwelling units subject to the following:

(1) Lot area meets the minimum requirements for the district.

(2) The exterior appearance of the structure is not altered from its single-family character.

(3) Parking meets the requirements of § 153.187.

(4) Access to any second floor dwelling unit is provided from the interior of the structure.

(5) The minimum square footage required for a studio or one bedroom unit shall be 300 square feet.

(6) The minimum square footage required for a two bedroom unit shall be 450 square feet.

(7) All units have construction code-approved egress.

(G) *Single-family attached and single multiple-family buildings.*

(1) Single-family attached buildings and single multiple-family buildings are subject to all applicable regulations of the zoning district in which they are located unless otherwise expressly stated in this section.

(2) The main entrance is located in the building façade of the principal frontage.

(3) A maximum of two entrances per building façade.

(4) Parking is located in the rear or on the side of the building.

(5) Parking access is from the alley where available, otherwise access may be from the side or front lot line.

(6) The principal building façade shall have a minimum of 20% glazing (windows).

(7) There shall be a minimum of two windows per non-street facing building façade.

(8) Porches and stoops may project into the yards in accordance with § 153.149.

(9) Façade elements above the ground floor may project into the yards in accordance with § 153.149.

(Prior Code, § 5.47) (Ord. 794, passed 9-17-2018; Ord. 795, passed 11-5-2018; Ord. 802, passed 4-15-2019; Ord. 805, passed 9-3-2019; Ord. 835, passed 1-2-2023)

§ 153.118 LODGING, DINING AND ENTERTAINMENT USES.

(A) *Sexually oriented businesses.*

(1) *Intent.* In the development and execution of these zoning regulations, it is recognized that some uses, because of their very nature, may have serious objectionable operational characteristics, particularly when several of those uses are concentrated under certain circumstances, thereby causing a detrimental effect upon the adjacent areas. The proximity of adult-regulated uses to certain other uses considered particularly susceptible to the negative impacts of a concentration of adult-regulated uses has been shown to erode the quality of life, adversely affect property values, disrupt business investment, encourage residents and businesses to move or avoid the community, increase crime and contribute to a blighting effect on the surrounding area. There is convincing documented evidence of the negative effect that adult-regulated uses have on both existing businesses around them and the surrounding residential areas to which they are adjacent. Therefore, the following intents are served by these regulations.

(a) This division (A) describes the uses regulated and the specific standards necessary to ensure that the adverse effects of these uses will not contribute to the deterioration of the surrounding neighborhood, to prevent undesirable concentration of these uses, and to require sufficient spacing from uses considered most susceptible to negative impacts.

(b) These provisions are not intended to impose, nor shall they have the effect of imposing a limitation or restriction on the content of any communicative materials including, but not limited to, sexually oriented materials that are protected by the First Amendment to the United States Constitution.

(c) Additionally, it is not the intent of the provisions of this division (A) to restrict or deny, nor shall it have the effect of restricting or denying, access by adults to sexually oriented materials that are protected by the federal and state constitutions.

(d) Further, it is not the intent of these provisions to deny, nor shall they have the effect of denying, access by the distributors and exhibitors of adult oriented entertainment to their target market.

(e) These regulations shall not be interpreted as intending to legitimize any activities that are prohibited by federal or state law, or by any other ordinance of the city.

(2) *Definitions.* For the purpose of this division (A), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

SEXUALLY ORIENTED BUSINESS. Any use of land devoted to displaying or exhibiting printed, recorded or electronic material or live entertainment, a significant portion of which depicts, describes or presents specified sexual activities or specified anatomical areas including, but not limited to: adult arcade; adult bookstore; adult novelty store; adult video store; adult cabaret; adult motel; adult motion picture theater; adult theater; escort agency; nude modeling studio; sexual encounter center; or massage parlor. The term “significant”, as used above and as follows, is defined as greater than 20% of the total material displayed or exhibited for sale or entertainment. Adult-regulated uses, activities and related definitions include, but are not limited to the following.

1. ***ADULT ARCADE.*** Any place to which the public is permitted or invited wherein coin-operated, slug-operated or for any form of consideration an electronically, electrically or mechanically controlled still or motion picture machine, projector, video or disc player, or other image-producing device is maintained to show images to five or fewer persons per machine at any one time, and where the image is so displayed, distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

2. ***ADULT BOOKSTORE***, ***ADULT NOVELTY STORE*** or ***ADULT VIDEO STORE.*** A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration, any one or more of the following:

a. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, discs or other video reproduction, slides or other visual representations which are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

b. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

3. ***ADULT CABARET.*** A nightclub, bar, restaurant or similar commercial establishment which regularly features:

a. Persons who appear live in a state of nudity or semi-nudity;

b. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

c. Films, motion pictures, video cassettes or discs, slides or other video or photographic reproductions which are distinguished or characterized by the depiction of specified sexual activities or specified anatomical areas.

4. ***ADULT MOTEL.*** A hotel, motel or similar commercial establishment which:

a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;” and has a sign visible from the public right-of-way;

b. Regularly offers a sleeping room for rent for a period of time that is less than ten hours; or

c. Regularly allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

5. ***ADULT MOTION PICTURE THEATER.*** A commercial establishment where, for any form of consideration, films, motion pictures, videos, slides or other similar photographic reproduction are regularly shown which are consistently distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas.

6. ***MASSAGE PARLOR.*** An establishment offering or providing massages, body rubs, physical stimulation or other similar treatments where the person either receiving or providing the service exposes specified anatomical areas or which involves real or simulated specified sexual activities. The following uses are not included as part of this definition:

a. Services by a licensed physician, chiropractor or osteopath, a licensed or certified physical or massage therapist, a licensed practical nurse or any other similarly licensed medical professional;

b. Electrolysis treatment by a licensed operator of electrolysis equipment;

c. Hospitals, nursing homes, medical clinics or medical offices; and

d. Barber shops or beauty parlors, health spas and/or salons offering massage to the scalp, face, neck or shoulders only.

SPECIFIED ANATOMICAL AREAS. The graphic depiction, whether real or simulated, of less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of areola and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. The graphic depiction, whether real or simulated, of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, sexual intercourse or sodomy and fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(3) *Locational requirements.*

(a) Sexually oriented business are not permitted in any zoning district except the Industrial (I) Zone.

(b) No sexually oriented business shall be permitted in a location in which a principal building or accessory structure, including signs, is within 300 feet of any principal building or accessory structure of another sexually oriented business.

(c) No sexually oriented business shall be established on a parcel within 300 feet of any parcel in a residential district or any parcel used as a dwelling, public park, school, child care facility, church or similar place of worship, public library, city hall, police department or fire department, youth center or commercially operated school attended by children such as dance schools, gymnastic centers and the like. The distance between a proposed sexually oriented business and any such zoned area or existing use shall be measured in a straight line from the nearest property line upon which the proposed sexually oriented business is to be located to the nearest property line of that zoned area or existing use.

(4) *Procedures.*

(a) *Special use.* Review of any request for establishment of a sexually oriented business shall be in accordance with the special land use provisions of §§ 153.250 through 153.257 of this chapter. The Planning Commission shall conduct a public hearing, in accordance with the timing and notification requirements of § 153.251(B) and shall approve, deny or approve with conditions the special land use request based on the requirements of this subchapter and the general standards of § 153.253.

(b) *Conditions of approval.* Prior to granting approval for the establishment of any sexually oriented business, the Planning Commission may impose conditions or limitations upon the establishment, location, construction, maintenance or operation of the use as authorized by § 153.252. Any evidence, bond or other performance guarantee may be required as proof that the conditions stipulated in connection therewith will be fulfilled.

(5) *Regulated uses.* The following uses are regulated by this division (A):

(a) Adult arcade;

(b) Adult book store;

(c) Adult cabaret;

(d) Adult motel;

(e) Adult motion picture theater; and

(f) Massage parlor.

(6) *Conditions and operating requirements.*

(a) Any sign must comply with the provisions of this chapter.

(b) The entrances to the proposed sexually oriented business at both the exterior and interior walls, in a location visible to those entering and exiting the business, must be clearly marked with lettering at least two inches in height stating:

1. “Persons under the age of 18 are not permitted to enter the premises”; and

2. “No alcoholic beverages of any type are permitted within the premises”.

(c) No product or service for sale or gift, or any picture or other representation of any product or service for sale or gift, shall be displayed so as to be visible by a person of normal visual acuity from the nearest adjoining roadway or neighboring property.

(d) Hours of operation shall not exceed 9:00 a.m. to 11:00 p.m., Monday through Saturday.

(e) All off-street and on-site parking areas shall comply with this chapter based on the primary use (i.e., retail, theater and the like) and shall additionally be illuminated at all times.

(f) Any booth, room or cubical available in any sexually oriented business that is used by patrons for the viewing of any entertainment shall:

1. Be unobstructed by any door, lock or other entrance and exit control device;

2. Have at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times from the adjoining aisle of any occupant;

3. Be illuminated such that a person of normal visual acuity looking into the booth, room or cubical from its entrance adjoining the public lighted aisle can clearly determine the number of people within; and

4. Have no holes or openings in any side or rear wall not relating to utility, ventilation or temperature control services or otherwise required by any governmental code or authority.

(g) No person operating a sexually oriented business shall permit any person under the age of 18 to be on the premises of the business as an employee, customer or otherwise.

(B) *Restaurant with drive-through.*

(1) (a) Sufficient stacking capacity for the drive-through facility shall be provided to ensure that traffic does not extend into a private or public right-of-way, with a minimum of seven stacking spaces.

(b) Stacking spaces shall be located so as not to interfere with vehicular circulation, access to parking spaces and egress from the property by vehicles not using the drive-through facility.

(2) (a) In addition to parking space requirements of §§ 153.185 through 153.190 of this chapter, at least two parking or waiting spaces shall be provided, in close proximity to the exit of the drive-through portion of the operation, to allow for customers waiting for delivery of orders.

(b) The waiting spaces shall be designed to allow maneuvering without being blocked by another vehicle and shall not impede traffic flow on the site.

(3) Public access to the site shall be located at least 100 feet from any intersection as measured from the nearest right-of-way line to the nearest edge of the access.

(4) The parking and maneuvering areas of the site shall be fenced and screened from the view of any abutting residential district or use by a decorative fence or wall, or a landscaped equivalent.

(5) The intensity level of sounds leaving the site shall not exceed 55 decibels (dBA) at any lot line bordering residential uses.

(6) Outdoor menu boards shall be located behind the front building line.

(C) *Restaurant with outdoor seating*.

(1) Restaurants providing outdoor seating within an at-grade deck or patio or a roof top deck, must first acquire a zoning and building permit from the city and Charlevoix County Building Department.

(2) All structures would be subject to review by the Zoning Administrator and shall meet the requirements of this chapter.

(3) Restaurant outdoor seating shall be allowed only during normal operating hours of the establishment.

(4) If alcoholic beverages are to be served, the current Liquor Control Commission rules and regulations shall apply.

(5) Any music or sound that would violate the city's noise ordinances and restrictions is prohibited.

(6) Lighting shall be shielded and pointed downward and shall not be a nuisance to adjacent properties subject to § 153.172.

(7) Outdoor seating space is subject to the requirements of Off-Street Parking, Loading, Access and Circulation.

(D) *Roof top decks.* The following provisions are intended to regulate roof top deck use, permanent or temporary, in all districts to reduce safety concerns, noise and other nuisances, and visual impact on neighboring properties and on the community generally. The use of roof top decks is subject to the following restrictions:

(1) A zoning and building permit for any roof top deck must be first obtained from the City Zoning Administrator and Charlevoix County Building Department and is subject to construction of and maintenance of guardrails and other protective features as required by the Charlevoix County Building Code.

(2) Any request for a City of Charlevoix zoning permit that includes a roof top deck must undergo site plan review and receive approval by the Planning Commission prior to issuance of a zoning permit.

(3) Parapet walls and perimeter guardrails shall extend around the perimeter of the roof top deck and incorporate exterior building materials consistent with the architectural style of the underlying structure subject to § 153.170.

(4) Any structure on a deck or patio must be permitted under the Zoning Code. Portable appurtenances are prohibited. Temporary appurtenances and structures are subject to site plan review to assure public safety.

(5) Except within the CBD, Central Business District, amplified musical instruments or sounds are prohibited. Any other music or sound that would violate the city's noise ordinances and restrictions is prohibited.

(6) All commercial food preparation shall take place inside the establishment.

(7) No open flames are allowed.

(8) Lighting shall be shielded and pointed downward and shall not be a nuisance to adjacent properties subject to § 153.172.

(9) Roof top deck space is subject to the requirements of §§ 153.185 et seq., Off-Street Parking, Loading, Access and Circulation.

(Prior Code, § 5.48) (Ord. 794, passed 9-17-2018; Ord. 795, passed 11-5-2018; Ord. 821, passed 10-19-2020)

§ 153.119 RECREATION AND OPEN SPACE USES.

(A) *Recreation facility, outdoor.*

(1) The minimum site area shall be one acre.

(2) No building or spectator seating facility shall be located within 100 feet of a lot line adjoining property in a residential district.

(3) All buildings, courts and playfields shall be set back a minimum of 50 feet from all front, side and rear lot lines. The setback shall apply to open recreation areas, such as football, soccer and baseball/softball fields and shall be measured from the edge of the fields.

(4) The minimum parking lot setback shall be 20 feet for any lot line. Ground cover and landscaping shall be provided within the setback.

(5) Activities that produce mechanical noise, such as go-carts, are prohibited.

(6) Accessory commercial activities shall be limited to those necessary to serve only the patrons of the facility.

(7) Central loudspeakers/paging systems are prohibited.

(8) No temporary sanitary facility or trash receptacle shall be located within 100 feet of an existing dwelling.

(9) Adequate trash receptacles shall be provided as needed throughout the site.

(10) Operating hours for all uses shall be determined by the Planning Commission based on the nature of the use and the nuisance potential to adjoining property owners.

(B) *Other.*

(Prior Code, § 5.49)

§ 153.120 RETAIL USE; GROSS LEASABLE AREA GREATER THAN 20,000 SQUARE FEET.

(A) A single retail business shall not occupy a gross leasable area greater than 20,000 square feet. This shall not be construed to limit the total size of a multi-tenant building, such as a shopping center.

(B) In addition to the special land use standards of § 153.253 of this chapter, the following criteria shall be considered. The proposed use:

(1) Will be designed, constructed and operated in a manner that will complement the immediate surroundings and the community as a whole;

(2) Will not generate excessive traffic beyond the capacity of the adjacent street network or create peak hour congestion;

(3) Will not operate during hours or days of the week that will create a nuisance for surrounding properties and residents; and

(4) Will not impose demands on public services such as, but not limited to: police, fire, water or sewer, beyond the city's capacity to provide those services.

(Prior Code, § 5.50)

§ 153.121 OFFICE AND SERVICE USES.

(A) *Day care center/nursery.*

(1) Adequate space for drop off and pick up of children shall be provided near the door to the facility, so children are not required to cross parking lots or street traffic unattended.

(2) A minimum of two drop-off spaces shall be provided per 20 children or major fraction thereof, based on licensed capacity.

(3) A fenced outdoor play area shall be provided, in accordance with state requirements.

(B) *Kennel, commercial.*

(1) Runs, exercise areas and accessory buildings where animals are kept shall be set back at least 75 feet from any lot line abutting a residential use.

(2) Runs and/or exercise areas and buildings where the animals are kept shall only be located in a rear yard.

(3) A kennel shall be operated in conformance with all applicable county, state and federal regulations.

(4) The main kennel building used to house animals shall be sound insulated to minimize animal noise.

(5) Animals shall not be permitted in outdoor exercise yards or pens between 10:00 p.m. and 7:00 a.m.

(6) Animals shall be confined and shall not freely roam the property, except during supervised training.

(7) A run and/or exercise area shall be enclosed by a sufficiently tall chain link fence or completely covered on the sides and top to prevent animals from escaping.

(8) The waste disposal system shall be adequate and approved by the county's Health Department.

(C) *Veterinary clinic or hospital.*

(1) An animal holding area shall be enclosed by a wall or fence of a height sufficient to contain animals on the premises.

(2) Kennels, pens, animal holding areas and/or stalls shall be at least at least 100 feet from a front property line and 30 feet from a side or rear line; however, if a side or rear yard abuts property in a residential district, the minimum setback shall be 50 feet.

(Prior Code, § 5.51)

§ 153.122 MEDICAL MARIJUANA RELATED USES.

(A) *Purpose and intent.* As a result of the enactment of the state's Medical Marijuana Act (hereinafter referred to as the "MMMA"), Initiated Law 1 of 2008, M.C.L.A. §§ 333.26423, et seq., and its administrative rules, R 333.101 et seq., the city intends to provide reasonable land use regulations associated with the medical use of marijuana in accordance with the MMMA to:

(1) Protect public, health, safety and welfare;

(2) Provide adequate separation of primary care giver facilities from schools, churches and any areas where children congregate including, but not limited to, day care facilities, public beaches and athletic fields;

(3) Mitigate negative impacts associated with medical marijuana use in residential areas; and

(4) Require adequate separation between primary care giver facilities to prevent clustering of grow operations in one area.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ENCLOSED, LOCKED FACILITY. That term as defined in § 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being M.C.L.A. § 333.26423.

MARIJUANA or ***MARIHUANA.*** That term as defined in § 7106 of Public Act 368 of 1978, as amended (Michigan Public Health Code), being M.C.L.A. § 333.7106.

MEDICAL USE. That term as defined in § 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being M.C.L.A. § 333.26423.

PRIMARY CARE GIVER. That term as defined in § 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being M.C.L.A. § 333.26423, who has registered with the Bureau of Health Professions, the state's Department of Licensing and Regulatory Affairs or any successor agency under the state's Medical Marijuana Act.

PRIMARY CARE GIVER FACILITY. A structure in which the activities of a primary care giver are conducted.

QUALIFYING PATIENT. That term as defined in § 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being M.C.L.A. § 333.26423, who has registered with the Bureau of Health Professions, the state's Department of Licensing and Regulatory Affairs or any successor agency under the state's Medical Marijuana Act, and includes the parents or legal guardians of a qualifying patient under the age of 18 who are serving as the primary care giver as required by the state's Medical Marijuana Act exclusively for that qualifying patient under the age of 18.

(C) *Regulations for qualifying patients.* The medical use of marijuana by a qualifying patient in that qualifying patient's dwelling or an accessory structure is hereby recognized as an accessory use to the principal residential use of the property and can be established without a zoning permit in any zoning district, but shall be subject to the following regulations.

(1) The qualifying patient must be issued and at all times must maintain a valid registry identification card, or appropriate documentation, from the Bureau of Health Professions, the state's Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.

(2) All marijuana plants or products must be contained within the dwelling or accessory structure in an enclosed, locked facility that permits access only by the

qualifying patient.

(3) If a room with windows within the dwelling or accessory structure is utilized to grow marijuana for medical use, any artificial lighting shall be shielded to prevent glare, must not be visible from neighboring properties and must not be visible from adjacent streets or public ways.

(D) *Regulations for primary care givers.* The medical use of marijuana by a primary care giver is hereby authorized as a use by right within a dwelling or an accessory structure in the R1 and R2 Zoning Districts only; provided that, all of the following regulations are met.

(1) The primary care giver must be issued and at all times must maintain a valid registry identification card, or appropriate documentation, from the Bureau of Health Professions, the state's Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.

(2) The primary caregiver must obtain a zoning permit under § 153.021 of this chapter.

(3) Except when being transported as provided in division (D)(9) below, all marijuana plants or products must be contained within the dwelling or accessory structure in an enclosed and locked facility where the marijuana plants and products are labeled for each qualifying patient and access is permitted only to the primary care giver.

(4) If a room with windows within the dwelling or accessory structure is utilized to grow marijuana for medical use, any artificial lighting shall be shielded to prevent glare, must not be visible from neighboring properties and must not be visible from adjacent streets or public ways.

(5) Except as provided herein, no more than one primary care giver shall be permitted to provide primary care giver services to qualifying patients within a single dwelling or accessory structure.

(6) Except for any qualifying patients who reside with the primary care giver at the dwelling, no more than five qualifying patients may be present at the same time at a dwelling or accessory structure in which a primary care giver of medical marijuana is providing primary care giver services to qualifying patients for any purpose directly related to primary care giver services. This division (D)(6), however, shall not be construed to prohibit the presence of qualifying patients at a dwelling or accessory structure in which a primary care giver of medical marijuana is providing primary care giver services for purposes unrelated to primary care giver services.

(7) Qualifying patient visits to a dwelling or accessory structure in which a primary care giver is providing primary care giver services to qualifying patients shall be restricted to between the hours of 7:00 a.m. and 10:00 p.m., except when the qualifying patient resides with the primary care giver at the dwelling and except when the qualifying patient visits are for purposes unrelated to primary care giver services.

(8) No qualifying patients under the age of 18 shall be permitted at any time at a dwelling or accessory structure in which a primary care giver is providing primary care giver services to qualifying patients, except in the presence of his or her parent or guardian, except when the qualifying patient resides with the primary care giver at the dwelling, and except when the qualifying patient visits are for purposes unrelated to primary care giver services.

(9) No marijuana for medical use shall be dispensed by the primary care giver to qualifying patients at the dwelling or accessory structure in which a primary care giver is providing primary care giver services to qualifying patients, except to a qualifying patient who resides with the primary care giver at the dwelling. Except as provided herein, the primary care giver shall deliver all marijuana for the medical use of such qualifying patient, and such delivery shall take place on private property away from public view. Any such delivery vehicle shall be unmarked. In addition, all marijuana for medical use delivered to a qualifying patient shall be packaged so the public cannot see or smell the marijuana.

(10) No marijuana for medical use shall be consumed, smoked or ingested by a qualifying patient by any method at a dwelling or accessory structure in which a primary care giver is providing primary care giver services to qualifying patients, except by a qualifying patient who resides with the primary care giver at the dwelling.

(11) A dwelling or an accessory structure in which a primary care giver is providing primary care giver services to qualifying patients shall display indoors and in a manner legible and visible to his or her qualifying patients:

(a) A notice that qualifying patients under the age of 18 are not allowed at the dwelling or accessory structure in which a primary care giver is providing primary care giver services to qualifying patients, except in the presence of his or her parent or guardian, except when the qualifying patient resides with the primary care giver at the dwelling, or except when the qualifying patient visits are for purposes unrelated to primary care giver services; and

(b) A notice that no dispensing or consumption of marijuana for medical use shall occur at the dwelling or accessory structure in which a primary care giver is providing primary care giver services to qualifying patients, except to or by a qualifying patient who resides with the primary care giver at the dwelling.

(12) A dwelling or an accessory structure in which a primary care giver is providing primary care giver services to qualifying patients shall not have any signage.

(13) (a) No primary care giver facility shall be located in violation of any of the following spacing requirements:

1. One thousand feet from any public or private school;
2. Three hundred feet from any church or place of worship and its accessory structures;
3. Five hundred feet from the Charlevoix Public Library; and
4. Five hundred feet from the B.A.S.E.S Teen Center.

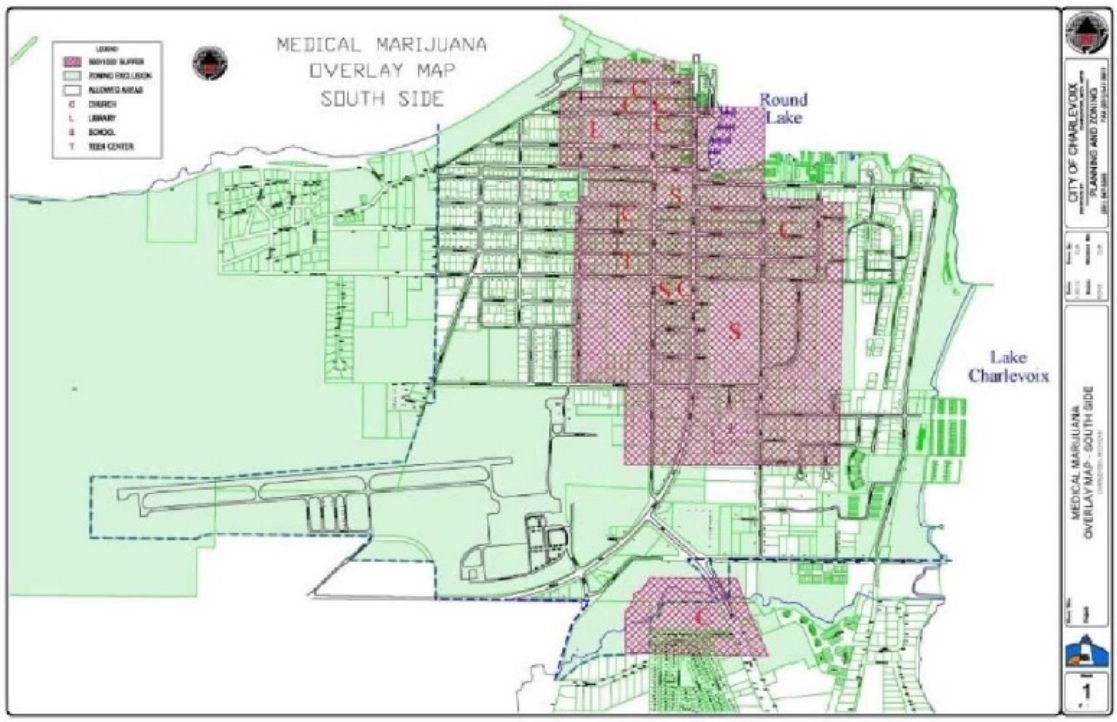
(b) The above spacing requirements shall be from lot line to lot line. The Medical Marijuana Reference Maps below illustrate the parcels where a primary care giver facility may be established. To the extent there is a conflict between the Medical Marijuana Reference Map and the application of the spacing requirements provided herein, the application of the spacing requirements shall control.

(14) The portion of the dwelling or accessory structure in which a primary care giver is providing primary care giver services to qualifying patients, including any room or area utilized to grow marijuana for medical use, shall contain electrical service and wiring, certified by an electrician licensed in the state, meeting the applicable requirements of the electrical code in effect in the county.

(15) All primary care givers must notify the Zoning Administrator on a yearly basis if the primary care giver facility is still in operation. Notification shall be in writing and shall be submitted no less than one month before and not after the month and day of the issuance of the original permit. (Example: If the original permit is issued on 2-10-2012, notification to the Zoning Administrator must be between 1-10-2013 and 2-10-2013.)

(16) Any primary care giver with a valid zoning permit who chooses to cease operations at any point in time shall notify the Zoning Administrator in writing within seven days. The Zoning Administrator shall have the right to inspect the facility for compliance.

(E) *Medical marijuana reference maps.*



(Prior Code, § 5.52) (Ord. 795, passed 11-5-2018)

§ 153.123 VEHICLE RELATED USES.

(A) *Vehicle repair, major*.

(1) All main and accessory structures shall be set back a minimum of 75 feet from any residential district.

(2) Overhead doors shall not face a public street or residential district. The Planning Commission may modify this requirement upon a determination that there is no reasonable alternative and the poor visual impact will be diminished through use of building materials, architectural features and landscaping.

(3) Where applicable, vehicle stacking space shall be provided in front of each service bay for at least two vehicles.

(4) All maintenance and repair work shall be conducted completely within an enclosed building.

(5) There shall be no outdoor storage or display of vehicle components and parts, materials, commodities for sale, supplies or equipment.

(6) Storage of wrecked, partially dismantled or other derelict vehicles or overnight parking of any vehicle, except a tow truck, shall be permitted up to 30 days in a designated area. Such area shall be located in a rear or side yard and screened from public view in accordance with the screening requirements of § 153.171(I)(5) of this chapter.

(7) If the use includes installation of oil or other automotive fluids except for fuel, the applicant shall submit a Pollution Incidence Protection Plan (PIPP). The PIPP shall describe measures to prevent ground water contamination caused by accidental spills or leakage of gasoline or other hazardous materials, such as special check

valves, drain back catch basins and automatic shut off valves, as approved by the Fire Department.

(B) *Vehicle repair, minor.*

(1) A building or structure shall be located at least 30 feet from any side or rear lot line abutting a residential district.

(2) Equipment, including hydraulic hoists, pits, and lubrication, greasing and other automobile repairing equipment shall be located entirely within an enclosed building. Outdoor storage or display of merchandise, such as tires, lubricants and other accessory equipment is not permitted.

(3) All activities shall occur inside a building. No vehicle may be stored on the property for more than 14 days.

(4) Storage of gasoline, liquefied petroleum gas, oil or other flammable liquids or gas above ground shall not be permitted.

(5) Floor drains shall not connect to the sanitary sewer system.

(6) If the use includes installation of oil or other automotive fluids, except for fuel, the applicant shall submit a Pollution Incidence Protection Plan (PIPP). The PIPP shall describe measures to prevent ground water contamination caused by accidental spills or leakage of gasoline or other hazardous materials, such as special check valves, drain back catch basins and automatic shut off valves, as approved by the fire department.

(7) If the use includes fuel sales, the requirements for a vehicle service station shall also be met.

(C) *Vehicle service station.*

(1) The site shall be located with frontage on and direct access to at least one arterial street.

(2) Minimum setback from the right-of-way shall be 30 feet for buildings and canopy structures. The setback for a canopy or similar shelter, if provided, shall be measured to the leading edge of the canopy fascia.

(3) Gasoline pumps, air and water hose stands and other appurtenances shall have a minimum setback of 25 feet from the right-of-way.

(4) Prohibited activities include outdoor storage or parking of rental or disabled or wrecked vehicles for more than seven consecutive calendar days and major vehicle repair.

(D) *Vehicle wash establishment.*

(1) All washing activities must occur inside a building.

(2) Required stacking spaces for waiting vehicles shall not be located within a public or private right-of-way and shall not conflict with maneuvering areas, parking spaces and other activities. Stacking lanes shall be designed to prevent vehicle queues from extending beyond the property.

(3) Wastewater must be recycled, filtered or otherwise cleansed to minimize discharge of soap, wax and solid matter into public sewers.

(4) Only one driveway shall be permitted from any street, unless the Planning Commission determines additional driveways will be necessary to ensure safe and efficient access to the site.

(5) For automated drive-through wash facilities, a by-pass lane is required that allows by-passing waiting vehicles.

(6) Overhead doors shall not face a street, except if approved by the Planning Commission in these circumstances:

(a) When the doors of a through-garage are located at the front and rear of a building;

(b) When a garage is located on a corner or through lot; or

(c) When determined that a rear garage door would negatively affect an abutting residential use or district.

(7) The property owner or operator must comply with all applicable noise regulations. Air handling equipment shall be located on a roof, be equipped with intervening noise reduction baffles, be in proper working condition and comply with this provision.

(Prior Code, § 5.53)

§ 153.124 INDUSTRIAL AND STORAGE USES.

(A) *Self-storage facility.*

(1) Minimum separation between self-storage buildings shall be 24 feet.

(2) Internal drive aisles shall be at least 20 feet wide; however, drives located between self-storage buildings and the property line may be one-way (and shall be marked as such) and 12 feet in width.

(3) All buildings shall be one story and shall not exceed 20 feet in height.

(4) An individual storage building shall not exceed 7,500 square feet.

(5) Except for recreational vehicles, motor homes and travel trailers, which may be stored outdoors, all other items shall be stored in an enclosed building. An outdoor storage area must be paved and completely screened from view from all adjacent residential districts and uses.

(6) Limited sales of products and supplies incidental to the principal use, such as packing materials, identification labels, rope, locks, tape and the like are permitted. Other uses such as auctions (except those authorized by the county for abandoned or garnished assets), sales or businesses of any other type are prohibited. The storage of combustible or flammable liquids, combustible fibers or explosive materials, as defined in the fire protection code, or toxic materials is also prohibited.

(Prior Code, § 5.54)

§ 153.125 OTHER USES.

(A) *Athletic courts.*

(1) Full sized regulation athletic courts, including basketball, tennis and pickle ball courts shall be allowed in the Private Club Residential (PC), High Density Residential (R4), Scenic Reserve (SR), and Public Facilities (P) zones. These courts may be enclosed by fencing not to exceed 15 feet tall and shall not be lit at night unless the court is in use.

(2) Athletic courts are permitted in the Low Density Single-family Residential (R1) and Medium Density Single-family Residential (R2) districts; provided that, they meet the following requirements.

(a) No athletic court shall be located in any front or side yard, nor shall any athletic court be located closer than five feet from any property line.

(b) No athletic court shall exceed 1,500 square feet in area.

(c) Athletic courts shall not be lighted.

(d) Fencing for athletic courts shall meet the requirements of § 153.145 of this chapter for fences.

(e) Athletic courts shall be included in calculating lot coverage for the underlying district.

(B) *Mineral extraction operations.*

(1) A special use approval shall be required for mineral extraction operations, including removal of soil, sand or gravel, where more than 600 cubic yards will be removed. The special use permit shall be subject to approval by the Planning Commission following a public hearing. Once issued, the special use may be reviewed annually by the Planning Commission to ensure that the operation conforms to all plans, progress, conditions and sureties. Removal operations shall not begin until the special use is approved and a zoning compliance permit is issued.

(2) Application. In addition to the submittals for a special use outlined in § 153.251 of this chapter, an application for a mineral extraction permit shall be accompanied by the following:

(a) A topographic map with two-foot contour intervals including the locations of all streets, buildings and existing drainage facilities within 300 feet of the property;

(b) A topographic map with two-foot contour intervals showing final elevations, including the proposed locations of access drives, parking areas and equipment;

(c) An estimated schedule for removal and an agreement conforming to all provisions of this section;

(d) A traffic control plan showing proposed truck routes to and from the site;

(e) A written description of proposed post-removal use of the property;

(f) A reclamation plan showing final grading of the site with two-foot contours, vegetation, roadways and other features to be installed; and

(g) A fee, determined by the City Manager, with input from staff to defray review, administration and inspection costs.

(3) *Requirements.* A special use permit shall not be issued unless activities comply with all the following requirements and the Planning Commission finds that there will be no serious consequences to the immediate area or community at large. A special use permit may be revoked if the use is found in violation of any part of this section.

(a) Activities shall comply with applicable soil erosion and sedimentation control regulations.

(b) Final grades shall not exceed 5% and shall meet existing elevations at all property lines. Grades in excess of 5% may be permitted by the Planning Commission if the applicant demonstrates that an increase is essential to implement a plan for future use.

(c) The limits of the excavation shall be at least 50 feet from any adjoining property line and 100 feet from any street right-of-way or private street easement line.

(d) Mineral extraction shall not create permanent depressions that may fill with water. All storm runoff must discharge into existing drainage systems.

(e) Since artificial lakes and water bodies can present threats of ground water pollution and stagnant water, thereby adversely affecting the public health, safety and welfare, they shall not be created as part of removal operations unless the applicant demonstrates:

1. Engineering and geological studies find there will be a positive source of unpolluted underground or stream-fed water in adequate amounts to produce positive water flow at all times;

2. Plans for the proposed artificial lake or water body have received all state approvals and conform to all federal, state, county and municipal standards;

3. A site plan of the proposed future development has been approved by the city; and

4. In an artificial lake or water body, a channel or lagoon shall not project beyond the main body of water greater than two times the width of the channel or lagoon.

(4) *Conditions.* Conditions may be imposed pursuant to the special land use provisions of § 153.252 of this chapter. Such conditions may include the reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures and traffic unless prohibited by the state's Zoning Enabling Act or other applicable law. All conditions shall be reasonable in accommodating customary mining operations.

(5) *Financial guarantee.* The city may require a financial guarantee in accordance with § 153.239 of this chapter to ensure compliance with the zoning ordinance and any conditions of approval.

(C) *Similar uses.*

(1) Applications for a use not specifically authorized in a zoning district, but similar to others that are identified, shall be submitted to the Planning Commission for review and a decision, based on the following.

(a) The Planning Commission shall first find that the proposed use is not listed as a permitted or special land use in any other district.

(b) If the use is not permitted elsewhere, the Planning Commission shall review the district purpose, permitted uses and special land uses in the zoning district to determine if the proposed use is consistent with the district purpose and is similar to other allowed uses relative to its character, scale and overall compatibility.

(c) The use would not be more appropriate within a different zoning district.

(2) If a proposed use is determined to be similar to other uses listed within the district, it shall comply with all the standards or requirements associated with the similar listed use(s). If the listed use(s) is a special land use, the similar use shall only be approved according to the requirements of §§ 153.250 through 153.257 of this chapter.

(3) The determination of whether a proposed use is similar to another listed use shall be considered as an interpretation of the use regulations and not a use variance. Once a use has been determined to be similar, it shall be deemed to be included in the list of uses, as regulated.

(D) *Wireless telecommunications towers.*

(1) *Required approvals.* The placement of communication facilities shall meet the following approval requirements.

(a) *Installation of a new antenna.* The installation of a new antenna(s) on an existing tower, including a legal non-conforming tower, and existing alternative structure (such as a water tower, building or church steeple) may be approved administratively by the Zoning Administrator, provided all the requirements of this subsection are met; however, such an installation on a city-owned or other municipal-owned structure must first be approved by the City Council. A new antenna that adds either 10% or 25 feet, whichever is less, to the highest point of an existing tower or alternative structure is subject to the provisions of this section for the installation of a new tower as described by divisions (D)(6) and (D)(7) below.

(b) *Installation of a new tower.* The installation of a new tower(s) requires approval of a special land use permit according to §§ 153.250 through 153.257 of this chapter.

(c) *Installation of a new accessory structure.* The installation of a new accessory structure(s), such as an equipment building, to support the installation of an additional antenna on an existing tower or alternative structure may be approved administratively by the Zoning Administrator; provided that, adequate space exists on the tower site.

(2) *Removal.* A tower that is unused or abandoned for 12 consecutive months shall be removed by the property owner at their expense.

(3) *Interference with public safety facilities.* A new telecommunications facility shall not interfere with public safety telecommunications.

(4) *Required documentation for all facilities.* In addition to the requirements provided in §§ 153.250 through 153.257 of this chapter for special land use and/or for land use permit submittals, an application for a new tower, new antenna and new related facilities shall include the following. Where an alternative structure is used, comparable information for that structure shall be provided.

(a) *Engineer's report.* A report from a professional engineer licensed in the state that:

1. Describes the height and design of a new tower and/or antenna including a cross-section, latitude, longitude and elevation;

2. Describes or updates (in the case of new antennas) the tower's capacity, including the type and number of antennas it can accommodate;

3. Certifies that construction specifications comply with all applicable requirements of the building codes adopted by the city, including, but not limited to, tower foundation, guy wire anchors (if used), collocation and strength requirements for natural forces (ice, wind, earth movements and the like);

4. Certifies the facility will not interfere with established public safety telecommunications; and

5. Includes an engineer's seal and registration number.

(b) *Proof of compliance.* Copies of required approvals from the Federal Communications Commission (FCC), Federal Aviation Administration (FAA) and all other appropriate state and federal agencies.

(c) *Removal affidavit.* A letter committing all parties, including the property owner and their successors, to remove the tower and all related accessory structures, fences and equipment if the tower is abandoned. The removal affidavit shall be recorded in the county's Register of Deeds, with a copy of the recorded affidavit provided to the Zoning Administrator.

(5) *Determination of new tower need.* A new telecommunications tower may only be approved if the applicant has submitted verification from a professional engineer licensed in the state that the antenna(s) planned for the proposed new tower cannot be accommodated on an existing or approved tower or other structure within a two-mile radius of the proposed tower location due to one or more of the following:

(a) *Inadequate structural capacity.* The antenna(s) would exceed the structural capacity of the existing or approved tower or other structure;

(b) *Interference.* The antenna would cause interference, impacting the usability of other existing or planned equipment at the tower site;

(c) *Inadequate height.* The existing or approved towers or structures within the search radius cannot accommodate the planned equipment at the necessary height; and

(d) *Land availability.* Additional land area is not available.

(6) *Design requirements for new towers and related facilities.* All telecommunications facilities shall meet the following design requirements.

(a) *Lighting.* Tower lighting shall only be as required for safety or security reasons or as required by the FAA or other federal or state authority. All ground level security lighting shall be full sharp cut-off fixtures (shielded down lights).

(b) *Collocation.* All telecommunication towers shall be designed, and engineered structurally, electrically and in all other respects to accommodate both the applicant's equipment and at least one additional user for every 50 feet, or fraction thereof, in total tower height in excess of 75 feet.

(c) *Assumption.* Each additional user shall be assumed to have an antenna loading equal to that of the initial user.

(d) *Rearrangement.* Towers must be designed to allow for rearrangement of antennas and to accept antennas mounted at varying heights.

(e) *Height.* All towers and antennas shall conform with all FAA tall structure requirements. The maximum height of all accessory structures shall be 14 feet.

(f) *Signs.* Signs for all telecommunications facilities shall be permitted up to a total of four square feet per user, mounted on the associated equipment building. Signs required for technical and safety information shall be exempt from this requirement.

(7) *Site requirements for new towers and related facilities.* All new telecommunications facilities shall meet the following site requirements.

(a) *Vehicular access.* Vehicle access drives may be gravel or paved and shall be located within an access easement that is at least 20 feet wide. Any portion of the entrance located in a public right-of-way shall meet the applicable public street or road design, construction and pavement requirements.

(b) *Site area.* A tower shall be located on a lot (or lease area) that is sufficiently large to accommodate the use and all anticipated accessory structures for future antenna users.

1. The arrangement of the tower and site topography shall be considered when determining if the site area is sufficient.

2. All tower support and stabilizing wires shall be located within the site area.

(c) *Setback.* The minimum required setbacks for the tower and related facilities shall be as follows:

1. Minimum side and rear setback: 50 feet from all property lines;

2. Front yard setback: as specified for the zoning district in which the tower is located; and

3. Additional setback from residential districts: a tower and related facilities shall not be closer than a distance equal to the total height of the tower plus antennas to a property within a residential district, and no closer than one-half the height of the tower plus antennas to a property line in any other district.

(d) *Encroachment.* No part of any telecommunications facility nor associated lines, cables, equipment, wires or braces shall at any time extend across or over any part of a public right-of-way, sidewalk or property line.

(e) *Fencing.* An eight-foot high security fence shall completely surround the tower and accessory equipment building site. Sharpened or electrified fencing is not permitted. An area ten feet in width shall remain outside of the fence for the purpose of providing the landscape screening described below.

(f) *Landscape screening.* Evergreen buffer plantings shall be located and maintained around the outermost perimeter of the security fence of all communication facilities. The landscape plan shall show all plantings and shall be approved by the Zoning Administrator or Planning Commission, as applicable, as part of the review and approval process.

1. Evergreen trees shall be planted around the perimeter of the security fence, every ten feet apart on center.

2. If evergreen hedges are used, they shall be planted a maximum of five feet apart on center.

(E) *Short-term rentals.* Short-term rentals shall be regulated as provided in Chapter 114 of this code.

(F) *Small wireless communications facilities deployment ordinance.*

(1) This division shall be known and may be cited as the "small wireless communications facilities deployment ordinance."

(2) *Definitions*. For the purposes of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ACT. The small wireless communications facilities deployment act, Public Act 365 of 2018, being M.C.L.A. §§ 460.1301 et seq., as the same may be amended from time to time.

ANTENNA. Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

APPLICANT. A wireless provider or wireless infrastructure provider that submits an application described in this division.

AUTHORITY. The City of Charlevoix, to the extent authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application described in this division. ***AUTHORITY*** does not include any of the following:

1. A municipally owned electric utility.

2. An investor-owned utility whose rates are regulated by the Michigan Public Service Commission.

3. A state court having jurisdiction over an authority.

AUTHORITY POLE. A utility pole owned or operated by an authority and located in the ROW.

COLOCATE or COLLOCATION. To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. ***COLLOCATION*** has a corresponding meaning. ***COLOCATE*** does not include make-ready work or the installation of a new utility pole or new wireless support structure.

FEE. An authority one-time per small cell site charge for application processing.

HISTORIC DISTRICT. An officially designated historic district.

MAKE-READY WORK. Work necessary to enable an authority pole or utility pole to support collocation, which may include modification or replacement of utility poles or modification of lines.

MICRO WIRELESS FACILITY. A small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

PUBLIC RIGHT-OF-WAY or ROW. The area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. ***PUBLIC RIGHT-OF-WAY*** does not include any of the following:

1. A private right-of-way.

2. A limited access highway.

3. Land owned or controlled by a railroad as defined in § 109 of the Railroad Code of 1993, Public Act 354 of 1993, being M.C.L.A. § 462.109.

4. Railroad infrastructure.

RATE. An authority annual charge per site.

SMALL CELL WIRELESS FACILITY. A wireless facility that meets both of the following requirements:

1. Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than six cubic feet.

2. All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

UTILITY POLE. A pole or similar structure that is or may be used to support small cell wireless facilities. ***UTILITY POLE*** does not include a sign pole less than 15 feet in height above ground.

WIRELESS FACILITY. Wireless equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. ***WIRELESS FACILITY*** includes a small cell wireless facility. ***WIRELESS FACILITY*** does not include any of the following:

1. The structure or improvements on, under, or within which the equipment is colocated.

2. A wireline backhaul facility.

3. Coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.

WIRELESS PROVIDER. A regulated provider of telecommunications services and a ***WIRELESS INFRASTRUCTURE PROVIDER*** is an installer of wireless equipment at small cell sites and, both terms are interchangeable terms for purposes of this division. ***WIRELESS PROVIDER*** does not include an investor-owned utility whose rates are regulated by the MPSC.

WIRELESS SERVICES. Any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

WIRELESS SUPPORT STRUCTURE. A freestanding structure designed to support or capable of supporting small cell wireless facilities. ***WIRELESS SUPPORT STRUCTURE*** does not include a utility pole.

WIRELINE BACKHAUL FACILITY. A facility used to transport services by wire or fiber-optic cable from a wireless facility to a network.

(3) *Scope of authority.*

(a) Except as provided in this division or the Act, the authority shall not prohibit, regulate, or charge for the collocation of small cell wireless facilities.

(b) The approval of a small cell wireless facility under this division authorizes only the collocation of a small cell wireless facility and does not authorize either of the following:

1. The provision of any services.

2. The installation, placement, modification, maintenance, or operation of a wireline in the ROW.

(c) The terms of this division do not permit the wireless provider to operate a cable system or to provide cable service, as those terms are defined by § 602 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. § 522), or install any wires or facilities that are required to be permitted under the METRO Act, Public Act 48 of 2002, being M.C.L.A. § 484.310, including any part of a small cell wireless facility constituting wireline telecommunication facilities.

(4) *Small cell ROW access; permitted use; height; underground, downtown, residential and historic districts.*

(a) This division applies only to activities of a wireless provider within the public right-of-way for the deployment of small cell wireless facilities and associated new or modified utility poles.

(b) The authority shall not enter into an exclusive arrangement with any person for use of the ROW for the construction, operation, or maintenance of utility poles or the collocation of small cell wireless facilities.

(c) 1. The authority shall not charge a wireless provider an annual rate more than:

a. $20 annually, unless division b. below applies.

b. $125 annually, if a new utility pole or wireless support structure was erected at a new site by or on behalf of the wireless provider on or after the effective date of this division. This division does not apply to the replacement of an existing utility pole that was not designed to support small cell wireless facilities.

2. Every five years after the effective date of the Act, the maximum rates are increased by 10% and rounded to the nearest dollar.

(d) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except for new small cell dedicated utility poles installed and operational in the ROW before the effective date of this division or related agreements, which shall remain in effect for the duration of the division or agreement.

(e) Except as set forth in §§ 153.125(F)(5) or (6), and as limited by this division, a wireless provider may colocate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the ROW as a permitted use not subject to zoning regulation if it complies with all other sections of this division and if:

1. A utility pole in the ROW installed or modified on or after the effective date of this division shall not exceed 40 feet above ground level, unless a taller height is agreed to by the authority.

2. A small cell wireless facility in the ROW installed or modified after the effective date of this division shall not extend more than five feet above a utility pole or wireless support structure on which the small cell wireless facility is colocated.

3. Such structures and facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel or public safety on the ROW or obstruct the legal use of the authority's ROW or uses of the ROW by other utilities and communications service providers.

(f) A proposed utility pole or other support structure that exceeds the height limits under § 153.125(F)(4)(e), is subject to zoning review.

(g) *Undergrounding*. A wireless provider shall comply with reasonable and nondiscriminatory requirements including concealment measures that prohibit communications service providers from installing structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities, if:

1. The authority has required all cable and utility facilities, other than authority poles, along with any attachments, or poles used for street lights, traffic signals, or other attachments necessary for public safety, to be placed underground by a date that is not less than 90 days before the submission of the application; and

2. The authority does not prohibit replacement of authority poles by a wireless provider in the designated area.

3. A wireless provider may apply for a waiver of the undergrounding requirements.

(h) *Historic, downtown and residential districts*. A wireless provider shall comply with written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral designs or concealment measures in a historic district, downtown district, or residential zoning district. Such requirement shall not have the effect of prohibiting any wireless provider's technology. Any such design or concealment measures are not included in size restrictions in the definition of small wireless facility in this division.

(i) *Aesthetic requirements*. Wireless providers shall install, modify, collocate or otherwise provide all wireless facilities, equipment, poles, support structures and all other related wireless objects in a manner, size and appearance that is consistent and in conformity with the existing requirements and existing practices in fact, pertaining to such districts as defined by the applicable ordinances, rules and codes of this community and the applicable rules and laws of this state, in such fashion as to create the least negative impact on the district as possible. Such accommodations may include use of similar height, materials, color, design, number and appearance of other similar structures utilized by other occupiers of the ROW and public spaces.

1. Collocation including replacement of existing poles or support structures is strongly encouraged over the installation of additional new poles or support structures in the ROW.

2. Placement of all equipment inside the pole or support structure is favored over placement outside the pole, including ground mountings.

3. Smallest equipment, antennas and poles and support structures feasible is preferred.

4. Camouflaging, stealth or concealment elements are preferred.

5. Installations generally are favored in the following zoning districts, in the following order of preference:

a. 1st Preference: Industrial

b. 2nd Preference: Commercial

c. 3rd Preference: Residential

d. 4th Preference: Historic

e. 5th Preference: Environmentally sensitive areas including nature and wetland preservation sites

6. Disagreements between the provider and authority on specific aesthetics issues shall be addressed by the City Council upon timely written request of the provider. Staff and City Council may consider incentives favoring installations in preferred districts.

(j) All wireless providers shall repair all damage to the ROW caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and, to return the ROW to its original condition. Following 60 days' written notice, the authority may make those repairs and charge the wireless provider the cost of the repairs.

(5) *Provider and authority responsibilities; application information; shot clocks; tolling; deemed approved; basis for denial; resubmittal; batch applications; application fees; micro wireless facility exemption; alternative siting; decommissioning sites.*

(a) This division applies to activities of a wireless provider within the public right-of-way.

(b) Except as otherwise provided in this division or the Act, a wireless provider shall seek an authority ROW access permit to colocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be colocated as required of all ROW users. The processing of an application for an authority ROW access permit is subject to all of the following:

1. Unless physically or technically infeasible, all small wireless facilities shall be constructed to accommodate two or more users. Any wireless provider must openly allow another provider to colocate upon its wireless facility under rates and conditions that are acceptable within the industry to promote collocation. Collocation of small cell wireless facilities is strongly encouraged.

2. In-kind contributions to the authority are not permitted in lieu of rates and fees described above unless all parties voluntarily agree in furtherance of the interests of both.

3. The applicant shall provide all the information and documentation required by the authority to enable the authority to make an informed decision with regard to its criteria for authorizing ROW access including the following:

a. A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility;

b. Proof of notification to every other affected authority and all necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained;

c. An attestation that the small cell wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date. Failure to abide by this term shall result in termination of any permit issued in reliance on such attestation.

4. Within 25 days after receiving an initial application, the authority shall notify the applicant in writing whether the application is complete. If incomplete, the notice will delineate all missing documents or information. The notice tolls the running of the time for approving or denying an application under § 153.125(F)(5)(b)6.

5. If the applicant makes a supplemental submission in response to the authority's notice of incompleteness, the authority will so notify the applicant in writing within ten days, delineating the previously requested and missing documents or information. The time period for approval or denial is tolled in the case of second or subsequent notices under the procedures identified in § 153.125(F)(5)(b)4.

6. The authority shall approve or deny the application and notify the applicant in writing within the following period of time after the application is received:

a. *Collocation shot clock*. For an application for the collocation of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:

(i) Add 15 days if an application from another wireless provider was received within one week of the application in question.

(ii) Add 15 days if the authority notifies the applicant in writing that an extension is needed and the reasons for the extension before the otherwise applicable 60-day or 75-day time period under this division elapses.

b. *New or replacement 40-foot pole and limited equipment* . For an application for a new or replacement utility pole that meets the height requirements of § 153.125(F)(4)(e) and associated small cell facility, 90 days, subject to the following adjustments:

(i) Add 15 days if an application from another wireless provider was received within one week of the application in question.

(ii) Add 15 days if, a timely extension is requested.

(iii) *Deemed approved*. A completed application is considered to be approved if not timely acted upon by the authority and, subject to the condition that the applicant provide the authority not less than seven days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

7. *Basis for denial*. The authority may deny a completed application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements in § 153.125(F)(4)(e) if the proposed activity would do any of the following:

a. Materially interfere with the safe operation of traffic control equipment;

b. Materially interfere with sight lines or clear zones for transportation or pedestrians;

c. Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.

d. Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of an authority.

e. With respect to drainage infrastructure under the jurisdiction of an authority, either of the following:

(i) Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.

(ii) Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code of 1956, Public Act 40 of 1956, being M.C.L.A. §§ 280.1 through 280.630, and access to the drainage infrastructure.

f. Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.

g. Fail to comply with all other applicable codes.

h. Fail to comply with §§ 153.125(F)(4)(g) or (h) relating to Undergrounding and Historic, Downtown, and Residential Districts.

i. Fail to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a historic district or other designated area, as specified in an ordinance or otherwise and non-discriminatorily applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the authority.

8. *Reasons for denial; resubmission and 30-day shot clock* . If the completed application is denied, the notice shall explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial is based. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after the denial without paying an additional application fee. The authority shall approve or deny the revised application within 30 days. The authority shall limit its review of the revised application to the deficiencies cited in the denial.

9. *Batch applications*. An applicant may file an application and receive a single permit for the collocation of up to 20 substantially similar small cell wireless installations. The authority may approve or deny one or more small cell wireless facilities included in such consolidated application.

10. Approval of an application authorizes the wireless provider to undertake the installation, collocation and maintenance of such facilities.

11. The authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of small cell wireless facilities or the installation, modification, or replacement of utility poles on which small cell wireless facilities will be colocated.

12. The authority and an applicant may extend a time period under this division by mutual agreement.

(c) 1. Application fee for a permit under § 153.125(F)(5)(b) shall not exceed the lesser of the following:

a. $200 for each small cell wireless facility alone.

b. $300 for each small cell wireless facility and a new utility pole to which it will be attached.

2. Every five years after the effective date of the Act, the maximum fees are increased by 10% and rounded to the nearest dollar.

(d) The authority may revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole fail to meet the requirements of § 153.125(F)(5)(b)7.

(e) *Micro wireless facility exempt*. The authority shall not require a permit or any other approval or require fees or rates for ordinance compliant replacement, maintenance or operation of a small cell wireless facility or ordinance compliant installation, replacement, maintenance or operation of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.

(f) *Alternate siting*. Upon receipt of an application to place a new utility pole, the authority may propose an alternate location within the ROW or on property or structures owned or controlled by the authority within 75 feet of the proposed location to either place the new utility pole or colocate on an existing structure. The applicant shall use the alternate location if, as determined by the applicant, the applicant has the right to do so on reasonable terms and conditions and the alternate location does not impose unreasonable technical limits or significant additional costs.

(g) *Decommissioning sites*. A wireless provider shall notify the authority in writing before discontinuing use of a small cell wireless facility, utility pole, or wireless support structure. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure. The wireless provider shall return the property to its pre-installation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the authority may complete the removal and assess the costs of removal against the wireless provider. A permit under this division for a small cell wireless facility expires upon removal of the small cell wireless facility.

(h) A wireless provider shall obtain a permit for any work that will affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.

(6) *Zoning review for non-permitted uses.*

(a) This division applies to zoning reviews for the following activities that are subject to zoning review and approval, that are not a permitted use under § 153.125(F)(4)(e), and that take place within or outside the public right-of-way:

1. The modification of existing or installation of new small cell wireless facilities.

2. The modification of existing or installation of new wireless support structures used for such small cell wireless facilities.

(b) The processing of an application for a zoning approval is subject to all of the following requirements:

1. Within 30 days after receiving an application under this division, the authority shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically delineate all missing documents or information. The notice tolls the running of the 30-day period.

2. The running of the time period tolled under § 153.125(F)(6)(b)1 resumes when the applicant makes a supplemental submission in response to the authority's notice of incompleteness. If the applicant makes a supplemental submission in response to the authority's notice of incompleteness, the authority will so notify the applicant in writing within ten days, delineating the previously requested and missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in division § 153.125(F)(6)(b)1. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

3. *Modification of support structure or collocation or installation of wireless facilities shot clock 90 days - new support structure shot clock 150 days; modification by agreement; deemed approved*. The authority shall approve or deny the application and notify the applicant in writing within 90 days after an application for a modification of a wireless support structure or installation of a small cell wireless facility is received or 150 days after an application for a new wireless support structure is

received.

a. The time period for approval may be extended by mutual agreement between the applicant and authority.

b. If the authority fails to comply with this division, the application is considered to be approved subject to the condition that the applicant provide the authority not less than 15 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

4. The authority may deny an application if all of the following apply:

a. The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.

b. There is a reasonable basis for the denial.

c. The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

(c) The authority's review of an application for a zoning approval is subject to all of the following requirements:

1. *Applicant presumed reasonable*. An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of wireless facilities or wireless support structures. The authority may consider the height of such structures in its zoning review, but shall not discriminate between the applicant and other communications service providers.

2. The authority shall not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:

a. The need for a wireless support structure or small cell wireless facilities.

b. The applicant's service, customer demand for the service, or the quality of service.

3. Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, shall be reasonable.

4. Any spacing, setback, or fall zone requirement shall be substantially similar to a spacing, setback, or fall zone requirement imposed on other types of commercial structures of a similar height.

(d) Application fees:

1. $1,000 for a new wireless support structure or modification of an existing wireless support structure.

2. $500 for a new small cell wireless facility or modification of an existing small cell wireless facility.

(e) All zoning approval is void if the wireless provider fails to commence construction within one year of the grant of same, unless the authority and the applicant agree to extend this period or the delay is caused by a lack of commercial power or communications facilities at the site. The wireless provider may reapply for a zoning approval.

(f) A wireless provider may voluntarily request that a zoning approval be terminated.

(g) The authority shall not institute a moratorium on either of the following:

1. Filing, receiving, or processing applications for zoning approval.

2. Issuing approvals for installations that are not a permitted use.

(h) The authority may revoke a zoning approval, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated wireless support structure fail to meet the requirements of the approval, applicable codes, or applicable zoning requirements.

(7) *Authority owned poles; rates; terms.*

(a) The authority shall not enter into an exclusive arrangement with any person for the right to attach to authority poles. A person who purchases, controls, or otherwise acquires an authority pole is subject to the requirements of this division.

(b) *Rate*. The rate for the collocation of small cell wireless facilities on authority poles shall be nondiscriminatory regardless of the services provided by the colocating person. The rate shall not exceed $30 per year per authority pole. Every five years after the effective date of the Act, the maximum rate then authorized under this division is increased by 10% and rounded to the nearest dollar. This rate for the collocation of small cell wireless facilities on authority poles is in addition to any rate charged for the use of the ROW under § 153.125(F)(4).

(c) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except with respect to wireless facilities on authority poles installed and operational before the effective date of this division or any related agreement, which shall remain in effect for the duration of the division or agreement.

(d) Within 90 days after receiving the first request to colocate a small cell wireless facility on an authority pole, the authority shall make available, through ordinance or otherwise, the rates, fees, and terms for the collocation of small cell wireless facilities on the authority poles. The rates, fees, and terms shall comply with all of the following:

1. The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with the Act.

2. The authority shall provide a good-faith estimate for any make-ready work within 60 days after receipt of a complete application. Make-ready work shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant.

3. The person owning or controlling the authority pole shall not require more make-ready work than required to comply with law or industry standards.

4. Fees for make-ready work shall not do any of the following:

a. Include costs related to preexisting or prior damage or noncompliance unless the damage or noncompliance was caused by the applicant.

b. Include any unreasonable consultant fees or expenses.

c. Exceed actual costs imposed on a nondiscriminatory basis.

(e) This division does not require the authority to install or maintain any specific authority pole or to continue to install or maintain authority poles in any location if the authority makes a nondiscriminatory decision to eliminate aboveground poles of a particular type generally, such as electric utility poles, in a designated area of its geographic jurisdiction. For authority poles with colocated small cell wireless facilities in place when an authority makes a decision to eliminate aboveground poles of a particular type, the authority shall do one of the following:

1. Continue to maintain the authority pole.

2. Install and maintain a reasonable alternative pole or wireless support structure for the collocation of the small cell wireless facility.

3. Offer to sell the pole to the wireless provider at a reasonable cost.

4. Allow the wireless provider to install its own utility pole so it can maintain service from that location.

5. Proceed as provided by an agreement between the authority and the wireless provider.

(8) *No provider requirement of service.* This division does not require wireless facility deployment or regulate wireless services.

(9) *Appeals.* The applicant may appeal any authority determinations related to this division to the highest elected body of the authority or, the Charlevoix County

Circuit Court.

(10) *Defense, indemnity and insurance*. All applicant wireless providers shall:

(a) Defend, indemnify, and hold harmless the authority and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, its contractors, its subcontractors, and the officers, employees, or agents of any of these.

(b) Obtain insurance naming the authority and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees. A wireless provider may meet all or a portion of the authority's insurance coverage and limit requirements by self-insurance. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the authority evidence demonstrating, to the authority's satisfaction, the wireless provider's financial ability to meet the authority's insurance coverage and limit requirements.

(11) *Bonding.*

(a) As a condition of a permit described in this act, the wireless provider shall provide a $1,000 bond per small cell wireless facility, for the purpose of providing for the removal of abandoned or improperly maintained small cell wireless facilities, including those that an authority determines should be removed to protect public health, safety, or welfare, to repair the ROW as provided under § 153.125(F)(4)(b) and, to recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the authority of the noncompliance.

(b) The authority shall not require a cash bond, unless the wireless provider has failed to obtain or maintain a bond required under this division or the surety has defaulted or failed to perform on a bond given to the authority on behalf of a wireless provider.

(12) *Labeling.* A small cell wireless facility for which a permit is issued shall be labeled with the name of the wireless provider, emergency contact telephone number, and information that identifies the small cell wireless facility and its location.

(13) *Electric costs*. A wireless provider is responsible for arranging and paying for the electricity used to operate a small cell wireless facility.

(14) *Investor owned utilities.*

(a) This division does not add to, replace, or supersede any law regarding poles or conduits, similar structures, or equipment of any type owned or controlled by an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, or an independent transmission company.

(b) This division does not impose or otherwise affect any rights, controls, or contractual obligations of an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, or an independent transmission company with respect to its poles or conduits, similar structures, or equipment of any type.

(c) Except for purposes of a wireless provider obtaining a permit to occupy a right-of-way, this division does not affect an investor-owned utility whose rates are regulated by the MPSC. Notwithstanding any other provision of this division, pursuant to and consistent with § 6g of Public Act 470 of 1980, being M.C.L.A. § 460.6g, the MPSC has sole jurisdiction over attachment of wireless facilities on the poles, conduits, and similar structures or equipment of any type or kind owned or controlled by an investor-owned utility whose rates are regulated by the MPSC.

(Prior Code, § 5.55) (Ord. 784, passed 10-16-2017; Ord. 794, passed 9-17-2018; Ord. 820, passed 6-1- 2020)

PROVISIONS GENERALLY APPLICABLE TO ALL DISTRICTS

§ 153.140 ACCESS.

(A) All lots shall have frontage on a dedicated public or private street.

(B) A copy of an approved driveway permit from the city, the county or MDOT, as applicable, shall be required.

(C) Multiple-family, commercial, office or industrial developments consisting of multiple buildings need not front each structure within the development upon publicly dedicated streets.

(Prior Code, § 5.60) Penalty, see § 153.999

§ 153.141 BUILDING REGULATIONS.

(A) *Conformity required.* Buildings or structures shall not be erected, constructed, used, reconstructed, altered or maintained; and any lot or land shall not be used or maintained; and a new use shall not be made of any building, structure or land, except in conformity with the provisions of this chapter.

(B) *Unlawful building.* Any building that is used, erected, occupied or altered contrary to the provisions of this chapter shall be deemed an unlawful structure and a nuisance and may be required to be vacated, torn down or abated by any legal means, and shall not be used or occupied until it has been made to conform to the provisions of this chapter. Public expenditures toward abating such nuisance shall become a lien upon the land.

(C) *Required space.* Any space used for a required setback, open space or lot area for a building may not be counted or calculated to meet the same requirements for any other building.

(D) *Frontage.* No principal building shall be erected on a lot, unless that lot fronts, as required by § 153.140, upon an improved street or access road. Multiple-family, commercial, office, industrial, or other developments may be exempt from this requirement, as provided in § 153.140.

(E) *One lot, one building.* A lot or parcel shall not be devoted to more than one principal use, or contain more than one principal building, except for properties in the CBD District and groups of multiple-family dwellings, commercial buildings or industrial buildings determined by the Zoning Administrator to be a principal use collectively, based on meeting all of the following criteria:

(1) Individual buildings share common parking areas, signs, access and similar features;

(2) Buildings are under single ownership;

(3) Individual activities support one another (such as vehicle sales/vehicle repair or gas station/restaurant/ convenience store); and

(4) Buildings are architecturally unified and compatible.

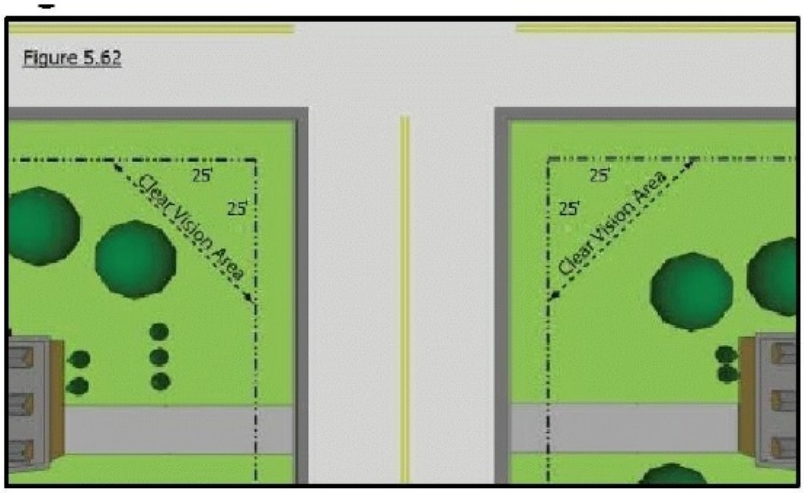
(Prior Code, § 5.61) (Ord. 795, passed 11-5-2018) Penalty, see § 153.999

§ 153.142 CORNER CLEARANCE (CLEAR VISION TRIANGLE).

(A) Fences, walls, structures or plantings shall not be erected, established or maintained on any lot that will obstruct the view of drivers in vehicles approaching the intersection adjacent to a corner lot or a driveway on any lot.

(B) Fences, walls, structures or plantings located in the clear vision triangle, as depicted below, shall not be permitted to exceed a height of 36 inches above the lowest point of the intersecting street(s). The unobstructed triangular area is described as follows:

(1) The area formed at the corner intersection of two street right-of-way or easement lines, the two sides of the triangular area being 25 feet in length measured along abutting public right-of-way lines and third side being a line connecting these two sides; and



(2) The area formed at the corner intersection of a street right-of-way, easement or alley and a driveway, the two sides of the triangular area being 15 feet in length measured along the right-of-way line and edge of the driveway, and the third side being a line connecting these two sides.

(Prior Code, § 5.62) Penalty, see § 153.999

§ 153.143 ESSENTIAL SERVICES.

(A) Essential services shall be permitted as authorized under any franchise in effect within the city, subject to regulation as provided in any law of the state or in any ordinance of the city.

(B) It is the intent of this section to ensure conformity of all structures and uses to the requirements of this chapter wherever such conformity shall be practicable and not in conflict with the specific requirements of such franchise, legislation or other city ordinance. In the absence of such conflict, the zoning ordinance shall prevail.

(C) Wireless communication facilities are not considered essential services and shall be subject to the requirements of § 153.125(D) of this chapter.

(Prior Code, § 5.63) Penalty, see § 153.999

§ 153.144 GRADING.

(A) Elevations for any site with a building located on it shall have a grade sloping away from the walls of the building to permit the flow of surface water. However, sunken or terraced areas may be permitted if they are constructed to prevent run-off surface water from flowing onto adjacent properties.

(B) Grading and/or filling of materials prior to, or after, application for zoning permits to elevate the grade for a taller structure is prohibited.

(C) No premises shall be filled or graded so as to discharge surface runoff on abutting premises in such a manner that will cause damage to adjacent properties.

(Prior Code, § 5.64) Penalty, see § 153.999

§ 153.145 FENCES AND WALLS.

(A) All fences, walls and other similar structures shall be located on private property and must not obstruct the sight distance of motorists from driveways, roads and intersections. Fences or walls in all districts, except Industrial, shall not exceed six feet in height above grade when located in any portion of the rear or side yard. Fences located in the front yard are permitted; provided, they are open wrought iron, picket, split rail and similar decorative fences, have a maximum opacity of 50% and do not exceed three feet above grade.

(B) Fence and wall materials may include treated wood, painted/stained wood, treated split rail, ornamental wrought iron, brick, stone, masonry block, molded vinyl, or chain link. Scrap lumber, plywood, woven wire, sheet metal, plastic or fiberglass sheets are specifically prohibited.

(C) All fences shall be constructed with the finished side exposed to the neighboring properties. Support posts shall be placed on the inside. The fence shall be properly maintained and its appearance shall be harmonious with the surrounding properties and neighborhood. Fence posts and decorative caps shall not extend greater than six inches above the maximum allowed height.

(D) Fences or walls in industrial districts shall not exceed nine feet in height above grade in the side and rear yards. All other relevant provisions of this section shall apply.

(E) It shall be unlawful to erect or maintain a fence, wall or other similar structure equipped with or having barbed wire, spikes, razor wire or similar devices, or any electrical charge or current sufficient to cause shock. In industrial districts, however, a security fence may be installed with one foot of barbed wire; provided, the barbed wire is at least eight feet above the adjacent grade.

(F) Fences in the front yard shall have a minimum setback of 12 inches from the property line.

(G) Fences shall not be allowed to be located directly over property lines, unless two or more adjoining property owners submit a joint application to the Zoning Administrator for approval.

(H) Posts, cement, wood and any other fence materials shall not encroach onto adjoining properties, unless such encroachments are authorized under a joint application.

(I) An artificial berm with a fence placed on top of it is considered part of the fence, with the combination being subject to the height limits for fences established in division (A) above.

(J) The required fence height shall be maintained through the entire length on sloping properties. Grading and/or filling of materials to elevate the grade for a higher fence is prohibited.

(K) Walls constructed of stone, brick or similar materials shall be permitted in the front yard; provided, they do not exceed three feet in height. The height limits in the side and rear yards shall not exceed six feet. Walls shall be set back a minimum of two feet from all property lines and must be constructed and maintained in the future as to not create safety concerns for adjoining property owners or the general public. The Planning Commission may approve walls not to exceed six feet in height in the front yard for developments in the R4 Zone. This section shall not apply to retaining walls, as defined by this chapter or screening walls under § 153.171 of this chapter.

(L) Retaining walls in residential districts are subject to the following requirements:

(1) Retaining walls in the front yard(s), or yard(s) facing the public right-of-way, may be no taller than three feet in height, and must be set back from the front property line, or property lines fronting the public right-of-way, a minimum of one foot.

(2) In cases where the height or slope of the grade in the front yard(s), or yard(s) facing the public right-of-way, needing to be retained is greater than three feet,

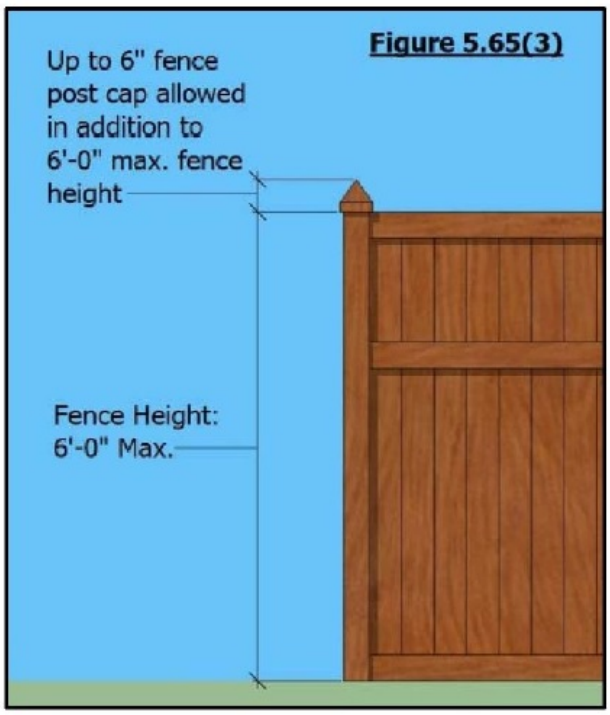
multiple tiers may be used. The horizontal distance between tiers must be a minimum of five feet.

(3) Retaining walls in side or rear yards that do not face a public right-of-way may be greater than three feet tall, but are required to be designed and sealed by a licensed engineer to ensure the safety of adjoining property.

(4) Retaining walls must be constructed of stone, brick, treated lumber or similar materials. Plain cement block and untreated wood are not acceptable materials.

(5) The fill behind retaining walls must consist of dirt, drain stone or similar materials.

(6) Retaining walls must be maintained in such a condition as to not present a threat to adjacent properties, or people or objects in the public right-of-way.



(Prior Code, § 5.65) (Ord. 791, passed 3-19-2018) Penalty, see § 153.999

§ 153.146 STRUCTURE HEIGHT CALCULATIONS AND HEIGHT LIMITS.

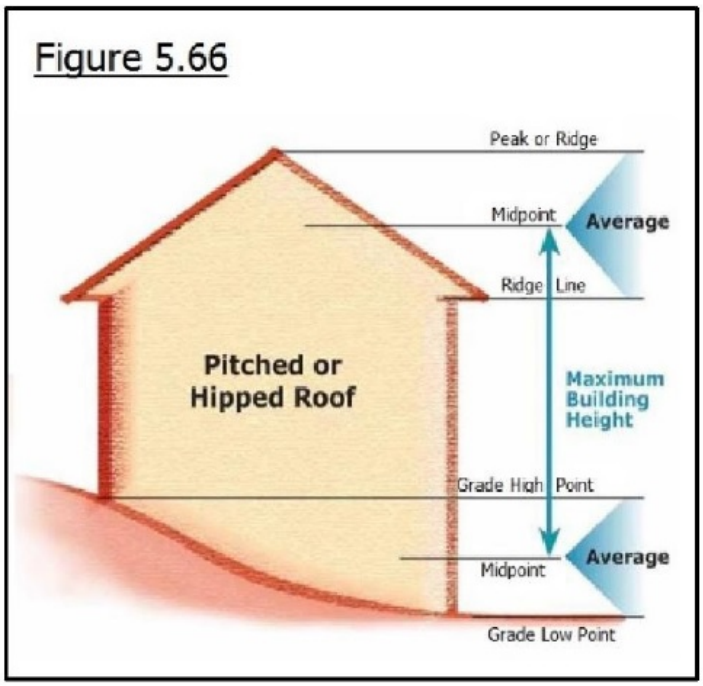
Structure height calculations:

(A) The vertical distance measured to the highest point of the building's roof for flat roofs; to the deck line for mansard roofs; and to the mean height level between eaves and peak for gable, hip and gambrel roofs, from the existing grade.

(B) On lots with less than 1% change in grade, building height shall be measured from the existing grade surrounding the building site.

(C) On lots having an average sloping grade of between 1% and 5%, building height shall be measured from the front of the building line of the proposed structure.

(D) On lots having an average sloping grade of more than 5%, building height shall be measured from the average elevation between front and rear building lines or between side building lines, whichever dimension reflects the greater degree of slope.



(E) Height limits specified elsewhere in this chapter shall not apply to:

(1) Churches, schools, hospitals and public buildings including, but not limited to, libraries, museums, art galleries, fire stations or public buildings owned or used by a public entity; or

(2) Unoccupied barns, silos, or other buildings or structures on farms; church spires, belfries, cupolas and domes; monuments; and windmills. These unoccupied structures shall be limited to 100 feet in height in any case, unless otherwise permitted in this chapter.

(Prior Code, § 5.66) (Ord. 835, passed 1-2-2023) Penalty, see § 153.999

§ 153.147 ILLEGAL DWELLINGS.

No structure shall be used for dwelling purposes that do not comply with the requirements of this or any other city ordinance. Garages or other accessory buildings, trailer coaches, basements, partial or temporary structures, whether of fixed or portable construction, shall not be erected or moved onto a lot and used for any dwelling purposes, unless authorized by the issuance of a zoning permit by the Zoning Administrator and satisfying all of the conditions thereof.

(Prior Code, § 5.67) Penalty, see § 153.999

§ 153.148 KEEPING OF ANIMALS.

(A) The keeping of household pets, including dogs, cats, fish, birds, hamsters and other animals generally regarded as household pets is permitted as an accessory use in any residential district.

(B) Any area where household pets are kept shall be maintained in a safe and sanitary condition.

(C) The keeping of animals not normally considered household pets, including, but not limited to, horses, pigs, sheep, cattle, poultry and poisonous reptiles is prohibited in all zoning districts.

(Prior Code, § 5.68) Penalty, see § 153.999

§ 153.149 PROJECTIONS INTO REQUIRED YARDS.

(A) Certain architectural features, such as eaves, cornices, bay windows (or windows without foundations), gutters, chimneys, pilasters and similar features may project no further than three feet into any required yard.

(B) (1) An open, unenclosed and uncovered porch, terrace, deck, balcony or window awning may project no further than ten feet into a required front yard; no further than 15 feet into a required rear yard; and shall not project into any required side yard.

(2) In no case, shall a porch, terrace, deck, balcony or awning be placed closer than five feet to any front or rear lot line with the exception of the CBD district where a porch, terrace, deck, balcony or awning may extend to the property line.

(C) Any porch, terrace, deck or balcony which is enclosed or covered shall meet the minimum setback requirements of the principal building or accessory building to which it is attached.

(Prior Code, § 5.69) (Ord. 795, passed 11-5-2018) Penalty, see § 153.999

§ 153.150 SITE EXCAVATION.

The construction, maintenance or existence within the city of any unprotected, unbarricaded, open or dangerous excavations, holes, pits or wells, which, in the opinion of the Zoning Administrator, constitute or are likely to constitute a danger or menace to the public health, safety or welfare is hereby prohibited; provided, this section shall not apply to:

(A) Any excavation for which a building permit or a temporary permit has been issued by the county's Department of Building Safety and which is properly protected and warning signs posted;

(B) Any mineral extraction site for which a special use has been approved, in accordance with §§ 153.250 through 153.257 of this chapter; and

(C) Streams, natural bodies of water or ditches, reservoirs and other such bodies of water created or existing by authority of the city or other governmental agency.

(Prior Code, § 5.70) Penalty, see § 153.999

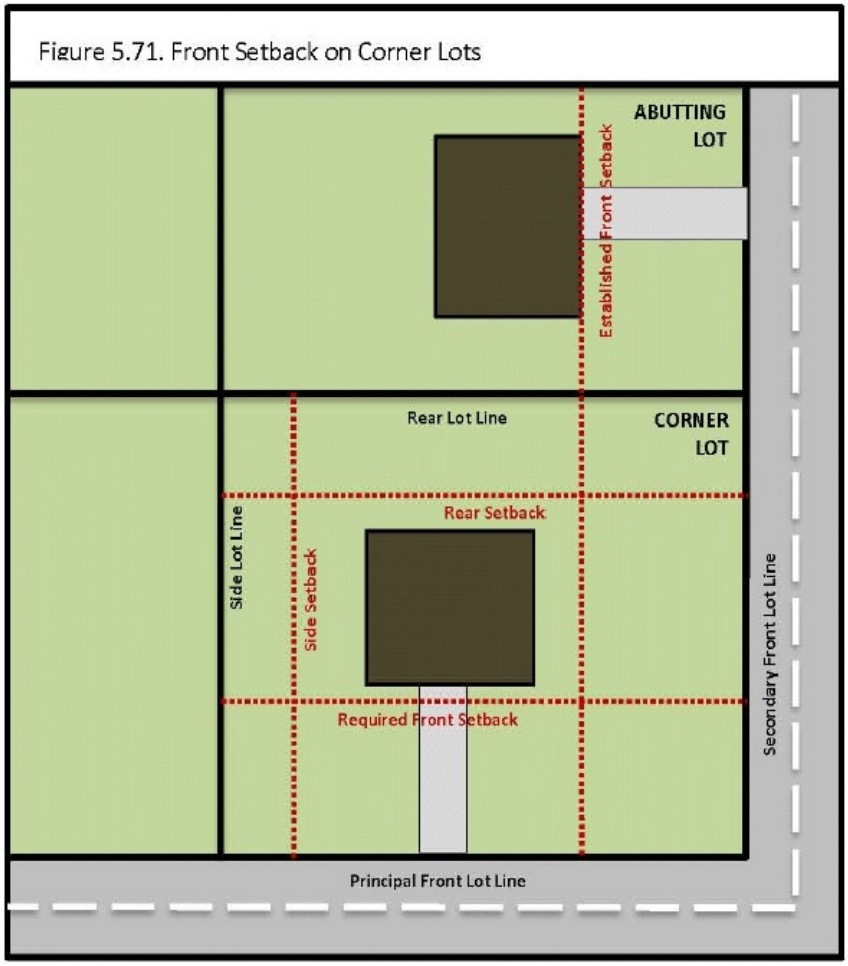
§ 153.151 SETBACK REQUIREMENTS.

(A) *Front setback on corner lots.* A corner lot shall have two front lot lines: a principal front lot line and a secondary front lot line which is considered a street side setback.

(1) The required front setback shall apply to the principal and secondary front lot line.

(2) The required setback for the secondary front yard shall be the lesser of the required front setback or the established setback for the principal building on the abutting lot that faces the same street as the secondary front lot line.

(3) The remaining setbacks shall be side setbacks.



(a) The required front setback shall apply to the principal front yard.

(b) The required setback for the secondary front yard shall be the lesser of the required front setback or the established setback for the principal building on the abutting lot that faces the same street as the secondary front lot line.

(c) 1. The remaining setbacks shall be a rear and a side setback.

2. The rear setback shall be measured from the rear lot line, which in the case of a corner lot, shall be the lot line opposite the principal front lot line.

(B) *Average front setback.* The minimum front setback requirements for a principal building in any residential district may be reduced in accordance with the following: where two or more lots, entirely or partially within 200 feet of a subject lot, on the same side of the street and on the same block, are occupied by principal buildings of which the existing front setback is less than required by the zoning district, the average of the established setbacks for those buildings shall be the minimum required front setback for the subject lot.

(C) *Setback from bodies of water.* Notwithstanding other provisions of this subchapter, all principal uses located in the R1 and R4 Districts shall have a setback of 50 feet from the ordinary high water mark of Lake Michigan, Lake Charlevoix and Round Lake, as well as the Pine River Channel.

(D) *Fences.* Fences are exempt from the setback requirements of this section.

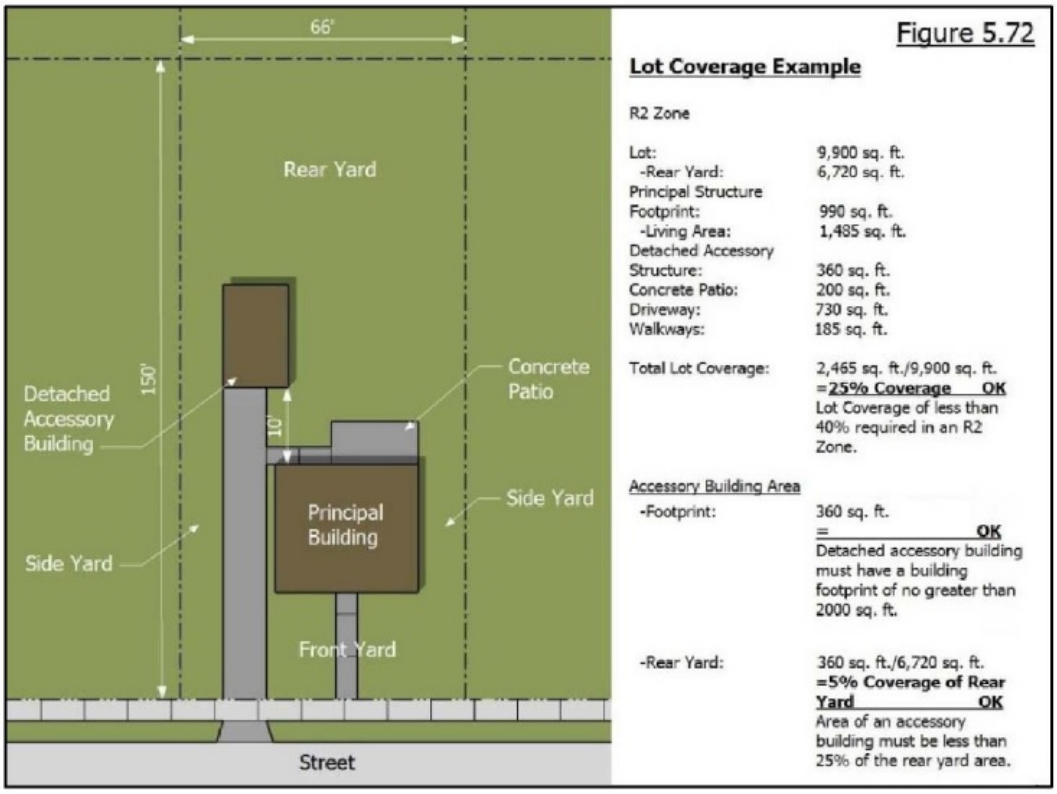
(E) *Intrusions below grade.* No portion of any building below grade containing usable space shall project into any front, side or rear yard.

(Prior Code, § 5.71) (Ord. 791, passed 3-19-2018; Ord. 795, passed 11-5-2018) Penalty, see § 153.999

§ 153.152 LOT COVERAGE REQUIREMENTS.

(A) Lot coverage requirements in all zones shall be calculated by dividing the total area of the lot by the total square footage of all impervious surfaces.

(B) Use of materials such as gravel or stone, pavers and similar permeable surfaces shall not count be calculated in lot coverage, however; the use permeable surfaces shall not exceed 60% of the lot area.



(C) Accessory buildings and structures refer to § 153.117(D).

(Prior Code, § 5.72) (Ord. 835, passed 1-2-2023) Penalty, see § 153.999

§ 153.153 OUTDOOR STORAGE.

(A) Inoperable or unlicensed motor vehicles shall not be kept, parked or stored in any residential district, except within a completely enclosed building. The purpose of this provision is to prevent the accumulation of junk motor vehicles and, therefore, it shall not apply to any motor vehicle ordinarily used, but temporarily out of running condition. If the motor vehicle is being kept for actual use, but is temporarily unlicensed, the Zoning Administrator may grant the owner a reasonable time, not to exceed two months, to procure a license.

(B) Likewise, old, rusty and unsightly machinery, machines not suited for use upon the premises or quantities of used building materials not fit to be used to improve the premises shall not be kept or stored outside a building; provided, however, that, building materials fit to be used to improve the premises may be kept on-site for one year if they are piled off the ground so as not to become a harbor for vermin.

(C) *Recreational equipment and vehicle storage.* The standards of this section apply to all residential districts.

(1) All recreational equipment and vehicles that are stored outside of a structure shall be maintained in good condition, shall be operable and shall have a current license and/or registration.

(2) Recreational equipment and vehicles parked or stored outside shall not be connected to electricity, water, gas or sanitary facilities for living or lodging purposes other than allowed for in § 153.153(C)(8).

(3) The parking and/or storage of buses and converted buses in excess of 18 feet in length, and boats in excess of 30 feet in length, is prohibited.

(4) Outdoor storage of not more than two recreational equipment or vehicles shall be permitted on any parcel of property.

(5) Off-season storage of recreational equipment and vehicles shall be parked completely in an enclosed structure or within the side or rear yards, except that they may not be parked in required setbacks, and such recreational equipment and vehicles shall not be closer than five feet from any lot line, unless otherwise provided by this section.

(6) Such recreational equipment and vehicles shall be placed or parked on a lot with a principal building, structure or use unless it is a lot which is attached to an occupied lot under the same ownership.

(7) Seasonal parking of recreational equipment and vehicles may be within any front yard, or front or side setback provided that public streets and sidewalks are not blocked to vehicular or pedestrian traffic.

(8) Recreational equipment and vehicles may be used for living or lodging purposes on a parcel with a principal building for no more than 14 days within any 60-day period.

(Prior Code, § 5.73) (Ord. 806, passed 9-3-2019) Penalty, see § 153.999

§ 153.154 TEMPORARY BUILDINGS, STRUCTURES, USES AND SPECIAL EVENTS.

(A) Construction buildings and structures, including trailers, incidental to construction work on a lot, may be placed on the lot, subject to the following restrictions.

(1) Construction buildings and structures may be used only for the storage of construction materials, tools, supplies and equipment, for construction management and supervision offices, and for temporary on-site sanitation facilities related to construction activity on the same lot. An enclosed structure for temporary sanitation facilities shall be required on all construction sites.

(2) No construction building or structure shall be used as a dwelling unit.

(3) Construction buildings and structures shall be removed from the lot within 30 days after an occupancy permit is issued for the permanent structure on the lot.

(B) Sales offices or model homes may be placed on a lot, subject to the following conditions: a permit shall be issued by the Zoning Administrator prior to installation of construction. The permit shall specify the location of the office and shall be valid for a period of one year. A temporary permit may be renewed by the Zoning Administrator for up to two successive one year periods or less, at the same location if the office is still incidental and necessary.

(Prior Code, § 5.74) Penalty, see § 153.999

§ 153.155 THROUGH LOTS.

(A) In all districts, both yards abutting a street on a through lot shall be considered front yards.

(B) Through lots are prohibited in any new developments, except where one frontage is a private road.

(Prior Code, § 5.75) Penalty, see § 153.999

§ 153.156 VOTING PLACE.

The provisions of this chapter shall not be construed in any manner that would interfere with the temporary use of any property as a voting place in connection with a municipal, school or other public election.

(Prior Code, § 5.76)

§ 153.157 WATER SUPPLY AND SEWAGE DISPOSAL FACILITIES.

(A) Every building erected, altered or moved upon any premises within the city shall be served with a safe and sanitary water supply system and with a means for collecting and disposing of all human and commercial, industrial and other wastes.

(B) For those areas of the city not served by public water and/or sanitary sewer, a permit from the district health department for on-site water and/or waste disposal facilities, as applicable, shall be obtained and submitted with an application for a zoning permit prior to commencing construction.

(C) This section shall not apply to structures that do not require water or waste systems.

(Prior Code, § 5.77) Penalty, see § 153.999

§ 153.158 RENTING OF RESIDENTIAL PROPERTIES.

Renting of residential properties, including, but not limited to, homes, condos, apartments, townhouses, and duplexes, as short or long term rentals, regardless of the underlying zoning district, shall comply with the following standards.

(A) Short and long-term renting of entire residential structures is permitted in any zoning district providing all rentals comply with any applicable requirements of city ordinances.

(B) Signage shall be subject to the requirements of §§ 153.205 through 153.219.

(Prior Code, § 5.78) (Ord. 795, passed 11-5-2018; Ord. 801, passed 4-15-2019; Ord. 823, passed 1-4-2021) Penalty, see § 153.999

§ 153.159 LANDSCAPING FEATURES AND PORTABLE STORAGE BINS.

Landscaping features including, but not limited to, arbors, gates, pergolas, trellises, latticework, permanent benches/seating, or portable storage closets or bins are not considered structures and are, therefore, not subject to the requirements of this chapter regarding structures.

(Prior Code, § 5.79)

GENERAL SITE DEVELOPMENT REQUIREMENTS

§ 153.170 BUILDING APPEARANCE.

(A) *Purpose.* The purpose of this section is to provide quality exterior architectural building styles and material standards to enhance the visual environment of the main corridor entries to the city, thereby improving property values and stimulating investment in the business districts. The provisions of this section are intended to promote quality architecture to ensure that buildings retain their value, protect the investment of adjacent landowners, blend harmoniously into the streetscape and create a positive image for business and the city.

(B) *Applicability.* This section shall apply to all new construction in the General Commercial (GC), Professional Office (PO) and Commercial Mixed Use (CM) Districts on lots fronting U.S. 31 (Bridge Street and Michigan Avenue) and M-66. This section shall not apply to single-family detached and two-family residential structures. Architecture shall be reviewed by the Zoning Administrator or Planning Commission, as applicable, as a part of site plan review under the requirements of §§ 153.230 through 153.243 of this chapter.

(C) All exterior materials shall comply with the following:

(1) *Design standards.* Buildings shall have architectural variety, but enhance the overall cohesive community character. At a minimum, the following standards shall be met.

(a) Buildings shall provide architectural features, details and ornaments such as archways, colonnades, cornices, peaked roof lines, hip returns, operable window shutters, transoms, gas lights or towers to accent and add interest.

(b) Repair of existing structures may utilize the existing roof pitch and roof design at the time of application.

(c) Plazas, strip malls or similar types of commercial or office developments where multiple businesses are located within the same building shall provide at least one dormer, archway or similar feature per business or store front.

(d) Building walls over 100 feet long shall be broken up with varying building lines, vertical architectural features, windows, architectural accents and trees.

(e) Building entrances shall utilize windows, canopies and awnings; provide unity of scale, texture and color; and clearly identify the entry.

(f) Building-mounted mechanical equipment shall be screened.

(D) *Site elements.* Signs and other site features shall be designed and located so they are aesthetically consistent and harmonious with the overall development. Sign bases shall be constructed of material which is compatible with the principal building. Mechanical equipment shall be screened.

(Prior Code, § 5.80) (Ord. 823, passed 1-4-2021) Penalty, see § 153.999

§ 153.171 LANDSCAPING.

(A) *Intent.* This section promotes the public health, safety and welfare by establishing minimum standards for the design, installation and maintenance of landscaping. Landscaping and landscaped buffers help protect and enhance land uses and the visual image of the community. They further preserve natural features, improve property values and can alleviate the impacts of noise, traffic and visual distractions. Landscaped buffers protect less intense uses from noise, lighting and other impacts associated with more intensive land uses. Specifically, the intent of these provisions is to:

(1) Improve the appearance of off-street parking and storage areas and property abutting public rights-of-way;

(2) Protect and preserve the appearance, character and value of the neighborhoods, which abut non-residential areas, parking lots and other potentially obtrusive uses;

(3) Reduce soil erosion and depletion;

(4) Increase soil water retention, thereby helping to prevent flooding, erosion and sedimentation and enhancing ground water recharge;

(5) Remove air pollutants and reduce, eliminate or control glare, reflection and heat island effects; and

(6) Assist in directing safe and efficient traffic flow and prevent vehicular and pedestrian circulation conflicts.

(B) *General requirements.* These regulations apply to all new uses and the expansion of existing uses requiring site plan approval.

(1) Landscaping shall be installed before occupancy, unless the Planning Commission authorizes occupancy prior to complete landscape installation, due to unforeseen weather conditions or other circumstances beyond the applicant's control. In such a case, a performance guarantee, per § 153.239 of this chapter, shall be provided to ensure completion of the project as required. All landscaping shall be completed within one full growing season.

(2) All landscaping shall be maintained after planting and regularly watered, fertilized, pruned and kept free from disease. The owner or controlling party shall be responsible for maintenance.

(3) Diseased or dead plants shall be replaced within one growing season.

(4) All plants shall be hardy per climatic conditions in the city.

(5) All landscaped areas shall be mulched and those not containing trees and shrubs must be planted with ground cover. Mulch of any type is not considered groundcover, nor is it a substitute for ground cover.

(6) The overall landscape plan shall not contain more than 25% of any one plant species.

(7) Trees and shrubs shall not be placed closer than four feet to a fence, wall or property line.

(8) For a corner lot or a lot with more than one frontage where landscaping is required, all frontages shall be landscaped.

(9) Berms shall be designed to vary in height and shape to create a more natural appearance. An unbroken earth mound of uniform height shall be avoided. The maximum slope for a berm shall be one foot vertical to three feet horizontal, unless otherwise allowed by the Planning Commission.

(10) Landscaping shall not obstruct sight distance, per § 153.142 of this chapter.

(11) Landscaping plans are subject to Planning Commission review and approval.

(12) The Planning Commission may allow a deviation from the requirements of this section under any of the following circumstances:

(a) Existing vegetation or topographic features make compliance with requirements unnecessary or difficult to achieve;

(b) The application of requirements will result in a significant loss of existing vegetation, or natural or cultural features;

(c) Modification of requirements will clearly result in a superior design that could not be otherwise achieved;

(d) Where the distance between a building, parking area or use is more than 200 feet from a side or rear lot line, the Planning Commission may reduce the buffer area requirements along the applicable lot line(s) by 50%;

(e) Where the required landscaping may interfere with view corridors, such as developments along water bodies, the Planning Commission may require planting of specific species in locations where the height or canopy will not compromise view corridors; and

(f) Where landscaping requirements may not be necessary for community aesthetics, such as within the Ance Industrial Park.

(13) The Planning Commission may impose conditions on landscaping as part of site plan review.

(14) Where a development is proposed in phases, each phase shall comply with all applicable landscaping requirements.

(15) Where landscaping requirements are based on a distance measured along a property line and result in a fractional requirement, the required landscaping for just that area shall be multiplied by the fraction. For example, when a fractional area is equal to 30% of the required distance the number of required plants shall be multiplied by 0.30. A fraction less than 25% may be disregarded.

(16) To ensure that all landscaping is installed, as a condition of approval a letter of credit or some other performance guarantee may be required in accordance with § 153.239 of this chapter.

(17) Low impact design, such as use of native vegetation, rain gardens and vegetated swales is encouraged.

(C) *Buffer areas.*

(1) A buffer area may be required where any use in a business or industrial district is adjacent to residentially zoned land and where multiple-family residential land uses are adjacent to land in the R1, R2, R2A and R4 Districts.

(2) A buffer area is not required if the qualifying adjacent zoning districts are separated by a public right-of-way.

(3) A buffer area shall be parallel to and follow the property line tangent to the qualifying zoning district.

(4) A buffer area shall be required even when the adjacent property is undeveloped.

(5) Except for access drives or private streets determined by the Planning Commission to be necessary to provide safe access to a property, a building, structure or parking lot shall not encroach within a required buffer area.

(6) When adjacent to a PUD containing a residential land use, a use in a non-residential or multiple-family residential district shall provide a buffer area along the property line adjacent to the residential use, in accordance with the requirements of Table 153.171(a). The Planning Commission, however, may waive or modify the required buffer if the setbacks and perimeter landscaping provided within the PUD meet the intent of division (A) above.

(7) Buffer areas are required as shown in Table 153.171(a). Buffer types 1, 2 and 3 are described in Table 153.171(b).

Table 153.171(a): Buffer Area Requirements by District			
Subject Zoning District	***Adjacent district***		
	R1 (Buffer Type)	***R2 (Buffer Type)***	***Residential areas in Charlevoix Township***

Table 153.171(a): Buffer Area Requirements by District			
Subject Zoning District	***Adjacent district***		
	R1 (Buffer Type)	***R2 (Buffer Type)***	***Residential areas in Charlevoix Township***

R4	3	3	NA
GC	1	1	1
CBD	2	2	NA
CH	1	1	NA

MC	1	1	NA
I	1	1	1

(8) Table 153.171(b) shows landscaping requirements by buffer type:

Table 153.171(b): Buffer Area Landscaping Requirements			
Buffer Type	***Minimum Width***	***Minimum Requirements***	***Intensity***
1	10 feet	2 canopy trees, plus 1 evergreen tree or 1 ornamental tree, plus 12 shrubs, for each 50 linear feet of buffer area	Most Intense  Least Intense
2	10 feet	1 canopy tree, plus 1 evergreen tree or 1 ornamental tree, plus 8 shrubs, for each 50 linear feet of buffer area	
3	10 feet	1 canopy tree or 1 evergreen tree, plus 1 ornamental tree or 12 shrubs, for each 50 linear feet of buffer area	

(9) Buffer Area Alternatives

(a) Plants may either be arranged formally, or be informally clustered for a more random, natural effect.

(b) Berms may be constructed in a buffer area to supplement landscaping and add interest. Minimum landscaping requirements shall be reduced by 50% where a berm at least three feet tall is constructed for at least 85% of the length of the buffer area.

(c) A screen wall or fence, located within a buffer area, may be used in lieu of some landscaping.

1. A screen wall or fence shall be six feet tall and constructed of architectural block, brick, wood, vinyl or textured concrete.

2. A screen wall or fence shall be located at least two feet from a property line.

3. To maximize the effectiveness of screening, openings shall not exceed 20% of the surface of a wall or fence.

4. When a screen wall or fence has both a finished and unfinished side, the finished side shall face either outward from the development site or to the side most visible to the general public, as determined by the Planning Commission.

5. Landscaping requirements may be reduced by 75% when a screen wall is constructed in a buffer area.

(D) *Minimum plant requirements.*

(1) The minimum plant size at the time of installation shall comply with Table 153.171(c):

Table 153.171(c): Minimum Plant Size at Installation			
Plant Material	***Minimum Caliper***	***Minimum Height***	***Minimum Spread***
Canopy tree	2.5”		
Ornamental tree	1-3/4”		
Evergreen tree		6’	
Shrubs			24”

(2) Existing healthy and desirable trees to be preserved may satisfy the landscaping regulations of this section, as shown in Table 153.171(d). Each credit may be applied toward fulfilling the requirements set forth in this section (i.e., one credit equal to one equivalent tree).

Table 153.171(d): Credit for Existing Landscaping			
Tree Material	***Minimum Caliper***	***Minimum Height***	***Credits***
Table 153.171(d): Credit for Existing Landscaping			
Tree Material	***Minimum Caliper***	***Minimum Height***	***Credits***
Canopy tree	4 to 8 inches		1
	Greater than 8 inches		2
Ornamental tree		6 to 10 feet	1
		Greater than 10 feet	2
Evergreen tree		6 to 12 feet	1
		Greater than 12 feet	2

(E) *Residential development.*

(1) For each dwelling unit in a residential subdivision, land division or site condominium.

(a) One canopy tree shall be planted between the right-of-way line and the street.

(b) Trees shall be evenly spaced, except where site conditions warrant otherwise.

(2) For a multiple-family development, one canopy or evergreen tree shall be provided for every 4,500 square feet of gross lot area.

(3) In addition to the above requirements in division (D) above for a residential development abutting an arterial street, two evergreen trees and one canopy tree shall be planted within 30 feet of the right-of-way for every 50 feet of development frontage on the arterial street.

(4) Berms may also be used to buffer lots or dwellings from an abutting arterial street. Minimum landscaping requirements shall be reduced by 50% where a berm at least three feet tall is constructed for at least 85% of the length of the street frontage.

(5) In the R4 Zone, the Planning Commission may require berms, fencing or vegetative screening (or any combination thereof) along property lines for reasons

including, but not limited to, protection of public safety, preservation of neighborhood character or the creation of privacy buffers for single-family zones.

(F) *Non-residential and mixed use districts and non-residential uses in residential districts.*

(1) For all non-residential uses in any zoning district except the CBD District, for every 100 feet of lot frontage as measured along a public right-of-way, the following front yard landscaping requirements apply.

(a) Three canopy trees and one evergreen or two ornamental trees shall be provided.

(b) The Planning Commission may allow landscaping anywhere within the front yard, except where a parking area is located along the lot frontage. In such instances landscaping shall be placed between the parking lot and the public right-of-way.

(2) Berms may be constructed in a front yard to supplement landscaping and enhance buffering. Minimum front yard landscaping requirements shall be reduced by 50% where a berm at least three feet tall is constructed between a parking lot located along a street frontage and the public right-of-way. A berm may also be used to meet the screening requirement for parking lots as required in division (H) below.

(3) For any permitted non-residential use in a residential district, the Buffer Type 2 requirements, as specified in Table 153.171(b), shall apply to all side and rear property lines.

(G) *Outdoor storage areas.* Where permitted, outdoor storage areas shall be completely screened by buildings, structures or a continuous buffer at least five feet wide. The buffer area shall include:

(1) A six-foot tall screen wall or fence along with any combination of the following to provide an effective screen, as approved by the Planning Commission:

(a) Berms;

(b) Canopy, evergreen and ornamental trees; and

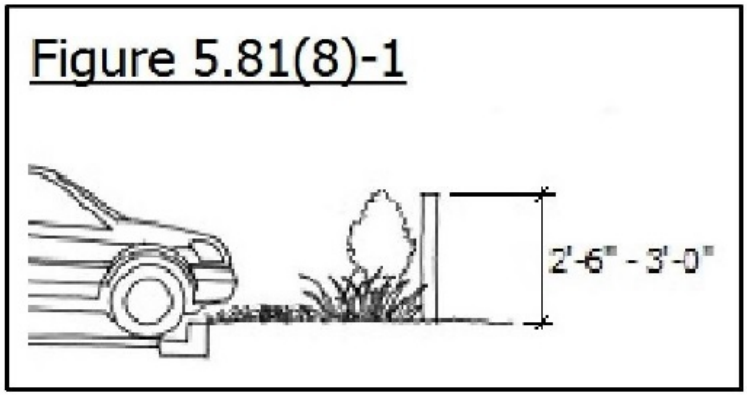
(c) Shrubs.

(2) If a buffer to an adjacent zoning district is required, per Table 153.171(a), it shall satisfy the requirements of this division (G).

(H) *Parking lot landscaping.*

(1) A parking lot containing more than ten spaces shall be screened as follows:

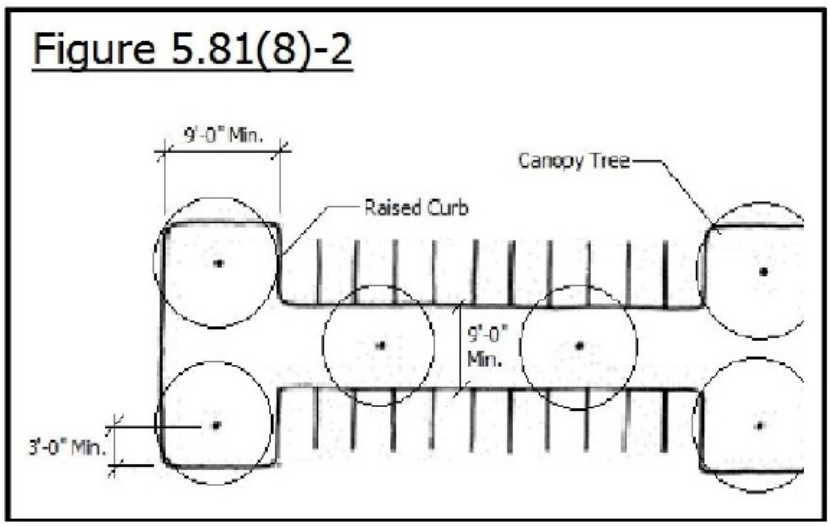
(a) Along any right-of-way or residential property line by a continuous two and one-half to three-foot tall screen; and



(b) The screen shall consist of landscaping, berms, a screen wall or any combination of these elements.

(2) To provide shade and to break up the visual appearance of large paved areas, parking lots with more than ten spaces shall be landscaped based on the following requirements.

(a) One canopy tree for every 12 parking spaces shall be provided within a parking lot island or peninsula.



(b) Parking lot islands and peninsulas shall meet the following requirements:

1. All islands and peninsulas shall be protected by raised curbs; dub-downs are permitted to facilitate drainage, except in instances where the grading and drainage plan demonstrates storm water runoff can be managed without the use of raised curbs.

2. An island or peninsula shall be at least nine feet wide.

3. Islands or peninsulas may be combined for greater visual effect.

4. Trees shall be planted at least three feet from the edge of the curb or pavement.

5. Landscaping shall not obscure traffic signs, fire hydrants or sight distance within the parking lot and at driveway entrances, in accordance with § 153.142 of this chapter.

(I) *Fencing, screening and walls.*

(1) Screening shall be required around all trash dumpsters in all zoning districts, except as may be provided elsewhere in this section.

(2) Solid waste dumpsters may be located in required buffers; provided, they are screened in accordance with this division (I).

(3) Screening shall be required even if the surrounding area or adjacent properties are not developed.

(4) When a property changes to a more intense land use, a special land use or when site plan approval is required, screening shall be provided in accordance with this section.

(5) (a) Unless otherwise permitted in accordance with this section, a screen shall consist of a solid, sight-obscuring fence or wall that meets the following specifications:

1. Six feet tall;

2. Enclosed on all sides and does not contain any openings other than an access gate, which shall be closed at all times when not being used. A screen around staging or loading/unloading areas may provide an opening that does not contain an access gate;

3. Constructed of masonry, treated wood or other materials approved by the Planning Commission and must be durable, weather-resistant, rust-proof and easily maintained; and

4. A trash dumpster enclosure and gates shall be protected by bollards or other means to prevent vehicle damage.

(b) If approved by the Planning Commission, a screen may consist of berms or landscaping either in combination or as a substitute for a fence or wall. It must be determined that the alternate design shall either provide the same degree, or enhanced screening as required by this section.

(6) (a) Walls must be no greater than eight feet high.

(b) Must be a minimum of two feet back from the property line.

(c) Placement cannot interfere with pedestrian or vehicular traffic.

(d) Walls must be maintained and kept in good condition by the property owner.

(J) *Landscape site plan requirements.*

(1) Proposed landscaping shall be shown on a separate drawing at the same scale as the site plan. To ensure that landscaping is not affected by, nor interferes with utilities, the plan shall indicate any existing or proposed utilities and easements.

(2) Planting plans shall show all landscaped areas and plants listed in a table by common and botanic name and show quantities, size at planting and anticipated mature height and spread. Anticipated mature height and spread shall be shown with circles indicating anticipated plant size at maturity.

(3) Text shall accompany the landscape plan, providing calculations for the proposed landscaping and describing how the plan successfully complies with the regulations of this section.

(4) Existing natural and human-made landscape features and proposed buildings and structures, as required for the overall site plan, shall be clearly indicated

(5) Contours shall be shown at intervals no greater than two feet.

(6) Irrigation systems shall be shown.

(7) All other site development plan review standards, as set forth in §§ 153.230 through 153.243 of this chapter, shall be followed.

(K) *Treatment of existing plant material.* The following regulations shall apply to existing plants.

(1) *Preservation of existing plant material.* Site plans shall show all existing trees (four-inch caliper or greater) located in portions of the site that will be built upon or otherwise altered. Trees shall be labeled “To Be Removed” or “To Be Saved” on the site plan.

(2) *Destruction or removal of healthy trees.* In the event healthy plants that are intended to meet the requirements of this section are cut down, damaged or destroyed during construction, they shall be replaced.

(Prior Code, § 5.81) (Ord. 791, passed 3-19-2018) Penalty, see § 153.999

§ 153.172 LIGHTING.

The following lighting requirements shall apply to all uses requiring site plan review, as stated in §§ 153.230 through 153.243 of this chapter.

(A) *Exemptions.* The following lighting applications are exempt from regulation under this section:

(1) Lighting for all agricultural, single and two-family residential uses; provided, the level of illumination at any property line adjoining an agricultural use shall not exceed 0.1 footcandles;

(2) Pedestrian walkway lighting;

(3) Soffit lighting, provided the light source is recessed or flush with the soffit surface;

(4) Emergency lighting, provided the lights are designed to operate only under emergency or loss of power situations;

(5) Holiday decorations;

(6) Window displays;

(7) Lighting for temporary events, such as fairs, carnivals and similar temporary outdoor uses; and

(8) Ornamental lighting that is incorporated into an architectural design, such as colored tubes, lighting of fountains, statuary or other outdoor art and other building elements (other than signs), provided that the light source is shielded to direct light onto the lighted element.

(B) *Prohibited lighting.* The following lighting types and methods are prohibited:

(1) High intensity lights such as laser light sources, search lights or any similar high intensity light for outdoor advertisement or entertainment;

(2) Any lighting determined to be creating off-site glare that is a hazard to travelers on an adjacent street or road;

(3) Lighting that is flashing, moving or intermittent, including those associated with signs meeting the requirements of §§ 153.205 through 153.219 of this chapter; and

(4) Lighting that appears similar to that used for traffic control devices or for emergency vehicles.

(C) *Shielding and glare.*

(1) All outdoor lighting shall be designed or shielded to reduce glare and shall be placed so a nuisance is not created for motorists, adjacent uses or residential dwellings.

(2) All outdoor lighting, with the exception of those ground-based lights for the purpose of illuminating government flags, shall be directed toward the ground or the article being illuminated and shall not impair the safe movement of automobile traffic on any street. Flag lighting shall be directed to illuminate the flag only and shall be placed so lighting or glare is not directed toward streets or adjacent properties.

(D) *General requirements.*

(1) Lighting shall be provided throughout all non-residential parking lots. Lights to illuminate parking lots shall not be attached to any building.

(2) Street lighting meeting the requirements of the city shall be required for all roads constructed as part of or in advance of any new development.

(E) *Specific requirements.*

(1) *Under-canopy lighting.*

(a) Canopy lighting shall be mounted flush with the canopy surface.

(b) No light fixture shall protrude below the underside (fascia) of any canopy.

(2) *Fixtures.* Lighting fixtures shall be a down-lighted type having 80% cut off.

(a) Unless otherwise approved by the Planning Commission, light sources for area illumination (such as parking lots and outdoor storage areas) shall be high pressure sodium or metal halide. Approved exceptions shall use warm light or natural lamp colors.

(b) Light fixtures shall have a maximum height of 20 feet when located within a residential district and 25 feet when the use is in a non-residential district, but adjacent to a residential district. In all other locations, light fixtures shall not exceed 30 feet in height.

(c) The height of a fixture shall be measured from the parking lot grade to the nearest portion of the light source. No portion of the fixture may extend more than one additional foot higher than the maximum heights specified above.

(3) *Signs.* Lighting of signs shall be subject to the requirements of §§ 153.205 through 153.219 of this chapter.

(4) *Illumination levels.* Light levels on a site that is subject to site plan approval under this chapter shall meet the requirements in Table 153.172 for the developed portion of the site containing buildings, drives and parking lots.

Table 153.172: Maximum Site Illumination

Location on Site	***Maximum Footcandles***
Parking lots, loading areas, sidewalks and building entrances	10 fc
Under canopies such as gas stations, drive-thru bank porte-cochere	20 fc
Along any lot line adjacent to the street frontage	3 fc
Along a lot line adjoining a non-residential use or district	1 fc
Along a lot line adjoining a residential use or district	0.5 fc

(F) *Lighting plans.* Compliance with the lighting design criteria shall be demonstrated by submitting the following information for as part of the required site plan:

(1) Lighting plan (as part of the site plan package) showing light fixture locations and type designations;

(2) Lighting equipment specifications and data sheets, including fixture height; and

(3) Any other materials or information required to convey the intent of the lighting design.

(Prior Code, § 5.82) Penalty, see § 153.999

§ 153.173 TRASH RECEPTACLES.

(A) Trash receptacle enclosures shall be required for all uses, except single-family detached and two-family dwellings, where an outdoor trash receptacle is stored. Trash receptacle enclosure locations and construction details meeting the requirements of this section shall be shown on site plans.

(1) *Location.* Trash receptacle enclosures shall be located in the rear yard or non-required side yard, unless otherwise approved by the site plan reviewing authority. Trash receptacle enclosures for commercial and industrial sites shall be as far as practical from an adjoining residential district boundary.

(2) *Access.* Access to the trash receptacles by refuse vehicles shall be designed to prevent damage to automobiles in designated parking spaces; provided, the enclosure doors shall not be highly visible from traffic entering the site from a public road.

(3) *Base.* The trash receptacle base shall be at least nine feet by nine feet, constructed of six inches of reinforced concrete pavement. The base shall extend six feet beyond the dumpster pad or gate to support the front axle of a refuse vehicle. Where grease disposal receptacles are used, curbing shall be provided around the enclosure base to contain any spillage.

(4) *Screening.* Trash receptacles shall have a lid or cover and be enclosed by a wall on three sides with a wood gate on the fourth side. The enclosure shall be constructed of wood, plastic, vinyl, brick or split face block that matches the building color with a height of six feet or at least one foot higher than the dumpster, whichever is greater. Other decorative masonry material may be approved if it matches the material used on the principal building. Poured concrete with false brick design or plain concrete slag blocks are not permitted.

(B) The site plan reviewing authority may waive the requirement for a trash receptacle enclosure for businesses, such as banks, that store all waste material indoors or other uses that provide alternate means of handling waste disposal.

(Prior Code, § 5.83) Penalty, see § 153.999

§ 153.174 MECHANICAL EQUIPMENT.

Ground-, building- and roof-mounted mechanical equipment and utility structures including, but not limited to, heating units, cooling units, air handling units, refrigeration units, blowers, ventilating fans, water and gas meters, elevator housing, tanks, generators and utility transformers are subject to the following regulations.

(A) *Ground- and building-mounted equipment.*

(1) Mechanical equipment and utilities visible to the public and located on or around any non-residential building shall be screened by landscaping or by decorative walls compatible with the material used on the building.

(2) Mechanical equipment may not be located within the required front yard setback area or within five feet of any side property line, except as may otherwise be permitted by this chapter. However, in a non-residential district, ground-mounted mechanical equipment shall not be located under any circumstances within 20 feet of a

residential district boundary.

(B) *Roof-mounted equipment.*

(1) All roof-mounted equipment shall be screened by parapet walls or a pitched roof integrated into the architectural design of the building of sufficient height to screen the rooftop equipment and provide sound attenuation. The location, height and screening methods shall be shown on the site plan.

(2) All roof-mounted mechanical units must be set back a minimum of 20 feet from the front of the building and any side of the building facing an adjacent residential district.

(Prior Code, § 5.84) Penalty, see § 153.999

OFF-STREET PARKING, LOADING, ACCESS AND CIRCULATION

§ 153.185 DESCRIPTION AND PURPOSE.

(A) The purpose of this subchapter is to prescribe regulations for off-street parking of motor vehicles in residential and non-residential zoning districts, to ensure that adequate parking and access are provided in a safe and convenient manner and to afford reasonable protection for adjacent land uses from light, glare, noise, air pollution and other effects of parking concentrations.

(B) It is the further intent of these regulations to:

(1) Implement the goals and policies of the city's Master Plan;

(2) Reduce the impacts associated with parking lots through minimum and maximum parking requirements; and

(3) Accommodate shared parking to limit the extent of paved and impervious surfaces.

(Prior Code, § 5.90)

§ 153.186 APPLICABILITY.

(A) For all buildings and uses established after the effective date of this chapter, off-street parking shall be provided as required by this section, except in the CBD Central Business District. Parking spaces provided in this manner shall be unreserved and generally available to the public.

(B) If the intensity of the use of any building or site is increased by adding floor area, increasing seating capacity or employees, or by any other means, additional off-street parking shall be provided to the extent required by this subchapter.

(C) For off-street parking facilities that exist on the effective date of this chapter, their capacity shall not be reduced below the requirements of this subchapter, nor shall the capacity of non-conforming parking facilities be further reduced or made more non-conforming.

(D) Required off-street parking shall not be changed to another use unless equal facilities are provided elsewhere, in accordance with the provisions of this subchapter.

(E) Changes in use or new uses of existing buildings or floor area shall require parking in accordance with this subchapter, except in the CBD Central Business District the requirement for additional parking due to a legal commercial use change shall be waived.

(Prior Code, § 5.91) (Ord. 807, passed 9-3-2019)

§ 153.187 PARKING REQUIREMENTS AND LIMITATIONS.

(A) Off-street parking shall only be used for temporary vehicle parking related to the activities on the premise. The storage of merchandise, motor vehicles for sale, recreational vehicles, limousines, trucks and trailers is prohibited, except under the conditions of § 153.153 of this chapter. Use of off-street parking to store or park wrecked or junked cars, or to repair vehicles is prohibited.

(B) When calculations for required parking spaces result in a fraction over one-half, one full parking space shall be required.

(C) For a use not specifically included in Table 153.187, off-street parking requirements shall be in accordance with a use determined by the Zoning Administrator to have comparable parking characteristics. For any use determined as not having a comparable parking requirement, it shall be determined by the Planning Commission based on recent and published parking research, or by accepting the findings of a parking study provided by the applicant in accordance with § 153.188(B)(6) of this chapter.

(D) For benches, pews or similar seating, each 24 inches shall be counted as one seat unless plans filed with the city specify a maximum seating capacity, which shall then be used to determine parking requirements.

(E) Unless otherwise indicated, floor area shall refer to usable floor area (UFA).

(F) Where parking requirements are established by maximum building seating or occupancy, capacity shall be based on the building and/or fire code, whichever is more restrictive.

(G) Minimum parking space requirements shall not be exceeded unless approved by the Planning Commission based on documented evidence that additional spaces are required to accommodate parking demand on a typical day. The Planning Commission may require any additional spaces to be constructed using alternate paving materials, such as pervious pavers or concrete. A required or requested use of alternative paving materials shall include a maintenance plan and agreement from the property owner deemed satisfactory to the Planning Commission.

(H) The minimum required number of off-street parking spaces shall be determined based on the requirements listed in Table 153.187.

Table 153.187: Parking and Access Requirements by Use	
Use	***Number of Parking Spaces***

Table 153.187: Parking and Access Requirements by Use	
Use	***Number of Parking Spaces***

RESIDENTIAL USES	
Bed and breakfast	See § 153.116(D)(7)
Boarding or rooming house	1 space per 2 beds, plus 1 additional space for owner or employee use
Dwellings above first floor businesses	1 space per dwelling unit
Multiple-family residential dwellings	1.5 spaces per dwelling unit
Senior apartments and senior independent living	0.5 space per unit, and 1 space per employee. Should units revert to general occupancy, the requirements for multiple-family residential dwellings shall apply
Single-family and two-family dwellings	2 spaces per dwelling unit

INSTITUTIONAL USES	
Auditoriums, assembly halls, meeting rooms, theaters and similar places of assembly	1 space per 4 seats, based on maximum seating capacity in the main place of assembly, as established by the city's Fire and Building Codes
Day care facility, nursery school, child care center, family day care home, group day care home	1 per 700 sq. ft. of UFA, plus 1 per employee. Sufficient area shall be designated for drop-off of children or adults in a safe manner that will not result in traffic disruptions
Elementary and middle schools	1 per teacher, employee and administrator
Convalescent or nursing home	1 per 6 beds or occupants and 1 space per staff member or employee on the largest shift
Hospitals and similar facilities for human care	1 per 5 beds, plus 1 per employee on the largest shift
Churches and customary related uses	1 for every 5 seats in the main place of assembly
High schools; colleges and universities; business, trade, technical, vocational or industrial schools; performing and fine arts schools	1 per teacher, employee and administrator, and 1 for every 10 students
RETAIL USES	
Retail stores, except as otherwise specified	1 per employee on the largest shift, plus 1 for every 500 sq. ft. of UFA
Multi-tenant shopping centers	
With 60,000 sq. ft. or less of retail	1 per employee on the largest shift, plus 1 for every 350 sq. ft. of retail UFA
With over 60,000 sq. ft. of retail	1 per employee on the largest shift, plus 1 for every 300 sq. ft. of retail UFA
With restaurants	If more than 20% of the shopping center's floor area is occupied by restaurants or entertainment uses, parking requirements for these uses shall be calculated separately. Where the amount of restaurant space is unknown, it shall be calculated at 20%
Agricultural sales, greenhouses and nurseries or roadside stands	1 per employee on the largest shift, plus 1 per 350 sq. ft. of permanent or temporary area devoted primarily to sales
Animal grooming, training, day care and boarding	1 per employee on the largest shift, plus 1 for every 1,000 sq. ft. of UFA
Furniture and appliance, household equipment, show-room of a plumber, decorator, electrician, hardware, wholesale and repair shop or other similar uses	1 per employee on the largest shift, plus 1 for every 1,000 sq. ft. of net UFA, plus 1 additional space per employee
Grocery store/supermarket	1 per employee on the largest shift, plus 1 for every 500 sq. ft. of UFA
Home improvement centers	1 per employee on the largest shift, plus 1 for every 1,000 sq. ft. of UFA
Open air businesses, except as otherwise specified	1 per employee on the largest shift, plus 1 for every 500 sq. ft. of lot area for retail sales, uses and services
Vehicle dealerships, including automobiles, RVs, motorcycles, snowmobiles, ATVs and boats	1 per employee on the largest shift, plus 1 for every 1,000 sq. ft. of floor space of sales room
SERVICE USES	
Banks and other financial institutions	1 per employee on the largest shift, plus 1 per 500 sq. ft. of UFA for the public. Drive-up windows/drive-up ATMs shall be provided with 2 stacking spaces per window or drive-up ATM
Beauty parlor or barber shop	1 per employee on the largest shift, plus 1 parking space per chair/station
Dry cleaners	1 per employee on the largest shift, plus 1 per 500 sq. ft. of UFA
Laundromats	1 per employee on the largest shift, plus 1 per 4 combinations of washer-dryer machines, plus 1 space per employee
Mortuary, funeral home	1 per employee on the largest shift, plus 1 per 3 patron seats at largest capacity
Motel, hotel or other commercial lodging establishment	1 per employee on the largest shift, plus 0.5 space per unit. In addition, spaces required for ancillary uses such as lounges, restaurants or places of assembly shall be provided and determined on the basis of the individual requirements for that use
Motor vehicle service stations (gas stations and truck stops)	1 per employee on the largest shift, plus additional parking required for other uses within an automobile service station, such as the retail floor area, restaurants or vehicle repair stalls
Vehicle repair establishment, major or minor	1 per employee on the largest shift, plus 1 per service stall
Vehicle wash	
Self-service (coin operated)	4 spaces, plus 2 stacking spaces for every washing stall
Full-service	1 per employee on the largest shift, plus 4 spaces and 3 stacking spaces for every washing stall or line
Restaurants, bars and clubs	

Standard sit-down restaurants with liquor license	1 per employee on the largest shift, plus 1 per 300 sq. ft. of UFA
Carry-out restaurant (with limited or no seating for eating on premises)	1 per employee on the largest shift, plus 4 per service or counter station
Open front restaurant/ice cream stand	1 per employee on the largest shift, plus 5 spaces and 1 per 6 seats
Drive-through restaurant	1 for every 2 employees, plus 1 for every 6 seats intended for patrons within the building, plus 4 stacking spaces per food pickup window
Bars, lounges, taverns, nightclubs (majority of sales consist of alcoholic beverages)	1 per employee on the largest shift, plus 1 per 200 sq. ft. of UFA
Private clubs, lodge halls or banquet halls	1 per employee on the largest shift, plus 1 for every 6 persons allowed within the maximum occupancy load as established by the city's Fire and Building Codes
RECREATION	
Athletic clubs, exercise establishments, health studios, sauna baths, martial art schools and other similar uses	1 per employee on the largest shift, plus 1 per 4 persons allowed within the maximum occupancy load as established by city's Fire and Building Codes
Billiard parlors	1 per 3 persons allowed within the maximum occupancy load as established by city's Building and Fire Codes, or 1 per 500 sq. ft. of gross floor area, whichever is greater
Bowling alleys	4 per bowling lane plus additional for accessory uses such as bars
Indoor recreation establishments including gymnasiums, tennis courts and handball, roller or ice-skating rinks, exhibition halls, dance halls and banquet halls	1 space for every 6 persons allowed within the maximum occupancy load as established by the city's Fire and Building Codes
Miniature or "par-3" courses	1 per employee on the largest shift, plus 1 per 2 holes
Commercial marinas	0.25 space for every boat slip based on the permitted slips by the state's Department of Natural Resources
OFFICES	
Business offices, post offices or professional offices of lawyers, architects or similar professionals	1 per employee on the largest shift, plus 1 for every 300 sq. ft. of UFA, but no less than 5 parking spaces
Medical offices of doctors, dentists, veterinarians or similar professions	1 per employee on the largest shift, plus 1 for every 300 sq. ft. of UFA
INDUSTRIAL USES	
Industrial establishments, including manufacturing, research and testing laboratories, creameries, bottling works, printing, plumbing or electrical workshops	1 for every 2 employees or 700 sq. ft. of UFA, whichever is greater
Warehouses and storage buildings	1 per employee on the largest shift
Mini warehouses/self-storage	Unobstructed parking area equal to 1 for every 10 door openings, plus parking for other uses on site such as truck rental
Truck terminal	1 per employee on the largest shift, plus 2 truck spaces of 10 x 70 ft. per truck berth or docking space
Air freight forwarders/distribution facilities	1 per employee on the largest shift

(Prior Code, § 5.92) (Ord. 802, passed 4-15-2019; Ord. 807, passed 9-3-2019; Ord. 839, passed 6-19-2023)

§ 153.188 PARKING ALTERNATIVES.

(A) *Shared/common parking.* Shared parking, or an arrangement in which two or more nonresidential uses with different peak parking demands (hours of operation) uses the same off-street parking spaces to meet their off-street parking requirements, may be allowed.

(1) The Zoning Administrator may approve an adjustment to the parking requirements allowing shared parking arrangements for nonresidential uses with different hours of operation.

(2) Applicant must provide that there is no substantial conflict in the principle operating hours of the uses for which the shared parking is proposed.

(3) Shared parking must be within 50 feet walking distance, measured from the entrance of the use to the nearest parking space in the shared lot.

(4) An agreement providing for the shared use of the parking, executed by the parties involved, must be filed with the Zoning Administrator, in a form approved by the Zoning Administrator upon consultation with the city attorney.

(B) *Modification of parking requirements.* The Planning Commission may reduce the parking space requirements of this section for any use, based upon one or more of the following.

(1) Shared parking by multiple uses is expected due to the likelihood of numerous multipurpose visits, or if uses have peak parking demands during different times of the day or days of the week; subject to the following.

(a) Sidewalks shall be maintained or established between the uses.

(b) Pedestrian connections, both within and to the site, shall provide safe and convenient access to building entrances.

(c) For separate properties, shared parking lots shall be within 300 feet to one another with vehicular and pedestrian access.

(d) Unless the multiple uses are all under single ownership and within a unified business or shopping center, office park or industrial park, shared parking agreements shall be filed with the City Clerk after approval by the Zoning Administrator.

(2) Convenient municipal off-street parking facilities or on-street spaces are located no further than 600 feet from the subject properties.

(3) An expectation of walk-in trade is reasonable due to the proximity of residential neighborhoods, downtown or employment areas that are interconnected with

sidewalks.

(4) Other forms of travel such as bicycle or transit are available and are reasonable alternatives.

(5) The Planning Commission may require a parking study to document that the above divisions (B)(1)(a) through (B)(1)(d) have been addressed.

(6) Where the applicant has provided a parking study, it shall demonstrate that a standard other than that required by this subchapter would be more appropriate based on the number of employees, expected level of customer traffic, or actual counts at a similar establishment. Parking studies shall be prepared by a qualified expert, such as a professional transportation engineer or professional transportation planner, based upon standards, manuals and research published by professional organizations, such as the Institute of Transportation Engineers, the Transportation Research Board or Urban Land Institute. The Planning Commission may require parking studies of comparable uses in the general area as part of the study.

(C) *Deferred parking.*

(1) Where a reduction in parking spaces is not warranted, but an applicant can demonstrate the parking requirements for a proposed use may be excessive given the particular circumstances of the use and property, the Planning Commission may defer some of the required parking. The site plan shall designate an area to accommodate its future construction, if and when it is needed, meeting the design standards and dimensional requirements of this subchapter. In the interim, the deferred parking area shall be landscaped and maintained and shall not occupy required setbacks, buffers or landscaped areas or be used for any other purpose.

(2) Construction of the deferred parking spaces may be initiated by the owner or required by the city based on conditions affecting on-site parking needs or observations, and shall require administrative approval of an amended site plan.

(D) *Downtown parking.* The minimum number of off-street parking spaces required by this section shall be waived for all buildings fronting Bridge Street between the Pine River Channel and Antrim Street.

(E) *Proposed developments.* The Planning Commission may require parking in the side or rear of a building where possible, if a proposed development fronts a public street. In these instances the Planning Commission may waive or reduce landscaping or screening requirements in § 153.171 of this chapter.

(Prior Code, § 5.93) (Ord. 794, passed 9-17-2018; Ord. 807, passed 9-3-2019)

§ 153.189 OFF-STREET PARKING FACILITY DESIGN.

(A) *Off-street parking location and setbacks.*

(1) *Side and rear yard limitation.* Off-street parking lots shall meet the side setback requirements as specified in the zoning district and shall not be closer than 15 feet from the rear property line.

(2) *Front yard limitation.* In the CBD, GC, PO and CM Districts, the required front yard setback shall not be used for off-street parking, loading or unloading and shall remain open, unoccupied and unobstructed, except for landscaping or vehicle access drives.

(3) *Proximity.* Required off street parking facilities for all uses, other than residential dwellings, shall be located on the same lot as the use, or within 300 feet of the building(s) or use they are intended to serve. Distance shall be measured from the nearest point of the building to the nearest point of the off street parking lot.

(a) Required off street parking facilities for residential dwellings shall be located on the same property as the premises they are intended to serve and shall consist of a driveway, a parking apron and/or a garage.

(b) In the CBD District, parking facilities shall be located within 600 feet of the building or use to be served. Distance shall be measured from the nearest point of the building to the nearest point of the off-street parking lot.

(B) *Parking construction and development.* The construction of a parking lot shall require an approved site plan, in accordance with §§ 153.230 through 153.243 of this chapter. Construction shall be completed and approved by the Zoning Administrator.

(C) *Pavement.* Unless alternative materials are specifically permitted as provided in this division (C), all parking lots and vehicle and equipment storage areas shall be hard-surfaced using asphalt, concrete or concrete or brick pavers and shall be appropriately graded and drained. The Planning Commission may approve permeable paving for all or part of a parking lot. For storage areas, a substitute for hard surface paving may be allowed if the Planning Commission finds adjoining properties will not be adversely affected.

(D) *Curbs.* A parking lot shall be surrounded by a six-inch concrete curb, except for driveway openings, sidewalk dub-downs and approved drainage systems, to protect landscaped or pedestrian areas, buildings or adjacent property from potential vehicle encroachment. The Planning Commission may approve an alternative to a fully curbed parking facility as long as the intent of this division (D) is achieved. To avoid conflicts with swinging car doors and overhanging bumpers, in such circumstances all plants shall be set back at least two feet from the edge of pavement.

(E) *Dimensions.* Table 153.189 specifies applicable parking space and aisle dimension requirements.

(1) Angled parking between the specified ranges shall be to the nearest degree.

(2) The length of a parking stall may be reduced by up to two feet if the parked vehicle can overhang an unobstructed landscaped area or sidewalk by not less than two feet. In such instances a sidewalk shall be at least seven feet wide.

(3) At least seven feet shall be maintained between a parking lot and building.

(4) All parking lots shall be striped and maintained showing individual parking bays in accordance with the following dimensions:

Table 153.189: Dimensional Requirements (Feet)

Parking Pattern (Degree)	***Parking Space***		***Maneuvering Lane Width***	***Total 1 Row of Parking and Maneuvering Lane***	***Total Bay (2 Rows of Parking and Maneuvering Lane)***
	Width	***Length***			
0 degree (parallel)	8	23	12	20	28
30 to 53	9	20	12	32	52
54 to 74	9	20	15	36.5	58
75 to 90	9	18	24	42	60

(F) *Stacking spaces.* Waiting/stacking spaces for a drive-through use (such as a bank, restaurant, car wash, pharmacy, dry cleaner or oil change establishment) shall be at least 24 feet long and ten feet wide and shall not block off-street parking spaces. Where the waiting/stacking lane is a single lane accommodating five or more vehicles, an escape lane shall be provided for vehicles wishing to by-pass the drive-up window.

(G) *Ingress and egress.* Clearly defined and limited driveways shall provide adequate vehicular access to a parking lot. Interior access and circulation aisles for all parking spaces shall be provided. A public street shall not be used as a maneuvering space for a vehicle to get into or out of an off-street parking space. Access drives serving a parking lot in a non-residential zoning district shall not cross a residential district, except when access is provided by means of an alley that forms a boundary between a residential and non-residential district.

(H) *Landscaping.* Off-street parking areas shall be landscaped in accordance with the requirements of § 153.171(H) of this chapter.

(I) *Fire lanes.* All fire lanes shall be designated on a site and posted with signs prior to occupancy.

(J) *Barrier free parking.* Signed and marked barrier free parking spaces shall be provided at convenient locations in a parking lot in accordance with the state barrier free parking requirements. Barrier free spaces shall be located as close as possible to building entrances.

(K) *Maintenance.* All parking lots and structures shall be maintained free of trash and debris and all surfaces, curbs, light fixtures and signs shall be maintained in good condition.

(Prior Code, § 5.94) (Ord. 807, passed 9-3-2019) Penalty, see § 153.999

§ 153.190 OFF-STREET LOADING REQUIREMENTS.

(A) *Uses requiring loading area.* To avoid interference with the use of public streets, alleys and parking spaces, adequate space for standing, loading and unloading shall be provided and maintained on the same lot as the premises.

(B) *Loading area requirements.* A loading and unloading space shall be paved, and unless otherwise provided, shall be ten feet by 40 feet, with a 15-foot height clearance, according to Table 153.190:

Table 153.190: Minimum Off-Street Loading Requirements

Building Net GFA	*Minimum Truck Loading Spaces*
0 - 1,400 sq. ft.	None
1,401 - 20,000 sq. ft.	1 space
20,001 - 100,000 sq. ft.	1 space, plus 1 space for each 40,000 sq. ft. in excess of 20,000 sq. ft.
100,001 - 500,000 sq. ft.	5 spaces, plus 1 space for each 40,000 sq. ft. in excess of 100,000 sq. ft.

(C) *Orientation of overhead doors.* Overhead doors for a truck loading area shall not face a public right-of-way and shall be screened so they are not visible from a public street or an adjacent residential district.

(Prior Code, § 5.95) Penalty, see § 153.999

SIGNS

§ 153.205 PURPOSE.

The purpose of this article is to regulate signs designed to be visible to the public in a manner which does not restrict the content thereof while:

(A) Recognizing the mass communications needs of both businesses and other parties;

(B) Protecting property values and neighborhood character;

(C) Creating a more attractive business climate;

(D) Promoting pedestrian and traffic safety by reducing sign distractions, obstructions and other hazards;

(E) Promoting pleasing community environmental aesthetics; and

(F) Discouraging visual competition among businesses.

(Prior Code, § 5.100) (Ord. 789, passed 3-19-2018)

§ 153.206 GENERAL PROVISIONS.

(A) *Prohibited signs.* The following signs shall not be allowed in any zoning district:

(1) Signs that are not consistent with the standards of this chapter;

(2) Signs that are not clean (i.e., are covered with materials that obscure the message, in whole or in part); signs that are not in good repair (i.e., having broken foundation, base or support structures, lighting fixtures and the like) and/or having a faded appearance;

(3) Signs that are structurally unsafe and/or dangerous (i.e., in a state of disrepair or being designed and/or constructed so as to pose a likely threat of total or partial collapse) (see division (E) below);

(4) Signs that are not securely affixed to a substantial structure that will hold the sign in a fixed position under normal weather conditions;

(5) Signs that are attached to any natural growth, such as trees, shrubs or other natural foliage;

(6) Signs other than official utility company signs affixed to power utility poles or other utility structures or fixtures;

(7) Signs located so as to interfere with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets or private roads (see § 153.142 of this chapter);

(8) Signs in public rights-of-way other than those allowed by the state's TODS program;

(9) External neon signs other than in the GC, CBD or CH Districts;

(10) All types of pennants, streamers and airborne devices attached to the ground or buildings;

(11) Billboards;

(12) Internally lighted signs;

(13) Off-premises signs;

(14) Roof signs; and

(15) Signs containing an electronic sign face other than allowed by § 153.209(A) of this chapter.

(B) *Signs authorized without a sign permit.* The following signs are authorized in any district without a sign permit and are not included towards the maximum number of signs allowed on a parcel, but shall conform to the applicable requirements of this chapter and the applicable building codes:

(1) Signs posted on private property less than or equal to two square foot in sign face area;

(2) Signs erected by, on behalf of a governmental body for purposes of protecting the public health, safety and welfare;

(3) Official signs erected by public utilities;

(4) Flags or insignia;

(5) Any sign located wholly within a building and not visible from outside the building;

(6) Window signs located on the interior of a building. Window signs located on the exterior of a building are considered wall signs and are subject to all applicable regulations; and

(7) Public signs or signs sanctioned by a public body on public land are not subject to this chapter.

(C) *Permit required for signs.*

(1) Except as otherwise provided in this chapter, no sign may be constructed, erected, moved, enlarged, illuminated or otherwise altered unless a sign permit has been issued in accordance with the provisions of this chapter. Repainting or changing the message of a sign is not in and of itself considered an alteration.

(2) Application for a sign permit shall be submitted to the Zoning Administrator on appropriate forms supplied by her or his office. Said application shall contain the following information:

(a) Name, address and telephone number of the applicant;

(b) Written permission of property owner on whose property the sign will be located (if the applicant is not the property owner);

(c) Type of sign as defined by this chapter;

(d) Scaled drawing showing sign size, height, type of support (if applicable), zoning district in which the sign will be located, location of sign on property including front and side yard setback distances and any other information required herein;

(e) Street address of the property upon which the sign will be located; and

(f) The name of the sign contractor, who shall erect the sign and/or sign structure.

(3) No permit shall be issued for the erection of any sign or signs until such sign(s) have been reviewed and approved by the Zoning Administrator and without first having paid a permit fee as established by the City Council.

(4) Any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the zoning board of appeals.

(D) *Signs in public rights-of-way.* All signs in the U.S. 31 and M 66 Highway rights-of-way are jointly regulated by the city and the state's Department of Transportation (MDOT) at locations approved by and installed in accord with the state's TODS program.

(E) *Unsafe signs.*

(1) No person, corporation, business organization or other legal entity shall own or maintain any sign or advertising device that is structurally unsafe. For purposes of this section, the term ***STRUCTURALLY UNSAFE*** shall mean being in a state of disrepair or being designed and/or constructed so as to pose a likely threat of a total or partial collapse.

(2) The Zoning Administrator and/or other officials designated by the Zoning Administrator shall have the right to inspect signs and advertising devices to determine whether they are structurally unsafe. The Zoning Administrator and/or other officials designated by the Zoning Administrator may exercise this right of inspection by consent of the owner of the sign or advertising device and the owner of the property on which the sign or advertising device is located or by administrative search warrant.

(3) If the Zoning Administrator finds that a sign or advertising device is structurally unsafe, he or she shall serve on the owner of the sign or advertising device and the owner of the property on which the sign or advertising device is located a written notice, which specifies all of the following:

(a) The location of the sign or advertising device that is structurally unsafe;

(b) The nature of the unsafe condition;

(c) The date, no less than 20 days after the written notice was served, before which the owner of the sign or advertising device or the owner of the property on which the sign or advertising device is located shall remedy the unsafe condition;

(d) A statement that if the owner of the sign or advertising device or the owner of the property on which the sign or advertising device is located fails to remedy the unsafe condition within the time specified in the written notice, the city may enter onto the property to remedy the unsafe condition and charge the costs of such action, including reasonable attorney fees, to the owner of the sign or advertising device and/or the owner of the property on which the sign or advertising device is located;

(e) A statement that the owner of the sign or advertising device and the owner of the property on which the sign or advertising device is located has the right before the expiration of the deadline contained in the written notice to request a hearing before the City Council regarding whether the sign or advertising device is structurally unsafe;

(f) The service required by this subsection shall be personal service or service by certified mail, restricted delivery, return receipt requested. For purposes of this section, the phrase ***REMEDY THE UNSAFE CONDITION*** shall mean repairing the sign or advertising device so that it does not pose a serious threat of a total or partial collapse or removing the sign or advertising device from the property;

(g) If the owner of the sign or advertising device or the owner of the property on which the sign or advertising device is located requests a hearing before the City Council as provided in this section, the city shall take no action to remedy the unsafe condition until, after notice and hearing, the City Council finds that the sign or advertising device is structurally unsafe. A notice of the time, date and place of the hearing before the City Council shall be served on the owner of the sign or advertising device and on the owner of the property on which the sign or advertising device is located no less than 14 days before the scheduled hearing. The service of this notice may be made by first class mail. The owner of the sign or advertising device or the owner of the property on which the sign or advertising device is located may appeal an adverse decision by City Council to the circuit court as provided by law; and

(h) In exercising its right under this section to remedy the unsafe condition, either with or without a hearing before the City Council, the city shall remove the sign or advertising device from the property if the unsafe sign is in imminent danger of collapse causing injury or damage to persons or property. The costs of remedying and/or removing the unsafe condition shall be collected by the city from the owner of the sign or advertising device or the owner of the property on which the sign or advertising device is located.

(F) *Non-conforming signs.*

(1) Subject to the remaining restrictions of this section, non-conforming signs that were otherwise lawful on the effective date of this chapter may be continued, repaired and maintained as is necessary to keep in a sound condition.

(2) No person may engage in any activity that causes an increase in the extent of non-conformity of a non-conforming sign. In addition, no person may add illumination.

(3) A non-conforming sign may not be moved or replaced, except to bring the sign into greater conformity with this chapter.

(4) If a non-conforming sign is destroyed to the extent it is impractical to be restored using a majority of its existing major components, it may not thereafter be repaired, reconstructed or replaced except in conformity with all the provisions of this chapter, and the remnants of the former sign structure shall be cleared from the land.

(5) The message of a non-conforming sign may be changed so long as this does not create any new non-conformity.

(Prior Code, § 5.101) (Ord. 789, passed 3-19-2018)

§ 153.207 SIGN STANDARDS FOR ALL SIGNS.

(A) *Number and placement requirements.*

(1) A number of small signs with organized elements or cohesive design may be construed as a single sign. Where graphic material is displayed in a random

manner without an organized relationship of elements, each element may be considered a single sign.

(2) No sign may extend above any parapet or be placed upon any roof surface, except that for purposes of this chapter, roof surfaces constructed at an angle of 75 degrees or more from horizontal shall be regarded as wall space.

(B) *Computation of sign face area.*

(1) The sign face area of a sign shall be computed by including the entire area within a single, continuous perimeter of a circle, triangle, rectangle or parallelogram enclosing the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework or bracing that is clearly incidental to the display itself.

(2) If the sign consists of more than one section or module, all of the area, including that between sections or modules, shall be included in the computation of the sign face area.

(3) Subject to the provisions of § 153.208(B) of this chapter, the sign face area of two-sided, multi-sided or three-dimensional signs shall be computed by including the total of all sides designed to attract attention or communicate information.

(C) *Sign height.* The height of a sign shall be measured vertically from the ground level to the top of the sign, unless otherwise specified.

(D) *Illumination and lighting.*

(1) For the safety of the general public, no unshielded lights, or lights directed upward or horizontally at sign faces, flashing lights, scrolling or moving electronic lights, or other distractive devices may be used in conjunction with any sign or business.

(2) Each sign, which is artificially illuminated, shall have the light source shielded from the direct vision of individuals using adjacent roadways, properties, or sidewalks.

(3) Signs shall not emit light directly into the sky. The light source shall not be positioned so that the center of the light source exceeds more than 45 degrees from ground level.

(4) Illumination by bare bulbs or flames is prohibited.

(5) Underground wiring shall be required for all illuminated signs that are not attached to a building.

(6) External neon signs no larger than two square feet in sign face area are allowed in the GC (General Commercial), CBD (Central Business District) and CH (Commercial Hospitality) Zoning Districts only.

(E) *Sign materials.*

(1) Signs shall be constructed of durable materials.

(2) Natural or natural-like materials are encouraged. Earth tone colors are to be encouraged.

(3) It is recommended that the sign be constructed of materials compatible with the existing structure.

(Prior Code, § 5.102) (Ord. 789, passed 3-19-2018; Ord. 801, passed 4-15-2019) Penalty, see § 153.999

§ 153.208 SIGN STANDARDS FOR SPECIFIC SIGNS.

(A) *Ground signs.*

(1) No part of a ground sign may exceed a height of 16 feet, measured from ground level.

(2) No part of a ground sign may be closer than four feet to the right-of-way line.

(B) *Two-sided signs.* A two-sided or multi-sided sign shall be regarded as one sign so long as the interior angle of a “V” type sign does not exceed 30 degrees and the two side are at no point separated by a distance that exceeds five feet; and the distance between the backs of each face of a double-faced (back-to-back) sign does not exceed three feet.

(C) *Wall signs.* No wall sign attached to a building may project more than 12 inches from the building wall. In those instances where a wall sign is affixed to the wall of the structure which lies on a right-of-way line, the bottom of the wall sign may be no closer than eight feet from the ground. In all other instances, see § 153.219 of this chapter for height requirements.

(D) *Projecting signs.*

(1) Projecting signs located above a public right-of-way shall be located at least nine feet from ground level, measured vertically from ground level to the bottom of the sign.

(2) Projecting signs located above an alley shall be located at least 16 feet above ground level, measured vertically from ground level to the bottom of the sign.

(3) No part of a projecting sign may extend more than eight feet over private property or a public right-of-way.

(E) *Awning, canopy, marquee signs.* Except for awning, canopy and marquee signs hanging entirely over private property, no part of an awning sign may be closer than eight feet from ground level.

(F) *Temporary banner signs.* Temporary banners in conjunction with a one-time event are only allowed in two specific locations within the city, adjacent to the city golf course and near the intersection of M 66 and U.S. 31. Temporary banners require a sign permit. Temporary banners may be erected not more than two weeks before the event and must be removed within two days after the event.

(G) *Flags.* Flags shall be a maximum of 15 square feet and shall be located so as to not interfere with pedestrian activity.

(H) *Sandwich board signs.*

(1) Shall be not more than 48 inches in height and 30 inches in width, and cannot exceed six square feet in sign face area;

(2) Shall be located on private property;

(3) Shall not block pedestrian access;

(4) Shall be constructed of durable materials and be clearly portable in terms of size, weight and placement;

(5) Shall only be displayed between the hours of 7:00 a.m. and 12:00 a.m.;

(6) Shall use chalkboards or whiteboards for their signage area; and

(7) Shall not utilize changeable lettering for their messaging

(Prior Code, § 5.103) (Ord. 789, passed 3-19-2018) Penalty, see § 153.999

§ 153.209 SIGN STANDARDS FOR SPECIFIC LAND USE; SCHEDULE OF REGULATIONS.

(A) (1) *Automobile gasoline service stations.*

(a) In addition to the signs allowed by § 153.219 of this chapter, automobile gasoline service stations, including any business selling gasoline, may display one other sign with a sign face area not to exceed 18 square feet. For purposes of this division (A)(1), the sign may be an electronic sign face. Signs on pump canopies may be considered secondary to a station's primary sign should the primary sign, for example be a ground sign. See § 153.210 of this chapter for all dimensional requirements.

(b) On-premises signs displayed over individual entrances or service bays shall be permitted. Not more than one such sign per bay shall be permitted and each sign shall not exceed four square feet in total sign face area. See § 153.210 of this chapter for all dimensional requirements.

(2) *Major home occupations.* Major home occupations may have one wall sign no larger than four square feet. See § 153.210 of this chapter for all dimensional requirements.

(3) *Multi-tenant business center.*

(a) Notwithstanding the requirements of § 153.210 of this chapter, in the case of a shopping center or other integrated group of stores or commercial buildings, one ground sign may be erected per street frontage. The maximum area for such a sign face shall be equal to 20 square feet one of sign face area for each business, or 60 square feet, whichever is less.

(b) See § 153.210 of this chapter for all dimensional requirements.

(Prior Code, § 5.104)

(B) Schedule of regulations for specific land use.

Table 153.209: Schedule of Regulations for Specific Land Use

Land Use	*Sign Type Allowed*	*Sign Face Area*	*Height*	*Number*	*Location*	*Permit Required?*
Major home occupations	Wall	Max 4 sf	Max 8 ft	Max 1 per parcel	First floor of building	Yes
Business center	Ground	See division (A)(3) above	Max 16 ft	See division (A)(3) above	Min setback 4 ft from ROW	Yes
Automobile gasoline service	Electronic	Max 18 sf	Max 16 ft	See division (A)(1) above	Min setback 4 ft from ROW	Yes
Service bay	Max 4 sf	Min 8 ft	Max 12 ft	Max 1 per service bay	See division (A)(1) above	Yes

(Prior Code, § 5.105)

(Ord. 789, passed 3-19-2018)

§ 153.210 R1, R2, R2A, R4, PC AND SR ZONING DISTRICTS.

The following signs are authorized in the R1 (Residential Low Density), R2 (Residential Medium Density), R2A (Residential Medium Density - Multi Family), R4 (Residential Planned High Density), PC (Residential Private Clubs), and SR (Scenic Reserve) Zoning Districts. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206 of this chapter; and

(2) Temporary signs less than or equal to eight square feet in sign face area. Such signs shall be removed within seven days after the activity referenced has concluded.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than eight square feet in sign face area but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded; and

(2) On-premises ground sign.

(Prior Code, § 5.106) (Ord. 789, passed 3-19-2018)

§ 153.211 PUD ZONING DISTRICT.

The following signs are authorized in the PUD (Planned Unit Development) Zoning District. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter; and

(2) Temporary signs less than or equal to 16 square feet in sign face area. Such signs shall be removed within seven days after the activity referenced has concluded.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than 16 square feet in sign face area but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises ground sign;

(3) On-premises projecting sign; and

(4) On-premises wall sign.

(C) *Mixed-use planned unit development.* Except for the signs permitted under this section, no other signs are permitted in residential areas of a PUD Zoning District, but are allowed in the commercial areas of a PUD Zone District. See § 153.219 of this chapter for all dimensional requirements.

(Prior Code, § 5.107) (Ord. 789, passed 3-19-2018)

§ 153.212 PF ZONING DISTRICT.

The following signs are authorized in the PF (Public Facilities) Zoning District. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter; and

(2) Temporary signs less than or equal to 16 square feet in sign face area. Such signs shall be removed within seven days after the activity referenced has concluded.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than sixteen (16) square feet in sign face area but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises ground sign; and

(3) On-premises wall sign.

(Prior Code, § 5.108) (Ord. 789, passed 3-19-2018)

§ 153.213 GC ZONING DISTRICT.

The following signs are authorized in the GC (General Commercial) Zoning District. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter;

(2) Temporary signs less than or equal to 16 square feet in sign face area. Such signs shall be removed within seven days after the activity referenced has concluded; and

(3) External neon signs no larger than two square feet in sign face area.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than 16 square feet in sign face area, but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises awning, canopy or marquee sign;

(3) On-premises ground sign;

(4) On-premises projecting sign; and

(5) On-premises wall sign.

(Prior Code, § 5.109) (Ord. 789, passed 3-19-2018)

§ 153.214 CM ZONING DISTRICT.

The following signs are authorized in the CM (Commercial Mixed Use) Zoning District. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter;

(2) Temporary signs less than or equal to 16 square feet in sign face area and less than eight feet in height. Such signs shall be removed within seven days after the activity referenced has concluded; and

(3) Portable signs. See § 153.208(H) of this chapter.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) On-premises temporary ground signs greater than 16 square feet in sign face area but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises awning, canopy or marquee sign;

(3) On-premises ground sign; and

(4) On-premises projecting sign.

(Prior Code, § 5.110) (Ord. 789, passed 3-19-2018)

§ 153.215 CBD ZONING DISTRICT.

The following signs are authorized in the CBD Zoning Districts. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter;

(2) Temporary signs less than or equal to 16 square feet in sign face area and less than eight feet in height. Such signs shall be removed within seven days after the activity referenced has concluded;

(3) External neon signs no larger than two square feet in sign face area;

(4) One commercial flag per business. See § 153.208(G) of this chapter; and

(5) Portable signs. See § 153.208(H) of this chapter.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than 16 square feet in sign face area but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises awning, canopy, marquee sign;

(3) On-premises ground sign;

(4) On-premises projecting sign; and

(5) On-premises wall sign.

(C) Commercial properties on Bridge Park Dr. that are located beneath Bridge Park are allowed to attach a sign less than or equal to two square feet in sign face area on the Bridge Park railing above the location of their business. A sign permit must be obtained, which must also be approved by the City Manager. The method of sign attachment must be included in the sign permit application. A sign permit approved under this division is valid only for the permit applicant and cannot be transferred to another entity.

(Prior Code, § 5.111) (Ord. 789, passed 3-19-2018; Ord. 834, passed 1-2-2023)

§ 153.216 I ZONING DISTRICT.

The following signs are authorized in the I (Industrial) Zoning District. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter; and

(2) Temporary signs less than or equal to 16 square feet in sign face area and less than eight feet in height. Such signs shall be removed within seven days after the activity referenced has concluded.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than 16 square feet in sign face area but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises awning, canopy, marquee sign;

(3) On-premises ground sign;

(4) On-premises projecting sign; and

(5) On-premises wall sign.

(Prior Code, § 5.112) (Ord. 789, passed 3-19-2018)

§ 153.217 PO AND MC ZONING DISTRICTS.

The following signs are authorized in the PO (Professional Office) and MC (Marine Commercial) Zoning Districts. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter; and

(2) Temporary signs less than or equal to 16 square feet in sign face area and less than eight feet in height. Such signs shall be removed within seven days after the activity referenced has concluded.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than 16 square feet in sign face area but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises awning, canopy, marquee sign;

(3) On-premises ground sign;

(4) On-premises projecting sign; and

(5) On-premises wall sign.

(Prior Code, § 5.113) (Ord. 789, passed 3-19-2018)

§ 153.218 CH ZONING DISTRICT.

The following signs are authorized in the CH (Commercial Hospitality) District. See § 153.219 of this chapter for all dimensional requirements.

(A) *Signs not requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized without a sign permit:

(1) Signs authorized by § 153.206(B) of this chapter;

(2) Temporary signs less than or equal to 16 square feet in sign face area and less than eight feet in height. Such signs shall be removed within seven days after the activity referenced has concluded; and

(3) External neon signs no larger than two square feet in sign face area.

(B) *Signs requiring a sign permit.* Subject to any other applicable requirements and permits, the following signs are authorized after issuance of a sign permit:

(1) Temporary signs greater than 16 square feet in sign face area, but not to exceed 36 square feet and less than eight feet in height. Such signs shall be removed within seven days after activity referenced has concluded;

(2) On-premises ground sign;

(3) On-premises projecting sign; and

(4) On-premises wall sign.

(Prior Code, § 5.114) (Ord. 789, passed 3-19-2018)

§ 153.219 SCHEDULE OF REGULATIONS.

Table 153.219: Schedule of Regulations by Zoning District

Zoning District / ***Sign Type***	***Max Sign Face Area***	***Max Height***	***Max. Number***	***Location***	***Permit Required?***
Table 153.219: Schedule of Regulations by Zoning District					
Zoning District / ***Sign Type***	***Max Sign Face Area***	***Max Height***	***Max. Number***	***Location***	***Permit Required?***
R1, R2, R2A, R4, PC, SR					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 8 sf

Ground	Max 16 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
PUD					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 16 sf
Wall	Max 30 sf	Max 8 ft	1/parcel	First floor of building	Yes
Ground	Max16 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
Projecting	Max16 sf	Min 8 ft Max 12 ft	1/public frontage	Shall not be located in ROW	Yes
PF					
Temporary banner	Max 30 sf	Max 16 ft	n/a	U.S. 31/M 66 intersection only. Shall not be located in ROW	Yes
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 16 sf
Wall	Max 30 sf	Max 8 ft	1/parcel	First floor of building	Yes
Ground	Max 16 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
GC					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 8 sf
Wall	Max 30 sf	Max 8 ft	1/parcel	First floor of building	Yes
Awning, canopy, marquee	Max 16 sf	Max 8 ft	1/awning, canopy, or marquee	Shall not be located in ROW	Yes
Ground	Max 20 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
Projecting	Max 16 sf	Min 8 ft Max 12 ft	1/parcel	Shall not be located in ROW	Yes
External neon	Max 2 sf	Max 8 ft	1/business	n/a	No
CM					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 16 sf
Portable	Max 6 sf	Max 4 ft	1/business		No
Awning, canopy, marquee	Max 16 sf	Max 8 ft	1/awning, canopy, or marquee	Shall not be located in ROW	Yes
Ground	Max 16 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
Projecting	Max 16 sf	Min 8 ft Max 12 ft	1/parcel	Shall not be located in ROW	Yes
CBD[1]					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 16 sf
Wall	Max 30 sf	Max 8 ft	1/parcel	First floor of building	Yes
Portable	Max 6 sf	Max 4 ft	1/business		No
External neon	Max 2 sf	Max 8 ft	1/business	n/a	No
Commercial flag	Max 15 sf	n/a	1/business	Shall not interfere with pedestrians	No
Awning, canopy, marquee	Max 16 sf	Max 8 ft	1/awning, canopy, marquee	Shall not be located in ROW	Yes
Ground	Max 16 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
Projecting	Max 16 sf	Min 8 ft Max 12 ft	1/parcel	Shall not be located in ROW	Yes
[1] See § 153.215(C) regarding commercial properties on Bridge Park Dr. located beneath Bridge Park.					
PO, MC					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 16 sf
Wall	Max 30 sf	Max 8 ft	1/parcel	First floor of building	Yes
Awning, canopy, marquee	Max 16 sf	Max 8 ft	1/awning, canopy, marquee	Shall not be located in ROW	Yes

Ground	Max 16 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
Projecting	Max 16 sf	Min 8 ft Max 12 ft	1/parcel	Shall not be located in ROW	Yes
CH					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 16 sf
Wall	Max 30 sf	Max 8 ft	1/parcel	First floor of building	Yes
Ground	Max 20 sf	Max 16 ft	1/public frontage	Min setback 4 ft from ROW	Yes
Projecting	Max 16 sf	Min 8 ft Max 12 ft	1/parcel	Shall not be located in ROW	Yes
(I) Industrial					
Temporary	Max 36 sf	Max 8 ft	1/public frontage	Min setback 4 ft from ROW	No - if sign face area less than/equal to 16 sf
Temporary banner	Max 30 sf	Max 16 ft	n/a	Adjacent to city golf course. Shall not be located in the ROW	Yes
Wall	Max 30 sf	Max 8 ft	1/parcel	First floor of building	Yes
Awning, canopy, marquee	Max 16 sf	Max 8 ft	1/awning, canopy, marquee	Shall not be located in the ROW	Yes
Ground	Max 16 sf	Max 16 ft	1/public frontage	Min. setback 4 ft from ROW	Yes
Projecting	Max 16 sf	Min 8 ft Max 12 ft	1/parcel	Shall not be located in the ROW	Yes

(Prior Code, § 5.115) (Ord. 789, passed 3-19-2018; Ord. 834, passed 1-2-2023)

SITE PLAN REVIEW

§ 153.230 INTENT.

The purpose of this subchapter is to establish uniform requirements for the planning and design of developments within the city in order to achieve the following objectives:

(A) To determine compliance with the provisions of this chapter;

(B) To apply provisions of this subchapter equitably and fairly;

(C) To promote the orderly development of the city;

(D) To prevent depreciation of land values;

(E) To ensure a consistent level of quality throughout the community;

(F) To ensure a harmonious relationship between new development and the existing natural and manmade surroundings;

(G) To achieve the goals and recommendations of the city Master Plan; and

(H) To promote consultation and cooperation between applicants and the city in order that applicants may accomplish their objectives in the utilization of land, consistent with the public purposes of this chapter and the Master Plan.

(Prior Code, § 5.115) (Ord. 822, passed 10-19-2020)

§ 153.231 APPLICABILITY.

Site plan review shall be required, as applicable, under the following conditions, or under other circumstances required by the City of Charlevoix Zoning Ordinance or other applicable law, unless exempted by § 153.232.

(A) *Level "A" review.* The Zoning Administrator shall review site plans in connection with the creation of a use or the erection of a building or structure in any of the following circumstances:

(1) Any use permitted by right within any zoning district, if the proposed building is less than 2,000 square feet;

(2) Additions to existing buildings in any zoning district; provided, the addition is not larger than 20% of the area of the building prior to the expansion or more than 2,000 square feet in area, whichever is less;

(3) Changes in the use of any existing building in any zoning district; provided, the use is permitted by right in that zoning district; and

(4) When, in the opinion of the Zoning Administrator, a project which otherwise qualifies for level "A" site plan review may have a significant impact on surrounding properties or the city, the Zoning Administrator may, at their sole discretion, submit the site plan to the Planning Commission for review. In such cases, the Planning Commission shall follow the review procedure for level "B" site plans and may require any additional information needed to make an informed decision.

(B) *Level "B" review.* The Planning Commission shall act upon all site plans, other than those provided for level "A" review, in connection with the creation of a use or the erection of a building or structure in any of the following circumstances:

(1) Any "permitted" use within any zoning district occupying a building of 2,000 square feet or more;

(2) Any special use in any district;

(3) Any planned unit development;

(4) Any site plan on a waterfront parcel. A waterfront parcel is a parcel of land, or a portion thereof, abutting a water body; and

(5) As otherwise required by this chapter.

(Prior Code, § 5.116) (Ord. 791, passed 3-19-2018; Ord. 822, passed 10-19-2020)

§ 153.232 EXEMPTIONS.

Site plan review shall not be required for:

(A) Developments, expansions, or additions to existing uses within the Charlevoix City Airport.

(B) Single- or two-family dwellings on a lot on which there exists no other principal building or use or for any home occupation or accessory building in a single-family residential district.

(Prior Code, § 5.117) (Ord. 822, passed 10-19-2020)

§ 153.233 SITE PLAN REVIEW PROCEDURES.

(A) The Charlevoix Zoning Administrator and/or planner shall have the authority to conduct a pre-application meeting with the applicant/developer to assist them in understanding the site plan review process and other subchapter requirements; and to provide insight as to what portions of their proposed development may be of special concern to the Planning Commission.

(B) This conference is not mandatory, but is recommended for small and large projects alike. For large projects, a pre-application conference should be held several months in advance of the desired start of construction. Such an advance conference will allow the applicant/developer time to prepare the needed information for the Planning Commission to make a proper review.

(Ord. 822, passed 10-19-2020)

§ 153.234 SITE PLAN REVIEW PROCEDURES.

The process for reviewing the site plan shall be as follows:

(A) Site plan and level "A" reviews shall be performed by the Zoning Administrator as follows:

(1) Two copies of a complete site plan and an electronic version, in a format specified by the city, shall be submitted along with an application for that purpose and a fee, as established by the City Council.

(2) The Zoning Administrator shall review the site plan for completeness.

(3) If the site plan is found to be incomplete, the Zoning Administrator shall return the site plan to the applicant with a list of items needed to make the site plan complete.

(4) Once the site plan is determined to be complete, the Zoning Administrator shall notify and seek comment from other city departments as applicable. A review by all the applicable departments will be held within 14 days. A report will be drafted by the Zoning Administrator stating a synopsis of the proposal and how the proposal relates to the zoning ordinance standards.

(5) The Zoning Administrator shall consider the site plan, any comments received and the applicable standards of this subchapter and shall either approve the site plan, as submitted, if all applicable requirements and the standards of § 153.237 have been met; approve the site plan with conditions; or deny approval of the site plan, if applicable requirements and standards have not been met.

(6) The reasons for the Zoning Administrator's action, along with any conditions that may be attached, shall be stated in writing and provided to the applicant.

(7) If approved, two copies of the final site plan shall be signed and dated by the Zoning Administrator and the applicant. One copy, along with the digital version, shall be kept on file with the city and one copy shall be returned to the applicant or their designated representative. If the plan is approved with conditions, a revised plan shall be submitted reflecting those conditions and signed by the applicant and Zoning Administrator prior to the issuance of any permits.

(B) Site plan and level "B" reviews shall be performed by the Planning Commission as follows:

(1) Two copies of a complete site plan and an electronic version, in a format specified by the city, shall be submitted along with an application for that purpose and a fee, as established by the City Council.

(2) The Zoning Administrator shall review the site plan for completeness.

(3) If the site plan is found to be incomplete, the Zoning Administrator shall return the site plan to the applicant with a list of items needed to make the plot plan or site plan complete.

(4) Once the site plan is determined to be complete, the Zoning Administrator shall notify and seek comment from other city departments as applicable. A review by all the applicable departments will be held within 14 days. A report will be drafted by the Zoning Administrator stating a synopsis of the proposal and how the proposal relates to the zoning ordinance standards.

(5) The applicant will then submit 11 copies of the complete (revised) site plan; two full size, nine 11 inches by 17 inches and an electronic version, in a format specified by the city.

(6) The Zoning Administrator shall transmit the site plan and report to the Planning Commission for consideration at its next meeting that meets the noticing requirements. Comments, if any, from the public, city departments and consultants shall be transmitted to the Planning Commission prior to its review of the plan. Where required by the City of Charlevoix Zoning Ordinance or other applicable law, notice shall be given to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction, and a public hearing held.

(7) The Planning Commission shall consider the site plan and shall either approve the site plan, as submitted, if all applicable requirements and standards have been met; approve the site plan with conditions; or deny the site plan if applicable requirements and standards have not been met. The Planning Commission review shall be based on the requirements of this chapter, comments received from city departments and consultants, and, specifically, the review standards of § 153.237.

(8) If approved, two copies of the site plan shall be signed and dated by the Planning Commission chairperson and the applicant. One copy, plus the digital copy, shall be kept on file with the city and one copy shall be returned to the applicant or their designated representative. If the plan is approved with conditions, a revised plan shall be submitted reflecting those conditions and signed by the applicant and the Planning Commission chairperson, prior to the issuance of any permits.

(Prior Code, § 5.118) (Ord. 794, passed 9-17-2018; Ord. 822, passed 10-19-2020)

§ 153.235 SUBMITTAL REQUIREMENTS.

(A) *Required content.* Each site plan submitted shall contain the information detailed in Table 153.235, as applicable:

Table 153.235: Required Site Plan Content		
Required Information	***Level "A"***	***Level "B"***

Table 153.235: Required Site Plan Content		
Required Information	***Level "A"***	***Level "B"***

GENERAL INFORMATION		
Date, north arrow and scale	X	X

Name and firm address of the professional individual responsible for preparing the site plan	X	X
Name and address of the property owner or petitioner	X	X
Location sketch	X	X
Legal description of the subject property	X	X
Size of subject property in acres or square feet	X	X
Boundary survey dated within six years of application	X	X
Preparer's professional seal		X
Revision block (month, day and year)	X	X
EXISTING CONDITIONS		
Existing zoning classification of subject property	X	X
Property lines and required setbacks (dimensioned)	X	X
Location, width and purpose of all existing easements	X	X
Location and dimension of all existing structures on the subject property	X	X
Location of all existing driveways, parking areas and total number of existing parking spaces on subject property	X	X
Abutting street right-of-way width	X	X
Location of all existing structures, driveways and parking areas within 300 feet of the subject property's boundary		X
Existing water bodies (rivers, creeks, wetlands and the like)	X	X
Existing landscaping and vegetation on the subject property		X
Size and location of existing utilities		X
Location of all existing surface water drainage facilities	X	X
PROPOSED DEVELOPMENT		
Location and dimensions of all proposed buildings	X	X
Location of all proposed drives (including dimensions and radii), acceleration/deceleration lanes, sidewalks, walls, fences, signs, exterior lighting, curbing, parking areas (including dimensions of a typical parking space and the total number of spaces to be provided) and unloading areas	X	X
Setbacks for all buildings and structures	X	X
Recreation areas, common use areas, dedicated open space and areas to be conveyed for public use		X
Flood plain areas and basement and finished floor elevations of all buildings	X	X
Landscape plan (showing location of proposed materials, size and type)		X
Layout and typical dimensions of proposed parcels and lots		X
Number of proposed dwelling units (by type), including typical floor plans for each type of unit		X
Number and location (by code, if necessary) of efficiency and 1-, 2- and 3- or more bedroom units		X
All deed restrictions or covenants		X
Brief narrative description of the project including proposed use, existing floor area (sq. ft.), size of proposed expansion (sq. ft.) and any change in the number of parking spaces	X	X
ENGINEERING		
Proposed method of handling sanitary sewage and providing potable water	X	X
Location and size of proposed utilities, including connections to public sewer and water supply systems and/or size and location of on-site systems	X	X
Location and spacing of fire hydrants		X
Location and type of all proposed surface water drainage facilities	X	X
Grading plan at no more than 2-foot contour intervals		X
Proposed streets (including pavement width, materials and easement or right-of-way dimensions)		X
BUILDING DETAILS		
Typical elevation views of all sides of each building		X
Gross and usable floor area	X	X

Elevation views of building additions	X	X
Building height	X	X

(B) *Information waiver.* Specific requirements of either a level "A" or "B" site plan may be waived by the Zoning Administrator where it is determined that such information is not applicable to the request. The Planning Commission reserves the right to request the waived information for level B site plan reviews in their decision making process.

(C) *Additional reports/study*. The Zoning Administrator or Planning Commission may require additional studies, reports or written opinions from qualified consultants to determine compliance with this chapter or other applicable law or to ensure negative impacts to public health, safety and welfare are avoided or mitigated. These reports/studies may include, but are not limited to, traffic studies, transportation plans, geotechnical reports, flood hazard evaluations or environmental assessments. The Zoning Administrator, or Planning Commission, shall have the authority to choose the individual consultant, firm or company. The costs of additional study shall be paid for by the applicant.

(Prior Code, § 5.119) (Ord. 822, passed 10-19-2020)

§ 153.236 COORDINATION WITH OTHER DEPARTMENTS AND AGENCIES.

(A) The Zoning Administrator shall forward level "A" and level "B" site plans and applications to the following departments and agencies where applicable for their information and opportunity to comment:

(1) City of Charlevoix Fire and Rescue Department

(2) City of Charlevoix Public Works Department

(3) Charlevoix County Road Commission

(4) Michigan Department of Transportation

(5) Charlevoix District Health Department

(6) Charlevoix County Drain Commissioner

(7) City of Charlevoix Police Department

(8) City of Charlevoix Downtown Development Authority

(9) Any other agency that may be affected by the site plan

(B) This review does not alleviate the applicant from obtaining any and all required permits and/or approvals from the departments and agencies listed above. Any comments received from the departments and agencies within a reasonable time (14 days) will be reviewed and considered by the Planning Commission and/or the Zoning Board of Appeals (ZBA).

(1) The Planning Commission may approve an application conditioned on obtaining agency permits, or may, if the permit is critical to the site plan, require the permit or approval prior to issuance of their approval.

(2) No construction activity associated with an approved site plan shall be undertaken until permits and approvals from all applicable agencies have been presented to the Zoning Administrator.

(3) Whenever possible, site plan review by the Zoning Administrator and Planning Commission shall be coordinated and done simultaneously with other reviews by the Zoning Administrator and Planning Commission on the same application.

(4) When an application is dependent on the need for a dimensional variance from the ZBA, re-zoning of property, or a zoning ordinance text amendment, such action must be completed prior to final site plan approval by the Planning Commission.

(Ord. 822, passed 10-19-2020)

§ 153.237 STANDARDS FOR SITE PLAN APPROVAL.

A site plan shall be approved or approved with conditions, only upon a finding of compliance with the following standards:

(A) The site plan must comply with all standards of this section and all applicable requirements of this chapter, as well as with all other applicable city, county, state and federal laws and regulations.

(B) The site must be designed in a manner that is harmonious, to the greatest extent possible, with the character of the surrounding area.

(C) The site must be designed to minimize hazards to adjacent property and to reduce the negative effects of traffic, noise, smoke, fumes and glare to the maximum extent possible.

(D) The site plan does not have a negative impact on the provisions of human services, housing, transportation needs, and access to food in the community.

(E) The site plan protects the natural environment and conserves natural resources and energy to the extent possible in light of the proposed development.

(F) Unless a more specific design standard is required by the city through a different ordinance or regulation, all uses and structures subject to site plan review shall comply with the following design standards:

(1) *Traffic circulation.*

(a) The site plan shall comply with the applicable zoning district requirements for minimum floor space, height of building, lot size, yard space, density and all other requirements as set forth in the City of Charlevoix Zoning Ordinance, unless otherwise provided.

(b) *Vehicular and pedestrian circulation.* Safe, convenient, uncontested, and well-defined vehicular and pedestrian circulation shall be provided for ingress/egress points and within the site. A pedestrian circulation system shall be provided and shall be as insulated as completely as reasonably possible from the vehicular circulation system. The number, location and size of access and entry points, and internal vehicular and pedestrian circulation routes shall be designed to promote safe and efficient access to and from the site, as well as circulation within the site. In reviewing traffic features, the number, spacing and alignment of existing and proposed access points shall be considered relative to their impact on traffic movement on abutting streets and adjacent properties.

(c) *Walkways from parking areas to building entrances.*

1. Internal pedestrian walkways shall be developed for persons who need access to the building(s) from internal parking areas and shall be designed to provide access from these areas to the entrances of the building(s)

2. The walkways shall be designed to separate people from moving vehicles.

3. These walkways shall have a minimum width of five feet with no car overhang or other obstruction.

4. The walkways must be designed in accordance with the Michigan Barrier Free Design Standards.

5. The walkways shall be distinguished from the parking and driving areas by use of any of the following materials: special pavers, bricks, raised elevation or scored concrete. Other materials may be used if they are appropriate to the overall design of the site and building and acceptable to the review authority.

(2) *Storm water.* Storm water retention and drainage systems shall be designed so the removal of surface water will not adversely affect neighboring properties or public storm water drainage systems. Unless impractical, storm water shall be removed from all roofs, canopies and paved areas by an underground surface drainage system. Low impact design solutions such as rain gardens and green roofs are encouraged. The proposed project will meet the City of Charlevoix Storm Water Ordinance.

(3) *Snow storage.* Proper snow storage areas shall be provided so to not adversely affect neighboring properties, vehicular and pedestrian clear vision, and parking area capacity.

(4) *Landscaping.* The landscape shall be preserved in its natural state, insofar as practical, by minimizing unnecessary tree and soil removal. Any grade changes shall be in keeping with the general appearance of neighboring developed areas. Provision or preservation of landscaping, buffers or greenbelts may be required to ensure the proposed uses will be adequately buffered from one another and from surrounding property.

(5) *Screening.* Where non-residential uses abut residential uses, appropriate screening shall be provided in accordance with § 153.171 to shield residential properties from noise, headlights and glare.

(6) *Lighting.* Lighting shall be designed to minimize glare on adjacent properties and public streets. As a condition of site plan approval, reduction of lighting during non-business hours may be required.

(7) *Utility service.* All utility service shall be underground, unless impractical due to engineering difficulties.

(8) *Exterior uses*. Exposed storage areas, machinery, heating and cooling units, service areas, loading areas, waste storage areas, utility buildings and structures, and similar accessory areas shall be located to have a minimum negative effect on adjacent properties and shall be screened, if reasonably necessary, to ensure compatibility with surrounding properties.

(9) *Emergency access*. All buildings and structures shall be readily accessible to emergency vehicles.

(10) *Water and sewer.* Water and sewer installations shall comply with all city specifications and requirements.

(11) *Signs.* Permitted signs shall be located to avoid creating distractions, visual clutter and obstructions for traffic entering or exiting a site.

(Prior Code, § 5.120) (Ord. 822, passed 10-19-2020)

§ 153.238 CONDITIONS OF SITE PLAN APPROVAL.

(A) Conditions which are designed to ensure compliance with the intent of this subchapter and other regulations of the City of Charlevoix may be imposed on site plan approval.

(B) Conditions imposed shall be based on the following criteria:

(1) Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected.

(2) Ensure that the use is compatible with adjacent land uses and activities.

(3) Protect natural resources, the health, safety, welfare and social and economic well- being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(4) Ensure compatibility between the proposed use or activity and the rights of the city to perform its governmental functions.

(5) Meet the intent and purpose of the City of Charlevoix Zoning Ordinance, be related to the regulations and standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.

(6) Ensure compliance with the intent of other city ordinances that are applicable to the site plan.

(7) Ensure compatibility with other uses of land in the vicinity.

(Prior Code, § 5.121) (Ord. 822, passed 10-19-2020)

§ 153.239 PERFORMANCE GUARANTEE.

To assure compliance with this subchapter and any conditions of approval, performance guarantees may be required. The City Manager may require that a performance guarantee be furnished to ensure compliance with the requirements and conditions imposed under the city's Zoning Ordinance. The amount of the performance guarantee shall be set forth by the City Manager, with input from Council, and shall be an amount acceptable to the city in covering the estimated cost of improvements associated with the project for which zoning approval is sought. This performance guarantee may be in the form

of a cash deposit, certified check, irrevocable bank letter of credit, or a surety bond, and shall be deposited with the treasurer of the city. The performance guarantee shall be deposited at the time of issuance of the permit authorizing the activity or project. The city shall not require the deposit of the performance guarantee before the date on which the city is prepared to issue the permit. The city shall rebate any cash deposits in reasonable proportion to the ratio of work completed on the required improvement as work on the required improvements progresses.

(Prior Code, § 5.122) (Ord. 794, passed 9-17-2018; Ord. 822, passed 10-29-2020)

§ 153.240 AUTHORITY AND LIMITATIONS.

(A) A person aggrieved by a decision of the Zoning Administrator or Planning Commission in granting or denying approval of a site plan, or regarding any conditions attached to an approval, may appeal the decision to the ZBA per the requirements of § 153.038. A party aggrieved by the decision of the ZBA may appeal to the Charlevoix County Circuit Court.

(B) Decisions on a Special Use Permit or Planned Unit Development site plan may not be appealed to the ZBA, and may be appealed directly to Circuit Court.

(C) Land use permits associated with an approved site plan will not be issued until permits and approvals from applicable outside agencies have been presented to the Zoning Administrator. Such permits and approvals shall include but not be limited to soil erosion and sedimentation control permits, wetland permits, floodplain permits, driveway and road permits, and Health Department permits.

(Ord. 822, passed 10-19-2020)

§ 153.241 AMENDMENT TO APPROVED SITE PLAN

Changes to an approved site plan shall be permitted only under the following circumstances:

(A) The holder of an approved site plan shall notify the Zoning Administrator of any proposed change to an approved site plan.

(B) Changes to a level "A" site plan may be approved by the Zoning Administrator.

(C) Minor changes to a level "B" site plan may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design or any specified conditions imposed as part of the original approval. Minor changes shall include the following:

(1) Reduction in building size or increase in building size up to 5% of total approved floor area.

(2) Movement of buildings or other structures by no more than ten feet.

(3) Replacement of plant material specified in the landscape plan with comparable materials of an equal or greater size.

(4) Changes in building materials to a comparable or higher quality.

(5) Changes in floor plans which do not alter the character of the use.

(6) Changes required or requested by a city, county, state or federal regulatory agency in order to conform to other laws or regulations.

(D) A proposed change to a level "B" site plan, determined by the Zoning Administrator to not be a minor change, shall be submitted to the Planning Commission as a site plan amendment and shall be reviewed in the same manner as the original application.

(Prior Code, § 5.123) (Ord. 822, passed 10-19-2020)

§ 153.242 EXPIRATION

Site plan approval shall expire 12 months after the date of approval, unless substantial construction has been commenced and is continuing. The Zoning Administrator, in the case of a level "A" site plan, or the Planning Commission, in the case of level "B" site plan, may grant one extension of up to 12 additional months; provided the applicant requests an extension in writing prior to the date of expiration of the site plan. The extension shall be approved if the applicant presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the applicant and the project will proceed within the extension period. If the above provisions are not fulfilled or the extension has expired prior to construction, the site plan approval shall become null and void.

(Prior Code, § 5.124) (Ord. 822, passed 10-19-2020)

§ 153.243 AS BUILT PLAN

(A) For a project which requires a detailed site plan review, an as-built site plan shall be submitted to the city within 90 days of completion or occupancy, whichever comes first. This site plan shall be prepared to the same standard as the approved site plan. The Zoning Administrator shall use this as-built site plan as a comparison to the approved site plan, and the actual construction on the ground to ensure compliance with the conditions, and other requirements of the site plan, Planned Unit Development, special use permit, and requirements of this subchapter.

(B) If the as-built site plan does not show compliance with the conditions, and other requirements of the site plan, Planned Unit Development, special use permit, or other requirements of this subchapter, the deviation shall be considered a violation of this subchapter and shall be subject to any applicable enforcement remedy.

(Ord. 822, passed 10-19-2020)

SPECIAL LAND USE REVIEW

§ 153.250 INTENT.

Special uses are uses of land specifically permitted within a zoning district only by the approval of the Planning Commission, following a review of the use and its potential impact on its surroundings. Special uses are generally consistent with the purpose of the zoning district in which they are permitted but, due to unique operational characteristics, may not be desirable or compatible in all locations within the district. Factors such as traffic, hours of operation, noise, odor or similar potential nuisance effects require that the special use be evaluated relative to its appropriateness on a case-by-case basis. This article establishes the review procedure for special uses and the general standards that must be met for all special uses. In addition, more specific standards and requirements, as found in §§ 153.140 through 153.159 of this chapter, are established for certain individual uses to mitigate their potential negative impacts.

(Prior Code, § 5.130)

§ 153.251 PROCEDURES.

The following application and review procedures shall be followed for all special uses.

(A) Application for a special land use permit shall be made to the Zoning Administrator and shall include the following:

(1) A complete site plan, in accordance with the requirements of §§ 153.230 through 153.239 of this chapter;

(2) A completed application form; and

(3) Payment of an application fee in an amount as established from time to time by resolution of the City Council.

(B) Upon receipt of an application for a special land use permit, the Zoning Administrator shall cause notice to be given of a public hearing, in accordance with the Michigan Zoning Enabling Act, as follows.

(1) The notice of public hearing shall be published in a newspaper of general circulation in the city and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet. If the name of the occupant is not known, the term “occupant” may be used in making notification.

(2) The required notices shall be given not less than 15 days before the application will be considered.

(3) The notice shall:

(a) Describe the nature of the special use request;

(b) Indicate the property which is the subject of the request;

(c) State when and where the request will be considered; and

(d) Indicate when and where written comments will be received concerning the request

(C) Following notice, the Planning Commission shall hold a public hearing on the special land use application.

(D) The Planning Commission may approve, approve with conditions or deny the special land use request based upon review and consideration of materials submitted with the application, comments received at the public hearing and the applicable standards of § 153.253 of this chapter.

(E) The Planning Commission may request that any information submitted be reviewed by the city staff or consultants, with that cost of consultant review to be borne by the applicant.

(Prior Code, § 5.131)

§ 153.252 CONDITIONS OF APPROVAL.

Reasonable conditions may be imposed on the approval of a special land use in order to achieve the following:

(A) Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected;

(B) Ensure that the use is compatible with adjacent land uses and activities;

(C) Protect natural resources, the health, safety, welfare and social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole;

(D) Ensure compatibility between the proposed use or activity and the rights of the city perform its governmental functions;

(E) Meet the intent and purpose of this chapter, be related to the standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards; and

(F) Ensure compatibility with other uses of land in the vicinity.

(Prior Code, § 5.132)

§ 153.253 REVIEW STANDARDS.

A special land use shall only be approved if all the following general standards are satisfied, in addition to any applicable requirements for specific special land uses, as found in §§ 153.140 through 153.159 of this chapter:

(A) The use is designed and constructed, and will be operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; will be compatible with adjacent uses of land; and will not change the essential character of the area in which it is proposed;

(B) The use is, or as a result of the special land use approval, will be served adequately by public services and facilities, including, but not limited to, streets, police and fire protection, drainage structures, refuse disposal, water and sewer facilities and schools;

(C) The use will not involve activities, processes, materials and equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of traffic, noise, smoke, fumes, glare or odors;

(D) The use will be compatible with the natural environment and will be designed to encourage conservation of natural resources and energy;

(E) The site plan proposed for the use demonstrates compliance with the special land use specific design standards and all other applicable requirements of this chapter; and

(F) The special land use will be consistent with the intent and purposes of this chapter and the most recent updates to the Master Plan.

(Prior Code, § 5.133)

§ 153.254 EXPIRATION OF PERMIT.

(A) A special land use permit shall expire one year after it is granted, unless construction is complete or commencement of the use has substantially begun. The Planning Commission may, upon written request by the applicant, extend the term of the special land use by one additional period of up to 12 months upon a finding that there have been no changed conditions in the area which would require reconsideration of the special land use application or site plan.

(B) A request for an extension of the initial permit period shall be submitted in writing prior to the expiration of the special land use permit.

(Prior Code, § 5.134)

§ 153.255 REVOCATION OF AN APPROVED SPECIAL LAND USE.

(A) If a violation of any of the conditions or standards imposed on a special land use is found to exist, the Zoning Administrator shall notify the owner of the premises and the approving body that a violation exists and that the permit will be revoked within 15 days of notification. If the violation is not corrected within 15 days, the approving body shall revoke the permit.

(B) Furthermore, the violation is hereby declared to be a violation of this chapter, subject to all of the remedies and penalties provided for in this chapter.

(Prior Code, § 5.135)

§ 153.256 APPEALS.

The Zoning Board of Appeals shall have no jurisdiction or authority to accept, or consider an appeal from, any special land use determination or decision, or any part thereof, nor shall the zoning board of appeals have authority to grant variances for, or with respect to, a special land use.

(Prior Code, § 5.136)

§ 153.257 RESTRICTIONS ON RESUBMITTAL OF A SPECIAL LAND USE REQUEST.

A petition for special land use approval which has been denied, wholly or in part, shall not be resubmitted for a period of one year from the date of denial, except on grounds of newly discovered evidence or proof of changed conditions found to be sufficient to justify reconsideration by the Planning Commission.

(Prior Code, § 5.137)

PLANNED UNIT DEVELOPMENTS (PUDS)

§ 153.270 INTENT.

The Planned Unit Development (PUD) District is established as an optional development tool to permit flexibility in the regulation of land development; to encourage innovation in land use, form of ownership and variety of design, layout and type of structures constructed; to achieve economy and efficiency in the use of land; to preserve significant natural, historical and architectural features and open space; to promote efficient provision of public services and utilities; to minimize adverse traffic impacts; to provide better housing, employment and business opportunities particularly suited to residents; to encourage development of convenient recreational facilities; and to encourage the use and improvement of existing sites when the uniform regulations contained in other zoning districts alone do not provide adequate protection and safeguards for the property and surrounding areas. It is the further intent of the PUD regulations to promote a higher quality of development than can be achieved from conventional zoning requirements in furtherance of the vision and goals of the adopted City Master Plan.

(Prior Code, § 5.140)

§ 153.271 QUALIFYING CONDITIONS.

(A) In order to qualify for PUD approval, the project must satisfy the conditions of this section.

(B) It is the applicant's responsibility to demonstrate in writing that each of the following criteria is, or will be, met by the proposed PUD.

(1) *Recognizable benefit.* A PUD shall achieve recognizable and substantial benefits that would not be possible under the existing zoning classification(s). At least three of the following benefits shall be accrued to the community as a result of the proposed PUD:

(a) Preservation of significant natural features;

(b) A complementary mix of land uses or housing types;

(c) Extensive open space and recreational amenities;

(d) Connectivity of open space with adjacent greenway corridors;

(e) Enhancement of small town appeal;

(f) Improvements to public streets or other public facilities that mitigate traffic and/or other development impacts;

(g) Coordinated development of multiple small parcels; or

(h) Infill development and/or removal or renovation of blighted buildings, sites or contamination clean-up.

(2) *Size.* Each PUD shall contain a minimum of 21,780 square feet; provided sites containing less than 21,780 square feet may be considered for rezoning to PUD, if

the Planning Commission determines that the site will advance the purposes of the PUD District. When determining the appropriateness of areas less than the applicable minimum required, the Planning Commission shall determine that:

(a) Rezoning the area to PUD will not result in a significant adverse effect upon nearby or adjacent lands;

(b) The proposed uses will complement the character of the surrounding area;

(c) The purpose and qualifying conditions of the PUD District can be achieved within a smaller area; and

(d) The PUD is not being used as a means to circumvent conventional zoning requirements.

(3) *Utilities.* The PUD shall be served by public water and sanitary sewer.

(4) *Ownership.* The PUD application shall be filed by the property owner, lessee or other person with legal interest in the property and written consent by the owner. The proposed development shall be under unified ownership or control so one person or entity has proprietary responsibility for the full completion of the project. The applicant shall provide sufficient documentation of ownership or control in the form of agreements, contracts, covenants and/or deed restrictions indicating that the development will be completed in its entirety as proposed.

(5) *Master Plan.* Proposed use(s) and design of the PUD shall be substantially consistent with the city's adopted Master Plan.

(6) *Pedestrian accommodation.* The PUD shall provide for integrated, safe and abundant pedestrian and bicycle access and movement within the PUD and to adjacent properties.

(7) *Architecture.* Building forms, relationships and styles shall be harmonious and visually integrated through the use of common materials, colors, treatment and scale.

(8) *Traffic.* The PUD shall provide for safe and efficient vehicular movement within, into and out of the PUD site. Traffic calming techniques, parking lot landscaping and other sustainable design solutions shall be employed to improve traffic circulation, storm water management, pedestrian safety and aesthetic appeal.

(9) *Eligible districts.* Land within any zoning district may qualify for PUD zoning.

(Prior Code, § 5.141) (Ord. 794, passed 9-17-2018)

§ 153.272 PUD REQUIREMENTS.

(A) *Permitted uses.* Any use permitted by right or special use approval in any zoning district may be permitted within a PUD, subject to the provisions of § 153.271 of this chapter and the requirements of this section.

(B) *Minimum lot size and zoning requirements.* Lot area and width, setbacks, height, lot coverage, minimum floor area, parking, landscaping, lighting and other requirements for the district applicable to the proposed use, as provided in Table 153.272, shall be applicable for all such uses within a PUD unless modified in accordance with division (C) below. In the case of a mix of uses, the zoning requirements applicable to each use category shall apply to that use.

Table 153.272: Minimum Zoning Requirements	
Land Use	***Applicable Zoning District***
Table 153.272: Minimum Zoning Requirements	
Land Use	***Applicable Zoning District***
Industry	I
Institutional	GC
Multiple-family	R4
Retail, office, service business	GC
Single-family	R1, R2
Townhome	R4
Two-family	R2A

(C) *Modification of minimum requirements.* District regulations applicable to a land use in the PUD may be altered from the requirements specified in Table § 153.272, including, but not limited to, modification from the lot area and width, building setbacks, height, lot coverage, signs and parking. The applicant for a PUD shall identify in writing all intended deviations from the zoning requirements. Modifications may be approved by the Planning Commission during the preliminary development plan review stage. These adjustments may be permitted only if they will result in a higher quality and more sustainable development consistent with the purposes of PUD expressed in § 153.270. The modifications shall also satisfy at least four of the following criteria:

(1) Preserve the best natural features of the site;

(2) Create, improve or maintain open space for the residents, employees and visitors beyond the minimum required by division (E) below;

(3) Commit that at least 10% of all dwelling units in the PUD will be affordable units;

(4) Provide a mix of residential types such as single-family, townhouse and/or multiple-family;

(5) Employ practices in site layout, building construction and materials that will result in a measurable reduction in energy consumption;

(6) Introduce new development concepts, such as cohousing:

(7) Include a mix of residential and non-residential uses; and

(8) Incorporate pathways for pedestrians and bicycles within the PUD and connectivity to adjacent uses.

(D) *Density bonus.* In addition to the modification of minimum requirements permitted in division (C) above, the Planning Commission may permit an increase in the total number of residential units allowed within a PUD where it is demonstrated that at least three of the following amenities will be included in the development:

(1) More than 20% of the total units within the PUD will be committed as affordable units;

(2) Forty percent or more of the PUD site will be dedicated as open space;

(3) Low impact development design principles will be employed to minimize storm water runoff;

(4) The proposed development will be an infill or redevelopment project; and/or

(5) The project clearly contributes, in a meaningful way, to the furtherance of the city's vision, goals and smart growth principles as stated in the Master Plan.

(E) *Open space.* At least 25% of the area of a PUD site shall be preserved as open space, in accordance with the following requirements. For purposes of this requirement, "green roofs" shall be counted as open space.

(1) *Areas not considered open space.* The following land areas shall not be counted as required open space for the purposes of this section:

(a) The area within any public street right-of-way or private street easement;

(b) Any easement for overhead utility lines, unless adjacent to qualified open space;

(c) Fifty percent of any flood plain, wetland, water body or steep slope (15% or greater) area and 50% of the area of any golf course;

(d) The area within a platted lot or site condominium unit, unless the lot has been dedicated to open space via conservation easement or other means of ensuring that the lot is permanent open space; and

(e) Parking and loading areas.

(2) *Specifications for required open space.* Required open space areas shall meet the following specifications:

(a) Shall be for use by all residents, employees and visitors of the PUD, subject to reasonable rules and regulations. In the case of a golf course, stable or similar facility, membership shall be available to all residents of the PUD, subject to charges, fees or assessments for use;

(b) If the site contains a river, stream or other body of water, the city may require that a portion of the required open space abuts the body of water;

(c) Leaves scenic views and vistas unblocked or uninterrupted, particularly as seen from public street rights-of-way;

(d) Protects the roadside character by establishing buffer zones along scenic corridors and improves public safety and vehicular carrying capacity by avoiding development that fronts directly onto existing roadways;

(e) Shall be configured so the open space is reasonably usable by residents of the PUD;

(f) Shall be of sufficient size and dimension and located, configured or designed in such a way as to achieve the applicable purposes of this chapter and enhance the quality of the development. The open space shall neither be perceived nor function simply as an extension of the rear yard of those lots abutting it;

(g) To the extent practical, open space areas shall be linked with adjacent open spaces, public parks, bicycle paths or pedestrian paths;

(h) Pedestrian access points to the required open space areas from the interior of the PUD shall be provided and clearly identified by signs or a visible improved path for safe and convenient access;

(i) Grading shall be minimal, with the intent to preserve existing topography and landscaping where practical; and

(j) May contain ball fields, tennis courts, swimming pools and related buildings, community buildings, golf courses and similar recreational facilities. However, no more than 50% of the required open space may contain any of these uses.

(Prior Code, § 5.142) (Ord. 794, passed 9-17-2018)

§ 153.273 GENERAL PROVISIONS.

(A) *Conditions.* Reasonable conditions may be imposed upon the PUD approval by the Planning Commission as part of the final decision of the PUD application. The conditions imposed shall be recorded in the minutes of the approval action and shall remain unchanged except upon amendment of the PUD in accordance with the procedures of § 153.290. Conditions may include, but are not limited to, those necessary to:

(1) Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected;

(2) Ensure that the use is compatible with adjacent land uses and activities;

(3) Protect natural resources, the health, safety, welfare and social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole;

(4) Ensure compatibility between the proposed use or activity and the rights of the city to perform its governmental functions;

(5) Meet the intent and purpose of this chapter, be related to the regulations and standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards;

(6) Ensure compatibility with other uses of land in the vicinity; and

(7) Ensure compliance with the final development plan and the provisions of this chapter.

(B) *Performance guarantees.* The Planning Commission may require reasonable performance guarantees in accordance with § 153.239 of this chapter to ensure completion of specified improvements within the PUD.

(C) *Interior streets.* Public or private streets may be required to be extended to exterior lot lines in order to allow connection to existing or planned streets on adjacent parcels in order to provide for secondary access, continuity of the circulation system and to reduce traffic on collector streets.

(D) *Time limits.* Each PUD shall be under construction within 12 months after the date of approval of the final development plan. If this requirement is not met, the Planning Commission may, in its discretion, grant one extension not exceeding up to 12 additional months; provided that prior to the expiration of the initial 12-month period, the applicant shall submit reasonable evidence in writing to the effect that unforeseen difficulties or special circumstances have been encountered, causing delay in commencement of the PUD. If the PUD has not been commenced within the initial 12-month approval period, or within an authorized extension thereof, any building permits issued for the PUD or any part thereof shall be of no further effect. At the expiration of the applicable period of time, the Planning Commission may initiate proceedings for the rezoning of the property to some other zoning district.

(Prior Code, § 5.143) (Ord. 794, passed 9-17-2018)

§ 153.274 PUD REVIEW PROCEDURES.

The following procedures shall be followed in the establishment of any PUD.

(A) *Pre-application conference.* Prior to filing a formal application for a PUD, the applicant shall meet with the Zoning Administrator and others, as the Zoning Administrator determines, in order to review the general character of the proposed development (i.e., its scope, nature and location). At this time, the applicant shall be advised of the PUD review procedures and the various information, studies and the like, which may be required as part of the review process.

(B) *Preliminary PUD application.* An application for rezoning to PUD shall be submitted to the Zoning Administrator on a form for that purpose, along with an application fee in accordance with the schedule of fees established by the City Council. In addition, the application shall include the following.

(1) *Parallel plan.* Residential density shall be determined through the preparation of a conventional development plan illustrating how the site could be developed in accordance with the basic requirements of this chapter. A concept layout shall be prepared to scale showing, as applicable, single-family and two-family lots, townhome and multiple-family buildings, parking, setbacks and street rights-of-way. The number of units that could be accommodated under the base zoning shall serve as maximum number permitted, unless a density bonus is approved in accordance with division (D) below. Live/work units located above main floor businesses shall not be counted toward the maximum number of dwellings.

(2) *Preliminary development plan.* A preliminary development plan containing the following information shall be submitted:

(a) A general location map;

(b) A legal description of the subject property;

(c) A title block, date, north arrow, scale, name and contact information of applicant and name and contact information of plan preparer;

(d) A current topographical map clearly showing existing topographic conditions, including contour intervals of no more than two feet based on field survey or photogrammetric methods;

(e) A map showing the existing flood plains as indicated by the Federal Emergency Management Agency;

(f) A property boundary survey;

(g) The location of existing natural features including woods, streams, ponds, wetlands and steep 15% or greater) slopes;

(h) Existing land uses within the development site and surrounding areas for a distance of 300 feet, including the approximate location of all buildings, structures, lots and streets (an aerial photo may suffice);

(i) The location and identification of existing and proposed public, semi-public or community facilities such as schools, parks, trails, churches, public buildings and dedicated open space;

(j) Existing zoning on all abutting properties;

(k) The approximate location of existing and proposed utilities, including a preliminary utility and drainage concept plan;

(l) Uses proposed within the PUD;

(m) Number and type of dwelling units proposed, including the number and type of committed affordable units, if any;

(n) Conceptual layout;

(o) The general location of proposed interior streets and access points to abutting streets;

(p) The general location of off-street parking facilities and number of spaces proposed; and

(q) Perspective drawings or photographs of representative building types, indicating the proposed architectural style and appearance.

(3) *Summary of intent.* A written statement containing the following information shall be submitted with the preliminary development plan:

(a) A statement of how the proposed PUD meets each of the qualifying conditions of § 153.271 of this chapter;

(b) A statement of the present ownership of all land within the proposed development;

(c) An explanation of the character of the proposed development including a summary of acres or square footage by type of use, number and type of dwelling units, gross density calculation for dwelling units and minimum standards for floor area, lot size and setbacks;

(d) A complete description of any requested deviations from the applicable spatial or other requirements applying to the property, in accordance with § 153.272(C) of this chapter;

(e) A general statement of the proposed development schedule and progression of each phase or stage; and

(f) Intended agreements, provisions and covenants to govern the use of the development, building materials or architectural styles and any common or open space areas, including the provisions which will organize, regulate and sustain the property owners association, if applicable.

(C) *Preliminary PUD plan.*

(1) *Planning Commission review.* Upon receipt of the PUD application and related materials, the Planning Commission shall conduct a work session with the applicant to review the development concept and determine the need for additional information, if any, prior to conducting a public hearing.

(2) *Additional information.* If required by the Planning Commission, the applicant shall submit additional information and/or studies to support the request such as, but not limited to: impact assessment; traffic analysis; storm water study; or a market feasibility study.

(3) *Public hearing.* Upon completion of its initial review and following receipt of any additional materials, the Planning Commission shall conduct a public hearing, notice of which shall be in accordance with the requirements of § 153.006(C) of this chapter.

(4) *Recommendation.* Following the public hearing, the Planning Commission shall review the PUD request and the preliminary development plan based on conformance with the standards of § 153.275 and shall approve, deny or approve with modifications the request for PUD zoning and the preliminary development plan.

(5) *Zoning Map.* If the PUD zoning is approved, the Zoning Administrator shall cause the zoning map to be changed to indicate the planned unit development. If the preliminary development plan is approved with modifications, the applicant shall file with the Zoning Administrator written notice of consent to the modifications and a properly revised preliminary development plan prior to the map being changed.

(D) *Final development plan.* Within 12 months of the Planning Commission's approval of the preliminary development plan and PUD rezoning, the applicant shall submit a final development plan for the entire PUD or one or more phases to the Zoning Administrator, in accordance with the requirements for Level B site plan review, as contained in § 153.235 of this chapter. If determined to be complete by the Zoning Administrator, copies of the plan shall be forwarded to the Planning Commission.

(1) *Phased projects.* If the PUD is to be developed in phases, the final development plan may be submitted for one or more phases of the overall PUD. A tentative schedule for the completion of each phase and commencement of the next phase shall also be submitted for Planning Commission approval.

(2) *Extension of time limit.* One extension of the time period for submitting the final development plan may be granted by the Planning Commission for up to an additional 12 months if a request is submitted by the applicant in writing prior to the expiration of the original 12-month approval period. If an application for final development plan approval has not been submitted prior to the expiration of the original 12 months or an approved extension, the preliminary development plan shall be null and void. In addition, the Planning Commission may initiate a rezoning of the property to another zoning district.

(3) *Subdivision plat.* For any PUD requiring subdivision plat or site condominium approval, the subdivision plat or site condominium shall be submitted simultaneously with the final development plan and reviewed concurrently as part of the PUD.

(4) *Review and action.* The Planning Commission shall review the final development plan in relation to its conformance with the preliminary development plan and any conditions or modifications attached to the PUD rezoning. If it is determined that the final plan does not substantially conform to the preliminary development plan, the review process shall be conducted as a preliminary development plan review, in accordance with § 153.274. If the final development plan is consistent with the approved preliminary development plan, the Planning Commission shall review the final plan in accordance with the standards for site plan review, § 153.237 and the PUD standards of § 153.275. The Planning Commission shall prepare a record of its findings and shall approve, deny or approve with modifications the final development plan.

(Prior Code, § 5.144) (Ord. 794, passed 9-17-2018; Ord. 823, passed 1-4-2021)

§ 153.275 REVIEW STANDARDS.

In considering the PUD request, the reviewing body must find that the proposed development meets all of the following general standards.

(A) The PUD will promote the intent and purpose of this subchapter.

(B) The PUD will comply with the standards, conditions and requirements of this subchapter.

(C) The proposed project will be compatible with adjacent uses of land, the natural environment and the capacities of public services and facilities affected by the proposed project.

(D) The proposed project will be consistent with the public health, safety and welfare needs of the city.

(E) Granting the PUD rezoning will result in a recognizable and substantial benefit to ultimate users of the project and to the community which would not otherwise be

feasible or achievable under the conventional zoning districts.

(F) The PUD will not result in a significant increase in the need for public services and facilities and will not place a significant burden upon surrounding lands or the natural environment, unless the resulting adverse effects are adequately provided for or mitigated by features of the PUD as approved.

(G) The PUD will be consistent with the city's Master Plan and the following planning principles, as applicable:

(1) Redevelopment and infill locations should be favored over greenfield development;

(2) Natural features and resources should be preserved or at least conserved;

(3) Future development/redevelopment shall strengthen the physical character of the city;

(4) Quality design is emphasized for all uses to create an attractive, distinctive public and private realm;

(5) Places are created with an integrated mix of uses that contribute to the city's identity and vitality;

(6) Diverse housing choices are offered, including relatively high density and affordable units;

(7) Parks, open space and recreational areas are incorporated into future development; and

(8) Places are connected and accessible throughout the community by transportation methods other than automobiles.

(H) The PUD will respect or enhance the established or planned character, use and intensity of development within the area of the city where it is to be located.

(Prior Code, § 5.145)

§ 153.276 DEVELOPMENT AGREEMENT.

(A) Prior to issuance of any building permits or commencement of construction on any portion of the PUD, the applicant shall enter into an agreement with the city in a recordable form, that sets forth the applicant's obligations with respect to the PUD.

(B) The agreement shall describe all improvements to be constructed as part of the PUD and shall incorporate, by reference, the final development plan with all required modifications, other documents which comprise the approved PUD and all conditions attached to the approval by the city.

(C) A phasing plan shall also be submitted, if applicable, describing the intended schedule for start and completion of each phase and the improvements to be undertaken in each phase.

(D) The agreement shall also establish the remedies of the city in the event of default by the applicant in carrying out the PUD and shall be binding on all successors in interest to the applicant.

(E) All documents shall be executed and recorded in the county.

(Prior Code, § 5.146)

§ 153.277 DEVIATIONS FROM APPROVED FINAL PUD SITE PLAN.

Changes to an approved PUD shall be permitted only under the following circumstances.

(A) *Notify Zoning Administrator.* The holder of an approved PUD final development plan shall notify the Zoning Administrator of any desired change to the approved PUD.

(B) *Minor change determination.* Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design and character of the PUD, nor any specified modifications imposed as part of the original approval. Minor changes shall include the following:

(1) Reduction of the size of any building and/or sign;

(2) Movement of buildings and/or signs by no more than ten feet;

(3) Landscaping approved in the final development plan that is replaced by similar landscaping to an equal or greater extent;

(4) Changes in floor plans which do not alter the character of the use or increase the amount of required parking;

(5) Internal rearrangement of a parking lot that does not affect the number of parking spaces or alter access locations or design; or

(6) Changes required or requested by the city or any other county, state or federal regulatory agency in order to conform to other laws or regulations.

(C) *Major change determination.* A proposed change not determined by the Zoning Administrator to be minor shall be submitted as an amendment to the PUD and shall be processed in the same manner as the original PUD application for the final development plan. While not required, the Planning Commission may elect to hold a public hearing in which case the notification requirements of § 153.274(C)(3) of this chapter shall be followed.

(Prior Code, § 5.147)

§ 153.278 APPEALS AND VARIANCES.

The Zoning Board of Appeals shall have no jurisdiction or authority to accept or consider an appeal from any PUD determination or decision, or any part thereof, nor shall the Zoning Board of Appeals have authority to grant variances for or with respect to a PUD or any part thereof.

(Prior Code, § 5.148)

NON-CONFORMITIES

§ 153.290 INTENT.

(A) It is recognized that there exists within zoning districts certain lots, buildings, structures and uses which were lawful before this chapter was passed or amended, but are now prohibited, regulated or restricted under the terms of this chapter. It is the intent to permit these legal non-conformities to continue until they are removed, but not to encourage their survival.

(B) Non-conforming lots, buildings, structures and uses are declared by this chapter to be incompatible with the provisions of the districts in which they are located. It is the intent of this chapter that these non-conformities shall not be enlarged upon, expanded or extended, except as otherwise permitted in this subchapter, nor be used as grounds for adding other buildings, structures or uses prohibited elsewhere in the district.

(C) Nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this chapter and upon which actual building construction has been diligently conducted.

(D) Nothing in this chapter shall be interpreted as authorization for, or approval of, the continuance of the use of a structure or premises in violation of the zoning regulation in effect at the time of the adoption of this chapter.

(Prior Code, § 5.150)

§ 153.291 NON-CONFORMING LOTS OF RECORD.

(A) Where a legally established lot of record in existence at the time of adoption or amendment of this chapter does not meet the minimum requirements for lot width or lot area, the lot of record may be used for any permitted or special land use in the district in which the lot is located; provided that, any building or structure constructed on the lot complies with all other requirements for the zoning district, except as subject to the following:

(1) Required minimum front and rear yard setbacks and the maximum building height limitations shall be met as required in the zoning district in which the lot is located.

(2) The required minimum side yard setback for a lot which is non-conforming by reason of lot width shall be 10% of the width of the non-conforming lot, but in no event shall the required minimum side yard setback for such a non-conforming lot be less than five feet on each side.

(B) If two or more vacant lots of record or a combination of lots and portions of lots of record in existence at the time of the passage of this chapter, or an amendment thereto, with continuous frontage and under single ownership do not meet the requirements established for lot width or lot area, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of that parcel shall be used or divided in a manner which diminishes compliance with lot width and area requirements established by this chapter.

(Prior Code, § 5.151)

§ 153.292 NON-CONFORMING USES.

(A) A non-conforming use shall not be enlarged or increased, nor extended to occupy a greater area of land or building area than was occupied at the effective date of adoption or amendment of this chapter.

(B) No part of any non-conforming use shall be moved unless that movement eliminates or reduces the non-conformity.

(C) If a non-conforming use is abandoned for any reason for a period of more than 12 months, any subsequent use shall conform to the requirements of this chapter. A non-conforming use shall be determined to be abandoned if one or more of the following conditions exists, and which shall be deemed to constitute an intent on the part of the property owner to abandon the non-conforming use:

(1) Utilities, such as water, gas and electricity to the property, have been disconnected;

(2) The property, buildings and grounds have fallen into disrepair;

(3) Signs or other indications of the existence of the non-conforming use have been removed;

(4) Equipment or fixtures necessary for the operation of the non-conforming use have been removed; and

(5) Other actions which, in the opinion of the Zoning Administrator, constitute an intention on the part of the property owner or lessee to abandon the non-conforming use.

(D) A non-conforming use may be changed to another non-conforming use provided all of the following determinations are made by the Zoning Board of Appeals.

(1) The proposed use shall be as compatible or more compatible with the surrounding neighborhood than the previous non-conforming use, considering factors such as hours of operation, traffic, noise and similar external impacts.

(2) The proposed non-conforming use shall not be enlarged or increased, nor extended to occupy a greater area of land or building area than the previous non-conforming use.

(3) That appropriate conditions and safeguards are provided that will ensure compliance with the intent and purpose of this chapter.

(E) Uses consisting of lots occupied by storage yards, used car lots, auto wrecking, junk yards, golf driving ranges, miniature golf courses and similar open uses, where the only buildings on the property are ancillary to the open use and where the use is non-conforming shall be subject to the following restrictions, in addition to all other applicable provisions of this subchapter.

(1) When a non-conforming use has been changed to a conforming use, it shall not be used again for any other non-conforming use.

(2) Non-conforming open uses of land shall only be converted to a conforming use.

(3) A non-conforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became non-conforming.

(4) When any non-conforming use is discontinued for a period of more than six months, any future use of the land shall be limited to those uses permitted in the zoning district under which the property is governed. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

(Prior Code, § 5.152)

§ 153.293 NON-CONFORMING BUILDINGS OR STRUCTURES.

(A) Where a lawful building or structure exists at the effective date of this chapter, or an amendment thereto, that does not comply with the requirements of this chapter because of restrictions such as lot area, lot coverage, width, height or setbacks, that building or structure may continue to be occupied and used so long as it remains otherwise lawful, subject to the following provisions.

(1) No non-conforming building or structure may be enlarged or altered in a way that increases its non-conformity, except in cases in which the setback of a building or structure is non-conforming by 50% or less of the distance required by this chapter. Only in these cases may the non-conforming setback be extended along the same plane as the existing non-conforming setback; provided that, in doing so, the setback itself is not further reduced.

(2) In the event that a non-conforming building or structure is destroyed to an extent of more than 50% of its replacement value, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this chapter; provided that, the Zoning Board of Appeals may, upon application, permit the reconstruction of the non-conforming building or structure if all of the following conditions are met.

(a) The prior non-conforming condition(s) shall not be increased.

(b) All building materials and architectural details shall conform to the requirements of §§ 153.170 through 153.174 of this chapter.

(c) The new building or structure shall be placed on the original foundation, unless the building or structure could be so located as to reduce the extent of its non-conformity on the lot.

(d) The application to reconstruct the non-conforming building or structure shall be filed with the Zoning Administrator within six months of the event in which the building or structure was damaged or destroyed.

(e) The reconstruction of the building or structure shall not be detrimental to adjacent property and the surrounding neighborhood.

(3) If a non-conforming building or structure is moved for any reason and for any distance, it shall be moved to a location which complies with the requirements of this chapter.

(B) None of the provisions of this section are meant to preclude normal repairs and maintenance on any non-conforming building or structure that would prevent strengthening or correcting any unsafe condition of the building or structure.

(Prior Code, § 5.153)

§ 153.294 UNLAWFUL NON-CONFORMITIES.

Any lot, use, building or structure established in violation of the provisions of this chapter or any prior zoning ordinance or amendment shall not be considered a legal

non-conformity and shall not be entitled to the provisions, remedies and safeguards of this subchapter.

(Prior Code, § 5.154)

§ 153.999 PENALTY.

(A) Any person, partnership, corporation or association who creates or maintains a nuisance per se or who violates or fails to comply with this chapter or any permit issued pursuant to this chapter shall be responsible for a municipal civil infraction punishable by a fine of no more than $500 as determined by the court. Every day that such violation continues shall constitute a separate and distinct offense under the provisions of this chapter. Nothing in this section shall exempt the offender from compliance with the provisions of this chapter.

(B) Upon the request of the Zoning Administrator, the city's Police Chief or any city police officer is authorized to issue municipal civil infraction citations directing alleged violators of this chapter to appear in court.

(C) In addition to enforcing this chapter through the use of a municipal civil infraction proceedings, the city may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this chapter.

(D) If during an enforcement action an alleged zoning violator files a request for a variance, the enforcement action may be adjourned until a hearing is held on the variance request.

(Prior Code, § 5.163)

CHAPTER 154: PARCEL DIVISION

Section

§ 154.01 TITLE.

This chapter shall be known as the "City of Charlevoix Parcel Division Ordinance".

(Prior Code, § 5.300) (Ord. 680, passed 11-18-2002)

§ 154.02 PURPOSE.

The purpose of this chapter is to carry out the provisions of the Land Division Act (Public Act 288 of 1967, as amended, being M.C.L.A. §§ 560.101 through 560.293, formerly known as the Subdivision Control Act), to prevent the creation of lots and parcels that do not comply with applicable city ordinances, to minimize potential boundary disputes, to maintain the orderly development of the city, and to otherwise protect the public health, safety and general welfare of the residents and the present and future property owners of the city. This shall be accomplished by regulating the division of existing lots and parcels and the property transfer between two or more adjacent lots or parcels. It is further the purpose of this chapter to prescribe the procedures for the submission and review of proposed lot and parcel divisions and property transfers, to authorize fees for the review of applications submitted under this chapter and to provide penalties for violations of this chapter.

(Prior Code, § 5.301) (Ord. 680, passed 11-18-2002)

§ 154.03 DEFINITIONS.

Except as provided in this section, the terms used in this chapter shall have the same meaning as in the Land Division Act, being Public Act 288 of 1967, as amended, being M.C.L.A. §§ 560.101 through 560.293. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. An owner of a lot or parcel of land, or his or her designee.

PARENT PARCEL. First a tract of land lawfully in existence on 3-31-1997, if one exists in connection with a proposed division, or, if one does not exist, a parcel lawfully in existence on 3-31-1997.

PROPERTY TRANSFER. A transfer of property between two or more adjacent lots or parcels.

(Prior Code, § 5.303) (Ord. 680, passed 11-18-2002)

§ 154.04 APPROVAL OF LAND DIVISIONS OR PROPERTY TRANSFERS REQUIRED; ESTABLISHMENT OF EXEMPT SPLITS.

The owner of a lot, parcel or tract of land shall not divide or effect a property transfer involving, or cause any person to divide or effect a property transfer involving, that lot, parcel or tract of land except as provided in this Chapter, unless the division is an exempt split as defined in the Land Division Act of 1967, being Public Act 288 of 1967, as amended, being M.C.L.A. §§ 560.101 through 560.293, the division or property transfer is approved as part of a subdivision plat at the time of plat approval under the Land Division Act, as amended, the division or property transfer is part of a condominium project developed under the Condominium Act, being Public Act 59 of 1978, as amended, being M.C.L.A. §§ 559.101 through 559.272, or the division or property transfer is done pursuant to an order of a court of competent jurisdiction.

(Prior Code, § 5.304) (Ord. 680, passed 11-18-2002)

§ 154.05 PROCEDURE FOR DIVISION OR PROPERTY TRANSFER.

The following procedure shall be followed to divide a lot, parcel or tract of land or to effect a property transfer.

(A) The applicant shall submit an application to the Zoning Administrator on a form supplied by the city for that purpose. The application shall include, but not be limited to the following:

(1) Proof of ownership of the lot, parcel or tract of land to be divided, or of the lots or parcels involved in a property transfer, which shall include a copy of a warranty deed, land contract, title commitment or other evidence satisfactory to the Zoning Administrator;

(2) The names and addresses of all persons having an interest in the lot, parcel or tract of land to be divided, or of the lots or parcels involved in a property transfer and a statement of the type of interest each holds;

(3) The history of the prior divisions of the parent parcel from which the applicant's parcel or tract of land came and proof that the applicant holds the right to divide the parcel or tract of land proposed for division;

(4) A survey map of the land proposed to be divided or the land involved in the property transfer prepared pursuant to the survey map requirements of Public Act 132 of 1970, being M.C.L.A. §§ 54.211 to 54.213, as amended, certified by a land surveyor licensed by the state. This survey map shall depict all of the following:

(a) The dimensions of the lot, parcel or tract of land to be divided, or the lots or parcels involved in a property transfer;

(b) The dimensions of the lots, parcels or tracts of land that will result from the division or property transfer;

(c) The location of all current easements on the lot, parcel or tract of land to be divided, or on the lots or parcels involved in a property transfer;

(d) The location of all proposed utility and ingress/egress easements on the lots, parcels or tracts of land that will result from the division or property transfer;

(e) The location of all buildings and structures on the lot, parcel or tract of land to be divided, or on the lots or parcels involved in a property transfer;

(f) The distances between these buildings and structures and the original property lines of the lot, parcel or tract of land to be divided, or the lots or parcels involved in a property transfer; and

(g) The distances between these buildings and structures and the property lines of the lots, parcels or tracts of land that will result from the division or property transfer.

(5) In addition to providing the survey map, the applicant or his or her representative shall accurately stake the boundaries of the lot, parcel, or tract of land proposed to be divided or the lot or parcel involved in the property transfer and the boundaries of the lots, parcels or tracts of land that will result from the division or property transfer such that the Zoning Administrator may, by use of a tape measure and horizontal measurements, confirm that the boundaries as staked are as represented on the survey;

(6) Accurate legal descriptions of the lots, parcels or tracts of land that will result from the division or property transfer. In the event the Zoning Administrator is unable to determine whether the legal description is accurate, he or she may require the applicant to obtain at applicant's sole expense legal descriptions of the lots, parcels or tracts of land that will result from the division or property transfer certified by a registered land surveyor licensed by the state;

(7) The Applicant shall submit documentation that each such resulting lot, parcel or tract of land has or will have adequate permanent access, as defined in Chapter 153 of this code of ordinances, as amended. In addition, if the lot, parcel or tract of land that will result from the division or property transfer will be a development site, then the applicant shall submit evidence establishing adequate easements for public utilities from each such resulting lot, parcel or tract of land to existing public utility facilities; and

(8) Such other documentation that the Zoning Administrator may require relating to the application to divide a lot, parcel or tract of land or to effect a property transfer.

(B) The application shall be accompanied by an application fee as established and set forth in a city fee schedule. This fee schedule shall also establish "after the fact" fees that must be paid when an otherwise lawful division or property transfer occurs, but without first complying with the procedural requirements of this chapter. This "after the fact"

(C) Within 45 days after receiving the information required in division (A) above, the Zoning Administrator shall decide whether to approve or disapprove the proposed division or property transfer. If the Applicant fails to provide all the information required by this chapter, then the application shall be deemed incomplete and may be denied on that basis. The Zoning Administrator's decision to approve the division or property transfer shall be made pursuant to the standards contained in § 154.06 of this chapter. The Zoning Administrator may grant conditional approval of an application, subject to the applicant obtaining any necessary variances from the Zoning Board of Appeals pursuant to § 154.08 of this chapter. If the Zoning Administrator fails to grant approval of a proposed division or property transfer, written reasons for his or her decision shall be given to the applicant. The applicant shall then have the option of resubmitting information for approval to the Zoning Administrator or appealing the Zoning Administrator's decision to the Zoning Board of Appeals pursuant to § 154.09 of this chapter.

(D) Upon approval of a proposed division or property transfer, the Zoning Administrator shall send a letter indicating such approval to the applicant with a copy to the county's Equalization Department. This letter shall contain the following statement: "Pursuant to Section 109a of the Land Division Act, as amended, the City of Charlevoix, its officers and employees are not liable if a building permit is not issued for a parcel less than one (1) acre in size that resulted from an approved division under the City of Charlevoix Parcel Division Ordinance." A copy of this letter shall be retained by the Zoning Administrator in his or her official records.

(E) Because zoning requirements may change over time, any approval of an application for a division or property transfer by the Zoning Administrator under division (C) above shall expire and a new approval required after 90 days from the date of the approval, unless the applicant records in the county's Register of Deeds Office an instrument(s) of conveyance documenting the division or property transfer and files a copy of that recorded instrument(s) with the Zoning Administrator.

(Prior Code, § 5.305) (Ord. 680, passed 11-18-2002)

§ 154.06 STANDARDS FOR APPROVAL OF DIVISIONS OR PROPERTY TRANSFERS.

An application to divide a lot, parcel or tract of land, or to effect a property transfer shall be granted when all of the following standards are met.

(A) The proposed division or property transfer shall comply with all requirements of the Land Division Act of 1967, being Public Act 288 of 1967, as amended, being M.C.L.A. §§ 560.101 through 560.293.

(B) The lots, parcels or tracts of land that will result from the division or property transfer shall comply with all requirements of Chapter 153 of this code of ordinances, as amended, including, but not limited to, the requirements relating to area and width for the newly created lots, parcels or tracts of land, the requirements relating to lake and/or street frontages, and the requirements relating to setbacks if the newly created lots, parcels or tracts of land have buildings or structures on them.

(C) Each lot, parcel or tract of land that will result from the division or property transfer shall have an adequate and accurate legal description.

(D) Each new lot, parcel or tract of land that will result from the division shall have a depth of not more than four times its width as measured under the requirements of Chapter 153 of this code of ordinances. This standard shall not apply to a property transfer.

(E) If a lot, parcel or tract of land that will result from the division or property transfer will be a development site, then each such resulting lot, parcel or tract of land shall have adequate easements for public utilities from each such resulting lot, parcel or tract of land to existing public utility facilities.

(F) Each lot, parcel or tract of land that will result from the division or property transfer shall be accessible.

(G) The owner of the parcel or tract of land shall possess the right to divide the parcel or tract of land. This standard shall not apply to a property transfer.

(H) The property lines of the lots, parcels or tracts of land that will result from the division or property transfer shall be consistent and in harmony with the property lines of the lot, parcel or tract of land to be divided, or the lots or parcels involved in a property transfer, and/or the property lines of adjacent lots, parcels or tracts of land.

(Prior Code, § 5.306) (Ord. 680, passed 11-18-2002)

§ 154.07 LIMITATION AFFECTING PROPERTY TRANSFERS.

If the land transferred between two or more adjacent lots or parcels does not independently conform to the requirements of the Land Division Act, being Public Act 288 of 1967, as amended, being M.C.L.A. §§ 560.101 being 560.293, Chapter 153 of this code of ordinances, as amended, and this chapter, then the land transferred shall

not thereafter be independently considered a development site, but may only be used in conjunction with an adjoining lot(s), parcel(s) or tract(s) of land.

(Prior Code, § 5.307) (Ord. 680, passed 11-18-2002)

§ 154.08 LAND CONFIGURATION VARIANCES.

(A) If a lot, parcel or tract of land that will result from a division or property transfer does not meet the requirements of Chapter 153 of this code of ordinances as specified in § 154.06 (B) of this chapter, then the applicant may seek a variance from those zoning requirements from the Zoning Board of Appeals pursuant to the procedures of Chapter 153 of this code of ordinances.

(B) If a lot, parcel or tract of land that will result from a division does not meet the depth to width requirements of § 154.06(D) of this chapter, then the applicant may seek a variance from those requirements from the Zoning Board of Appeals pursuant to the procedures of this section.

(C) The Zoning Board of Appeals may grant a variance under this chapter from the depth to width requirement of § 154.06(D) of this chapter, if all of the following exist:

(1) Exceptional or extraordinary circumstances or conditions exist on the parent parcel, including exceptional topographic or physical conditions, that do not generally apply to other lots, parcels or tracts of land in the city;

(2) The exceptional or extraordinary circumstances or conditions existing on the parent parcel are not the result of any act or omission by the applicant or his or her predecessors in title;

(3) The granting of the variance shall not be injurious or otherwise detrimental to adjoining lots, parcels or tracts of land or to the general health, safety and general welfare of the city;

(4) The resulting lots, parcels or tracts of land with the variance granted shall be compatible with surrounding lots, parcels or tracts of land; and

(5) The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel.

(D) The Zoning Board of Appeals shall follow the procedures of Chapter 153 of this code of ordinances relating to variances when deciding whether to grant a variance under this section.

(E) In granting any variance under this chapter, the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in order to ensure that the lot, parcel or tract of land that will result from the division or property transfer complies with the variance granted under this chapter. Violations of such conditions and safeguards shall be deemed a violation of this chapter, punishable under § 154.99 of this chapter.

(Prior Code, § 5.308) (Ord. 680, passed 11-18-2002)

§ 154.09 APPEALS TO THE ZONING BOARD OF APPEALS.

(A) Any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the Zoning Board of Appeals following the procedures of Chapter 153 of this code of ordinances, as amended, for appeals to the Zoning Board of Appeals. Any such appeal shall be filed within 30 days from the date of the decision from which the appeal is taken. During the appeal, the Zoning Board of Appeals shall conduct a de novo hearing of the matter and to that end shall have all the powers of the Zoning Administrator.

(B) In rendering its decision, the Zoning Board of Appeals shall receive and consider evidence and data relevant to the case and shall issue its decision in writing within 30 days after receiving all evidence and data in the case. The decision of the Zoning Board of Appeals shall then be sent promptly to the applicant, to the person who filed the appeal (if different than the applicant), to the Zoning Administrator and to the City Assessor.

(Prior Code, § 5.309) (Ord. 680, passed 11-18-2002)

§ 154.10 ENFORCEMENT OFFICER.

The Zoning Administrator is hereby designated as the authorized city official to issue municipal civil infraction citations directing alleged violators of this chapter to appear in court.

(Prior Code, § 5.311) (Ord. 680, passed 11-18-2002)

§ 154.11 NUISANCE PER SE.

A violation of this chapter is hereby declared to be a nuisance per se and is declared to be offensive to the public health, safety and welfare.

(Prior Code, § 5.312) (Ord. 680, passed 11-18-2002)

§ 154.99 PENALTY.

(A) Any person who shall violate any provision of this chapter shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being M.C.L.A. §§ 600.101 through 600.9939, and shall be subject to a fine of not more than $500. Each day this chapter is violated shall be considered as a separate violation.

(Prior Code, § 5.310)

(B) In addition to enforcing this chapter through the use of a municipal civil infraction proceeding, the city may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this chapter.

(Prior Code, § 5.313)

(Ord. 680, passed 11-18-2002)

CHAPTER 155: STORMWATER MANAGEMENT

Section

Purpose, Objectives, and Administration

Definitions

PURPOSE, OBJECTIVES, AND ADMINISTRATION

§ 155.001 PURPOSE.

The purpose of this chapter is to supplement Michigan Public Act 451 of 1994, as amended, for the more stringent regulation of storm water discharges originating within the city; to provide a set of regulations for storm water management; and to provide rules and guidelines to facilitate enforcement thereof.

(Ord. 810, passed 11-18-2019)

§ 155.002 OBJECTIVES.

The objective of this chapter is to accomplish, among other things, the following:

(A) To manage storm water runoff resulting from earth changes occurring within the City of Charlevoix, both during and after development.

(B) To ensure that future development provides measures to manage the quantity and quality of storm water runoff originating from the property so that surface water and groundwater quality is protected and flooding potential is reduced.

(C) To preserve and use the natural drainage system for receiving and conveying storm water runoff and to minimize the need to construct enclosed, below grade storm drain systems.

(D) To preserve natural infiltration and the recharge of groundwater and to maintain subsurface flows which replenish lakes, streams and wetlands.

(E) To ensure that storm water management systems are incorporated into site planning at an early stage of the planning and design process.

(F) To minimize the need for costly maintenance and repairs to roads, embankments, ditches, streams, lakes, wetlands and storm water management facilities which are the result of inadequate storm water control.

(G) To reduce long-term expenses and remedial projects which are caused by uncontrolled storm water runoff.

(H) To encourage the design and construction of storm water management systems which serve multiple purposes, including but not limited to flood prevention, water quality protection, wildlife habitat preservation, education, recreation and wetlands protection.

(I) To minimize the impact of development on downstream properties and to preserve the biological and structural integrity of existing watercourses.

(J) To allow for off-site storm water management facilities and measures if such proposals meet the requirements of these regulations.

(K) To assure that all storm water management facilities will be properly designed, constructed and maintained in accordance with a uniform set of standards.

(L) To provide for enforcement of this chapter and penalties for violations.

(Ord. 810, passed 11-18-2019)

§ 155.003 ORDINANCE ADMINISTRATION.

The City of Charlevoix shall designate an enforcing agent (“agent”) to administer and enforce the ordinance. The city may enter into an inter-local agreement with Charlevoix County which will permit the Charlevoix County Soil Erosion and Sedimentation Control Officer to be the agent for this chapter.

(Ord. 810, passed 11-18-2019)

§ 155.004 EXCLUSIVE STORM WATER REGULATION PROVISION.

To the extent that this storm water ordinance is in conflict with any previously adopted ordinance within the city, the intent is to have this storm water ordinance supersede any other storm water regulations that may have been previously adopted or included as a portion of other local ordinances or zoning provisions. If any conflicts arise, the city shall either repeal or amend such other ordinances to make this chapter the exclusive regulation.

(Ord. 810, passed 11-18-2019)

§ 155.005 RULES APPLYING TO TEXT IN THIS CHAPTER.

When not inconsistent with the context, the present tense includes the future; words used in the singular include the plural. The word “shall” is understood to be mandatory, and the word “may” is merely suggestive.

(Ord. 810, passed 11-18-2019)

DEFINITIONS

§ 155.015 GENERAL.

This subchapter sets forth the definitions of certain terms used within the chapter which have a meaning specific to the interpretation of the text of the chapter.

(Ord. 810, passed 11-18-2019)

§ 155.016 UNDEFINED WORDS.

Any word not defined herein shall first be interpreted as defined within Part 91, Public Act 451 of 1994, as amended, and where not defined there, shall be interpreted within its common and approved usage.

(Ord. 810, passed 11-18-2019)

§ 155.017 DEFINITIONS.

The following terms and phrases shall have the meaning given herein, unless the context otherwise requires:

AGENT. Person designated by the City of Charlevoix for administration and enforcement of the Ordinance.

APPEALS BOARD. The public body which is charged with the responsibility to consider and decide appeals from decisions made by the agent in administering and enforcing this chapter.

APPEALS BOARD CLERK. The individual who is charged with the responsibility to process appeals to the Appeals Board pursuant to §§ 155.100 through 155.102 of this chapter.

APPLICANT. The landowner, or his duly authorized agent, for the property upon which a regulated earth change is proposed, and who has submitted an application for a storm water management permit.

CHANNEL. The portion of a stream which conveys normal flows of water, or a ditch or other conveyance structure excavated for the flow of water.

COMMERCIAL DEVELOPMENT. An activity, action or alteration of property that is proposed for the purpose of a commercial activity, such as retail sales, professional offices, multi-family residential structures of three or more units, or any other purpose which includes access by the public for conducting business. Activity, action or alteration of property by the city is not ***COMMERCIAL DEVELOPMENT***.

CONVEYANCE FACILITY (STRUCTURE). A surface or subsurface structure, pipe or channel which transports storm water from one location to another.

COUNTY DRAIN. Drains established and/or constructed pursuant to the Michigan Drain Code (Act 40 of 1956, as amended).

DESIGN STANDARD (OR ENGINEERING DESIGN STANDARD). A specification or set of specifications that prescribes the methodology for developing storm water management facilities based upon a uniform set of standards, calculations, and procedures.

DESIGN STORM. A hypothetical rainfall event that is developed as a statistical relationship between actual rainfall intensity-duration-frequency data for the purpose of modeling the effectiveness of a given drainage system.

DETENTION BASIN (POND). A structure or facility, natural or artificial, which stores storm water on a temporary basis and releases it at a controlled rate to another water course, wetland, conduit or drain. A detention basin may drain completely after a storm event (dry detention basin) or it may be a body of water with a fixed minimum and maximum water elevation between runoff events (wet detention basin).

DISCHARGE. The rate of flow of water through an outlet structure at a given point and time, typically measured in cubic feet per second (cfs) or gallons per minute (gpm).

DISTURBED AREA. An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including filling.

DOWNSTREAM PROPERTIES. Down gradient lands and waters which receive storm water runoff and other surface water flows from the applicant’s property and are often subjected to the cumulative impact of upstream development.

DRAINAGE. The interception and removal of water (groundwater or surface water) by natural or artificial means.

DRAINAGE SYSTEM. All facilities, channels and areas which serve to convey, filter, store and/or receive storm water, either on a temporary or permanent basis.

EARTH CHANGE. A human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. The term ***EARTH CHANGE*** as used in this chapter shall not apply to the practice of plowing and tilling soil for the purpose of

crop production.

FLOOD. An overflow of surface water onto lands not normally covered by water. ***FLOODS*** have these essential characteristics: the inundation of land is temporary and results from unusually heavy precipitation and the land is inundated by overflow from a lake, pond, stream and/or wetland, or is flooded by natural runoff.

FLOODPLAIN. The area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal watercourse. For mapping purposes, ***FLOODPLAINS*** are as designated in the National Flood Insurance Program Flood Insurance Rate Maps for the City of Charlevoix effective May 16, 2019 (as amended).

GRADING. Any stripping, clearing, stumping, excavating, filling, stockpiling or any combination thereof, including the land in its excavated or filled condition.

GRUBBING. To clear (ground) of roots and/or stumps.

IMPERVIOUS AREA. Surfaces that do not readily allow rainfall to infiltrate into the soil; examples include but are not limited to: roof area, paved or gravel driveways, parking areas, roads (both asphalt and gravel), or areas of heavy clay soils.

INDUSTRIAL USE. Any manufacturing, processing, fabrication, maintenance assembly, printing or improvement of articles or merchandise, warehousing, wholesaling, storage, or activities related to mineral extraction and processing; and other business enterprises not classified as commercial.

INFILTRATION. The downward movement or seepage of water from the surface into the subsoil and/or groundwater. The infiltration rate is expressed in terms of inches per hour.

MAINTENANCE AGREEMENT. A binding agreement between the landowner and the city, which sets forth the location and design of best management practices as well as terms and requirements for storm water and erosion management facility maintenance, recorded with the Charlevoix County Register of Deeds.

OFF-SITE FACILITY. Storm water management facility which is located partially or completely off the applicant's subject property.

ORDINARY HIGH WATER MARK. The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. On an inland lake which has a level established by law, it means the ordinary high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

OUTFALL. The point where storm water flows out from a conduit, drain or stream.

PEAK DISCHARGE RATE (PEAK FLOW). The maximum calculated rate of storm water flow at a given point in a channel, watercourse, or conduit resulting from a predetermined frequency storm or flood, measured in cubic feet per second (cfs).

PERSON. Any individual, firm, partnership, association, public or private corporation, company, organization or legal entity of any kind, including governmental agencies.

REGISTERED PROFESSIONAL. One following licensed professionals: State of Michigan licensed engineer, land surveyor, architect and/or landscape architect.

RETENTION BASIN. A wet or dry storm water holding area, either natural or manmade, which does not have any outlet to adjoining watercourses or wetlands other than an emergency spillway.

SITE. Any tract, lot, or parcel of land or combination of tracts, lots or parcels of land proposed for development.

STOP WORK ORDER. A notice for cessation of activity issued by the agent to any person engaged in an activity in violation of this chapter including, but not limited to, grading and development activities.

STORM WATER MANAGEMENT FACILITIES. Any structure, ditch, swale, facility, barrier, berm, vegetative cover, basin or other measure which serves to manage storm water.

PERMANENT MEASURES. Installations designed to manage storm water runoff after development is completed.

TEMPORARY MEASURES. Installations designed to manage storm water runoff during development or until soils in the contributing drainage area are stabilized.

STORM WATER MANAGEMENT PERMIT. Written approval along with supporting documentation and storm water management plan that is executed by the agent and issued under the provisions of this chapter authorizing the applicant to engage in specified earth changes.

STORM WATER MANAGEMENT PLAN. Maps and written information prepared in accordance with specific standards identified within the ordinance for a proposed land use or earth change. The ***STORM WATER MANAGEMENT PLAN*** describes the way in which storm water runoff will be managed during and after completion of the proposed development.

STORM WATER RUNOFF. Excess water that does not infiltrate the soil, but instead flows over the surface of the ground or is collected in channels, watercourses or conduits and transported over a given drainage area.

STREAM. A moving body of water that has definite banks, a bed and visible evidence of a continued flow or continued occurrence of water. See Public Act 451 of 1994, as amended, Part 301, Inland Lakes and Streams § 324.30101, Subparagraph E, as amended.

SWALE. Low lying grassed area with gradual slopes which transports storm water, either on site or off site.

WATERSHED. A land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.

(Ord. 810, passed 11-18-2019)

REGULATED ACTIVITIES AND PERMIT REQUIREMENTS

§ 155.030 REGULATED ACTIVITIES.

Except as otherwise provided in this chapter, all earth changes described below shall be regulated activities and shall require a storm water management permit from the agent, pursuant to § 155.031 of this chapter:

(A) Industrial and commercial development regardless of the size or location, with the following exception: a proposal for redevelopment or alteration of an existing commercial or industrial site with a maximum total increase of 10% of the impervious surface in existence on May 8, 2018, or 4,356 square feet, whichever is less, shall not be required to meet the design standards of this chapter. Greater than a 10% increase in the impervious surface in existence on May 8, 2018, or more than 4,356 square feet of additional impervious surface shall require storm water management measures in accordance with the design standards of this chapter for the entire increase.

(B) All subdivision developments as defined by § 102 of Public Act 288 of 1967, as amended, regardless of size, location or environmental sensitivity.

(C) All site condominium developments or condominium developments as defined by Public Act 59 of 1978, as amended, M.C.L.A. § 559.101 *et seq.* regardless of size, location or environmental sensitivity.

(D) A mobile home park, manufactured housing development, or campground.

(E) Private roads which either provide access to five or more parcels, are more than 500 feet in length, and/or have a grade of 10% or greater.

(F) A private driveway that is at a 10% grade or greater, sloping down toward the intersecting road.

(G) Public road and facility projects of the city are not classified as regulated activities and are exempt from the permitting requirements of this chapter.

(Ord. 810, passed 11-18-2019)

§ 155.031 PERMIT REQUIREMENTS.

For purposes of this chapter, a storm water management (SWM) permit for regulated activities as identified in § 155.030 is required before any earth changes commence. The SWM permit requirements are independent of any other regulations governing the proposed earth change, such as soil erosion regulations or zoning requirements, which may require additional permitting through other enforcing agencies. The granting of a SWM permit shall authorize only such earth changes for which the permit has been issued, and shall not be deemed to approve any development as a whole, or any other land use activities.

(Ord. 810, passed 11-18-2019)

§ 155.032 PERMIT APPLICATION SUBMITTAL.

(A) An application for a SWM permit shall be submitted on the form provided by the agent, signed by the landowner or his/her duly authorized agent, and shall include a storm water management plan, prepared in accordance with §§ 155.055 through 155.057, along with the appropriate permit and review fees, prior to being considered by the agent as an administratively complete application. The agent may request additional storm water management plans or supporting documentation at his/her discretion during the permit review process.

(B) The application for a SWM permit shall be made, reviewed and approved prior to the start of any earth change including construction of access roads, driveways, grubbing or grading. Permit approval shall be given prior to the initiation of any work activity. Any unauthorized work shall be considered a violation of this chapter subject to enforcement actions under §§ 155.100 through 155.102 regardless of any later actions taken toward compliance. Soil test borings including those utilizing reasonable backhoe test excavation, vegetative cutting for land surveys, percolation tests and normal maintenance shall not be considered a start of work under these regulations.

(Ord. 810, passed 11-18-2019)

§ 155.033 PLAN PREPARATION BY A REGISTERED PROFESSIONAL.

Following the calculation of pre- and post-development (or increase in development) stormwater runoff, if 100% of this increased storm water will not be retained on-site in a stormwater retention basin, the storm water management plan shall be prepared by a registered professional as defined by this chapter. The agent may waive this requirement for regulated activities on a single family dwelling site when the agent finds that, considering the size, location, or natural discharge of the stormwater runoff, a storm water management plan is not reasonably required to accomplish the objectives of this chapter.

(Ord. 810, passed 11-18-2019)

§ 155.034 SEQUENTIAL APPLICATIONS

(A) On development proposals which are so large or complex that a storm water management plan encompassing all phases of the project cannot reasonably be prepared prior to initial ground breaking, an application for a sequential SWM permit, based on successive major incremental earth change activities may be allowed. Requests for sequential applications shall be approved by the agent prior to submittal of the initial SWM permit application.

(B) Approval of sequential applications shall take place in two phases. First, the overall conceptual plan for the entire development shall be submitted for review and approval. Second, detailed plans for each phase of the total project shall be submitted for review and approval.

(C) All permits processed and issued for phases of a project shall be clearly defined as to the nature and extent of work covered for that phase. Each phase of the project must be reviewed and permitted individually prior to construction.

(Ord. 810, passed 11-18-2019)

§ 155.035 PERMIT APPLICATION REVIEW.

The application review period begins upon receipt of an administratively complete application submittal. The agent shall act upon an application for an earth change permit involving five acres or less of disturbed area within 15 calendar days. An application for all other regulated projects shall be acted upon within 30 calendar days.

(Ord. 810, passed 11-18-2019)

§ 155.036 PERMIT APPROVAL OR DISAPPROVAL.

(A) If the agent determines that the proposed storm water management plan complies with the standards in this chapter, a permit shall be issued specifying the work approved, along with any supplemental conditions. If the proposed storm water management plan does not comply with these standards, the permit request shall be modified by the applicant or denied. When necessary, the agent may request additional information from the applicant upon which to base the permit decision.

(B) The agent shall notify the applicant in writing if the application is denied, citing the reasons for the denial.

(C) The agent shall notify the city after a permit decision has been made.

(D) Upon written request, the agent shall furnish any interested party with a statement in writing, detailing the reasons for permit denial or approval.

(Ord. 810, passed 11-18-2019)

§ 155.037 PERMIT EXPIRATION OR REVOCATION.

(A) SWM permits shall terminate automatically upon completion of the project or one year from the date of issuance, whichever occurs first. The applicant may request a one-year extension, which shall be reviewed and shall be granted by the agent if he/she finds good cause for the extension and that the SWM regulations governing the proposed development have not changed since the date the SWM permit was first approved.

(B) A SWM permit issued by the agent under this chapter may be revoked or suspended, subject to the provisions of §§ 155.100 through 155.102, for any of the following causes:

(1) A violation of a condition of the permit.

(2) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or storm water management plan.

(3) A change in a condition that requires a temporary or permanent change in the activity.

(Ord. 810, passed 11-18-2019)

§ 155.038 PERMIT REVISIONS.

Revisions to an approved SWM permit, permit condition, or approved storm water management plan must first be approved by the agent. The applicant shall make a written request for the proposed revision(s) to the agent, including any supporting documentation that the agent may require as a basis for making a decision regarding the proposed revision. Proposed revisions do not take effect until approved by the agent, and construction of unapproved plan revisions may be subject to enforcement action.

(Ord. 810, passed 11-18-2019)

§ 155.039 ADMINISTRATIVE FEE SCHEDULE.

(A) All fees applicable under this chapter shall be specified in a fee schedule determined from time to time by resolution of the legislative body of the city and maintained in the agent's office.

(B) Permit fees shall be directly related to the actual costs of administering the SWM permit program, including design review, site inspection, enforcement and permit administration.

(C) A printed fee schedule shall be made available by the agent.

(D) If the agent determines that the basic fees will not cover the actual costs of the application review, or if the agent determines that review of the application and/or participation in the review process by qualified professional planners, engineers, attorneys, or other professionals is necessary or advisable, then the applicant shall deposit with the agent such additional fees in an amount determined by the agent equal to the estimated additional costs. The additional fees shall be held in escrow in the applicant's name and shall be used solely to pay these additional costs. If the amount held in escrow becomes less than 10% of the initial escrow deposit or less than 10% of the latest additional escrow deposit and review of the application is not completed, then the agent may require the applicant to deposit additional fees into escrow in an amount determined by the agent to be equal to the estimated costs to complete the review. Failure of the applicant to make any escrow deposit required under this chapter shall be deemed to make the application incomplete thereby justifying the denial of the application. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application. Any actual costs incurred by the agent in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the release of a final decision on the application.

(Ord. 810, passed 11-18-2019)

§ 155.040 PENALTIES FOR INITIATING EARTH CHANGE ACTIVITIES WITHOUT A PERMIT.

Any earth change activity, subject to regulation under this chapter, which has commenced without a valid permit, is not proceeding in accordance with an issued SWM permit, or is in violation of a permit condition shall be considered a violation of this chapter and subject to the provisions of §§ 155.100 through 155.102 of this chapter.

(Ord. 810, passed 11-18-2019)

STORM WATER MANAGEMENT PLAN REQUIREMENTS

§ 155.055 STORM WATER MANAGEMENT PLAN REQUIREMENTS.

A storm water management plan shall be prepared for any regulated earth change subject to SWM permit requirements. The plan shall be designed to effectively manage the runoff from the site to not more than the rate and volume prior to development. Pretreatment of runoff shall be required if deemed necessary by the agent. Administratively complete plans shall include the following:

(A) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the agent, including the following:

(1) A legal description;

(2) Site location sketch which includes the proximity of any proposed earth change to lakes, streams, and wetlands;

(3) Predominant land features;

(4) Contours at not more than two-foot intervals, or slope description.

(B) A written description of the soil types of the exposed land area contemplated for the earth change.

(C) A description and the location of the physical limits of each proposed earth change.

(D) Location of all lakes, streams, and wetlands partially or completely contained within the boundaries of the site or within 50 feet of the site boundary to the extent that the property owner has the ability of depicting the same.

(E) A description and the location of all existing and proposed on-site storm water management facilities and measures.

(F) The timing and sequence of each proposed regulated earth change.

(G) A description and the location of all proposed temporary storm water facilities and measures.

(H) A description and the location of all proposed permanent storm water facilities and measures.

(I) Pre- and post-development storm water calculations.

(J) A program for the continued maintenance of all permanent storm water facilities and measures.

(K) Other information which the agent requires to review the impact of the proposed earth change in relationship to the standards and requirements of this chapter.

(Ord. 810, passed 11-18-2019)

§ 155.056 SITE CONDOMINIUM AND SUBDIVISION REQUIREMENTS.

Applicants for site condominium or subdivision plat approval shall submit the same information as in § 155.055 of this chapter and may need to submit additional relevant information including but not limited to the following: off-site watershed boundaries, existing and proposed easements, and proposed drainage system including water movement onto and out of the proposed development.

(Ord. 810, passed 11-18-2019)

§ 155.057 GENERAL STANDARDS FOR APPROVAL OF STORM WATER MANAGEMENT PLANS.

Approval of a storm water management plan shall be based upon the following general provisions:

(A) The agent shall approve or disapprove storm water management permit applications and plans in accordance with the provisions of this chapter and the design standards included and/or referenced in Appendix A .

(B) All regulated earth changes subject to review under the requirements of this chapter shall be designed, constructed and maintained to provide for the retention/detention of storm water runoff and to protect water quality.

(C) Measures required for storm water shall take into consideration natural features, proximity of the site to lakes, streams and wetlands, extent of impervious surfaces, potential for flooding, and the size of the site.

(D) Alteration to natural drainage patterns shall not create downstream or off-site flooding.

(E) Storm water management plans shall be designed in accordance with the specific design criteria included as "Design Standards", attached and made a part of this chapter as Appendix A .

(F) All storm water management plans and maintenance agreements shall be recorded with the Charlevoix County Register of Deeds by the agent, at the expense of the applicant.

(G) Storm water management facilities shall be constructed, operated and maintained on the applicant's property, without impact or degradation to downstream conveyance structures or properties. However, the applicant may request a waiver from the requirements for on-site storm water management by written petition to the agent with the SWM permit application. Where a request is made for off-site storm water management, the request shall comply with the following general criteria:

(1) Off-site storm water management areas may be shared between two or more property owners or developments, provided that maintenance agreements have been approved by the agent and storm water management easements have been obtained and recorded with the Charlevoix County Register of Deeds by the agent, at the expense of the applicant.

(2) The storm water management easement shall contain language stating that the easement shall exist as long as said development exists and shall not be modified or terminated without the prior written authorization of the agent. The Agent may only approve a modification or termination of this easement upon a determination that alternative means are available and will be used to improve the handling and disposition of storm water generated from the development or redevelopment of the site.

(3) Easements within drainage districts shall require prior approval of the Drain Commissioner.

(4) Storm water management plan requirements specified in § 155.057 and the Design Standards included as Appendix A of this chapter shall be used as the basis for reviewing off-site storm water management proposals.

(Ord. 810, passed 11-18-2019)

MAINTENANCE, INSPECTION AND ACCESS

§ 155.070 APPLICABILITY.

All temporary storm water management facilities shall be maintained and inspected during the life of the facility to provide adequate protection against adverse impacts from storm water runoff. Permanently installed storm water management facilities shall be routinely inspected and maintained by the property owner or designated qualified party to ensure the continued and proper operation of the facility for the protection of downstream properties.

(Ord. 810, passed 11-18-2019)

§ 155.071 MAINTENANCE REQUIREMENTS.

Where maintenance is required, it shall be performed in accordance with the following general provisions, as well as any specific conditions that may be included with the SWM permit.

(A) All storm water management facilities and measures shall be maintained in accordance with permit conditions.

(B) The person(s) or organization(s) responsible for maintenance shall be designated in the storm water management plan or the permit application submitted to the agent. Options may include:

(1) The owner(s) of the property.

(2) Property owners association or other designated qualified party as determined by the agent, provided that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements.

(C) Maintenance agreements may be required by the agent when the average annual cost of maintenance is reasonably expected to exceed $500 per year and shall be required for all site condominium and subdivision plat proposals. When required, maintenance agreements shall specify responsibilities for financing maintenance and emergency repairs, including but not limited to the procedures specified in §§ 155.072 and 155.073 and §§ 155.085 through 155.087 of this chapter.

(D) The agent is not required to accept the applicant's desired responsible party for maintenance purposes in a given situation. Natural features, proximity of site to lakes, streams and regulated wetlands, extent of impervious surfaces, size of the site and potential need for ongoing maintenance activities will be considered when making this decision, as well as the overall complexity of the storm water management facilities. Where deemed necessary by the agent, third party maintenance may be required for the adequate protection of sensitive sites, or complex storm water management facilities.

(Ord. 810, passed 11-18-2019)

§ 155.072 INSPECTIONS.

(A) The agent, or his/her authorized agent, shall have the right to conduct on-site inspections of the storm water management facilities to verify compliance with the requirements of this chapter, including that maintenance is being performed as required by this chapter. Any such inspections may take place before, during, and after any earth change activity has occurred for which a permit has been issued. The agent or his/her authorized agent shall exercise this right to inspection by written consent of the person having the right to possession of the property, or by administrative search warrant issued by a court of competent jurisdiction. Submission of an application for a permit under this chapter shall be deemed as providing written consent for the agent to conduct on-site inspections of the storm water management facilities.

(B) If upon inspection, existing site conditions are found not to be as stated in the permit or approved storm water management plan, the permit may be revoked. No earth disrupting work shall be undertaken or continued, except preventative storm water measures as authorized by the agent, until revised plans have been submitted and a valid permit issued.

(C) Requests for revisions must be submitted to and approved by the agent in writing before being effective unless approved by the agent on site. If a change is approved on site, the following shall occur:

(1) The agent shall provide written verification of a change and/or revision.

(2) The permit holder shall provide updated drawings, calculations, etc. to reflect the changes and/or revisions.

(Ord. 810, passed 11-18-2019)

§ 155.073 STORM WATER MANAGEMENT EASEMENTS.

(A) If any portion of the storm water management facilities will be located on property other than the property on which the storm water will originate, then the owner of the property on which the storm water will originate shall obtain a storm water management easement from the owner of the property on which all or a portion of the storm water management facilities will be located. The storm water management easement shall define the scope of the easement to include at a minimum the legal right of the owner of the property on which the storm water will originate to access the property on which the storm water management facilities will be located for the purpose of installing, inspecting, and maintaining the storm water management facilities; shall run in perpetuity with the land benefitted by the easement, or until the storm water management facilities are removed, whichever is sooner; and shall be recorded in the office of the Charlevoix County Register of Deeds.

(B) A recorded copy of the storm water management easement shall be filed with the agent prior to the issuance of a SWM permit.

(C) The recorded storm water management easement shall not be revoked, terminated, re-conveyed, or amended without the prior written authorization of the agent. Any such extinguished or revised storm water management easement shall be recorded in the office of the Charlevoix County Register of Deeds, and a recorded copy shall be filed with the agent.

(Ord. 810, passed 11-18-2019)

COMPLIANCE ASSURANCE

§ 155.085 PERFORMANCE GUARANTEES.

(A) Applicants proposing subdivision plats, site condominiums, private road construction projects, or other developments identified by the agent with a high potential for storm water management problems may be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount sufficient to assure the installation and completion of the storm water management plan.

(B) Letters of credit shall extend for a minimum of one year with the option of renewal. Money held in escrow, cash deposits, and/or certified checks will be returned to the applicant when the site is completely stabilized to meet requirements set forth by the agent, and as-built plans of the site, sealed by a State of Michigan licensed professional engineer, are submitted to the agent.

(Ord. 810, passed 11-18-2019)

§ 155.086 CONSTRUCTION CERTIFICATION BY A REGISTERED PROFESSIONAL.

(A) For any sites that require a professionally prepared site plan in accordance with § 155.033, a certification letter shall be submitted after any storm water management facilities have been installed to affirm that construction has been completed in accordance with the approved storm water management plan. Unless this

chapter requires certification by a State of Michigan licensed engineer as provided later in this section, the certification letter can be prepared by a registered professional as defined by this chapter.

(B) If there are changes during the course of construction, the agent may require final “as-built” drawings for final approval of the site work.

(C) ***CHANGES DURING CONSTRUCTION***, as used in this section, includes, but is not limited to: unanticipated soil conditions, elevation, acts of God, or other changes in circumstances not anticipated during the initial application, process.

(D) *Sites where certification by a state of michigan licensed engineer is mandatory.*

(1) Certain activities listed under the Michigan Natural Resources and Environmental Protection Act (Public Act 451 of 1994, as amended).

(a) Part 23, Pretreatment.

(b) Part 31, Floodplain.

(c) Part 41, Sewage Systems.

(d) Part 111, Solid Waste.

(e) Part 115, Hazardous Waste.

(f) Part 307, Inland Lake Levels.

(g) Part 309, Inland Lake Improvements viii. Part 315, Dams.

(2) Certain activities listed under the U.S. Environmental Protection Agency, Title 40 of the Code of Federal Regulations.

(a) Part 112, Spill Prevention, Control and Counter Measures.

(b) Part 122, Storm Water Pollution Prevention Plan (SWPS).

(Ord. 810, passed 11-18-2019)

§ 155.087 LETTER OF COMPLIANCE.

Upon receipt and approval of the certification letter, the agent shall issue a letter of compliance to the property owner.

(Ord. 810, passed 11-18-2019)

STOP WORK ORDERS AND ENFORCEMENT ACTION

§ 155.100 STOP WORK ORDERS.

(A) If necessary to assure compliance with the permit requirements, standards, and other provisions of this chapter or to protect public health, safety and/or welfare, the agent may issue a stop work order for the purpose of preventing uncontrolled storm water, or other conditions posing imminent and substantial danger to public health, safety, welfare or natural resources.

(B) The stop work order, when issued, shall require all specified storm water activities to be stopped. A copy of the stop work order shall immediately be submitted to other state and local agencies with regulatory jurisdiction. Said order shall describe the specific alleged violation and the steps deemed necessary to bring the project back into compliance.

(C) If the agent determines that storm water violations have or will reasonably occur from a parcel of land in violation of this chapter, it may seek to enforce the ordinance by notifying the person who owns the land by mail, with return receipt requested, of its determination. The notice shall contain a description of specific storm water measures which, if implemented by the property owner, would bring the property owner into compliance.

(Ord. 810, passed 11-18-2019)

§ 155.101 ENFORCEMENT.

(A) Any person who violates any provision of this chapter shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being M.C.L.A. §§ 600.101-600.9939 and shall be subject to a fine of not more than $500. In addition, any person found responsible for a municipal civil infraction may be subject to an enforcement order issued by the District Court Judge requiring remedial action to bring the property into compliance with this chapter. Each day this chapter is violated shall be considered as a separate violation.

(B) The Agent and any other person designated by the legislative body of the city are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this chapter to appear in court.

(C) A violation of this chapter is hereby declared to be a public nuisance or a nuisance per se and is declared to be offensive to the public health, safety and welfare.

(D) In addition to enforcing this chapter through the use of a municipal civil infraction proceeding, the agent may initiate proceedings in the Circuit Court on behalf of the city, to abate or eliminate the nuisance per se or any other violation of this chapter.

(Ord. 810, passed 11-18-2019)

§ 155.102 EMERGENCY ACTION.

(A) Where necessary to protect public safety or water resources, including lakes, streams, regulated wetlands, and other receiving bodies of water, the agent, through a Circuit Court abatement proceeding, may seek a temporary restraining order or preliminary injunction from the court authorizing entry onto private property for the purpose of initiating emergency action to abate imminent and substantial danger and risk.

(B) Except as otherwise provided through maintenance agreements, the property owner shall reimburse the city and/or Charlevoix County for all expenses incurred as a result of the emergency action, including but not limited to reasonable attorneys’ fees, administrative costs, and the costs of any remedial action taken to abate the emergency condition.

(Ord. 810, passed 11-18-2019)

APPEALS

§ 155.115 CREATION OF APPEALS BOARD.

An Appeals Board is hereby created which shall consist of five members. The membership and organizational structure of the Appeals Board shall be determined by the City. When discharging its duties under this chapter, the Appeals Board shall comply with all requirements of the Open Meetings Act, being Act 267 of the Public Acts of 1976, as amended. The Appeals Board Clerk shall be responsible for providing all required notices for Appeals Board hearings and for taking the minutes of the Appeals Board hearings.

(Ord. 810, passed 11-18-2019)

§ 155.116 RIGHT OF APPEAL.

Any person aggrieved by the action or inaction of the agent related to this chapter may appeal to the Appeals Board. Such appeal shall be made in writing and shall be

filed with the Appeals Board Clerk within 30 calendar days of the decision that is being appealed. Any appeal that is not filed in a timely manner shall be dismissed by the Appeals Board. The written appeal shall state the order, requirement, decision, or determination that is being appealed, the sections of this chapter that relate to the appeal, and those facts relevant to the appeal, which support the basis for the appellant's claim.

(Ord. 810, passed 11-18-2019)

§ 155.117 APPEALS PROCESS.

Upon receipt of an appeal, the Appeals Board Clerk shall direct the agent to transmit to the Appeals Board a summary report of all previous action taken on the subject of the appeal, a copy of any permits issued, and the appellant's written statement. The Appeals Board will then adhere to the following general process:

(A) Within 15 calendar days of receiving a completed application, the Appeals Board Clerk shall schedule a hearing date before the Appeals Board. The Appeals Board Clerk shall send a written notice specifying the time, date, and place of the Appeals Board hearing to the appellant and to all land owners within 300 feet of the subject parcel and shall publish a copy of the hearing notice in a newspaper of general circulation within the city where the subject property is located. The notice shall be mailed and published no less than 15 days before the scheduled hearing. The Appeals Board shall hold the hearing within 60 calendar days from receipt of a completed application.

(B) The appellant shall deposit with the Appeals Board Clerk when the appeal is filed the required fee, as specified in the fee schedule adopted under § 155.039(A) of this chapter. The fee shall be used to cover the cost of handling said appeal including compensation for Appeals Board members and associated administrative costs.

(C) If the Appeals Board Clerk determines that the basic fee will not cover the actual costs of the appeal, then the appellant shall deposit with the Appeals Board Clerk such additional fees in an amount determined to be equal to the estimated additional costs, including costs which may be incurred by the agent. The additional fees shall be held in escrow in the appellant's name and shall be used solely to pay these additional costs. If the amount held in escrow becomes less than 10% of the initial escrow deposit or less than 10% of the latest additional escrow deposit and the appeal is not completed, the Appeals Board Clerk may require the appellant to deposit additional fees into escrow in an amount determined to be equal to the estimated costs to complete the appeal. Failure of the appellant to make any required deposits shall be deemed to make the appeal incomplete thereby justifying denial of the appeal. Any unexpended funds held in escrow shall be returned to the appellant following final action on the appeal. Any actual costs incurred in excess of the amount held in escrow shall be billed to the appellant and shall be paid by the applicant prior to the release of a final decision on the appeal.

(D) The Appeals Board may affirm or reverse, wholly or in part, a decision of the agent. In deciding an appeal, the Appeals Board shall determine:

(1) Whether the agent properly interpreted and applied this chapter in making the decision.

(2) Whether the specific situation has circumstances that warrant a variance from the standards of this chapter. Where the Appeals Board has determined that a variance from the standards of this chapter may be warranted, the Board may grant the appellant a variance from any design standard, setback, or other provision contained within this chapter, provided that such variance complies with the following general standards:

(a) The variance will not adversely impact adjacent property owners or downstream properties in any material way.

(b) The variance is necessary to grant the appellant substantial relief from a hardship that would otherwise be imposed by strict enforcement of this chapter.

(c) The variance granted is the minimum deviation from the requirements of this chapter necessary to do substantial justice to the appellant. The Appeals Board may include such conditions or limitations on any variance issued to ensure that granting the relief requested will not substantially prevent, nor result in less, effective management of storm water runoff.

(d) Granting of the variance would not knowingly be in conflict with other regulatory requirements.

(e) The need for the variance is due to circumstances that are unique to the property in question and not due to any act or omission of the property owner, a prior property owner, or a past or present occupant of the property.

(E) The decisions of the Appeals Board shall in all instances be final administrative decisions, shall be in writing, and shall include specific findings of fact by the Board, and further, shall be subject to such judicial review as by law may be provided.

(Ord. 810, passed 11-18-2019)

REVISIONS

§ 155.130 REVISIONS.

The agent shall review this chapter at least biannually, and make recommendations for amendments if needed. The recommendations of the agent shall be transmitted to the legislative body of the City of Charlevoix.

(Ord. 810, passed 11-18-2019)

APPENDIX A

City of Charlevoix Storm Water Ordinance Design Standards

Temporary Storm Water Management Standards

(A) Temporary storm water management facilities shall be installed by the applicant and inspected by the agent before grading, filling or grubbing is initiated.

(B) Where permanent storm water management facilities, such as detention or retention basins are proposed for use during construction as a temporary storm water management measure, the construction sequence and grading plan shall be designed for the proper and effective implementation of these facilities.

(C) Temporary storm water management measures shall be maintained throughout the duration of the earth change, including the later stages of development. Maintenance activities may include, but are not limited to removal of accumulated sediment, structural repairs, and reseeding or replacement of temporary vegetative covers.

(D) Temporary storm water management facilities shall be designed in accordance with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) Best Management Practices (BMP) Guide Book for Michigan Watersheds.

(E) At a minimum, during construction all regulated earth changes shall be required to provide temporary storm water management that either contains the volume of runoff generated from a 10-year, 24-hour design storm on-site for all disturbed area, or to provide silt fencing or other permeable barriers that will manage the flow of storm water discharging off-site, diffusing it and releasing it at reduced velocities, where such discharge will not adversely impact downstream properties.

Permanent Storm Water Management Standards - General

(A) *Storm Water Management Plan Preparation.*

(1) For regulated activities on sites that exceed one acre, the agent may require the Storm Water Management Plan is prepared by a registered professional as defined by this chapter.

(2) For regulated activities on sites that exceed one acre, the agent may request that the submitted site plan be reviewed by one or more registered professionals contracted by the agent. The costs incurred for such review(s) shall be the responsibility of the applicant. The applicant shall deposit with the agent such fees in an amount determined by the agent equal to the estimated costs. The fees shall be held in escrow in the applicant's name and shall be used solely to pay these costs. If the amount held in escrow becomes less than 10% of the initial escrow deposit or less than 10% of the latest additional escrow deposit and review of the application is not completed, then the agent may require the applicant to deposit additional fees into escrow in an amount determined by the agent to be equal to the estimated costs to complete the review. Failure of the applicant to make any escrow deposit required under this chapter shall be deemed to make the application incomplete, thereby

justifying denial of the application. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application. Any actual costs incurred in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the release of a final decision on the application.

(3) If the applicant disputes the agent's need for outside professional assistance in the review of the submitted plans, or the professional(s) selected, the applicant has the right to appeal the agent's decision to the Appeals Board, who shall be responsible for making the final decision.

(B) On-site storm water management facilities which minimize adverse impact to downstream properties shall be required for all sites unless a proposal for off-site storm water management has been approved. Storm water management facilities may include, but are not limited to: retention basins/ponds, detention basins/ponds, wet basins, storm water treatment units, controlled outfall structures, and rain gardens or other bio-filtration systems.

(C) The Michigan Department of Environmental Quality "Urban Stormwater Best Management Practices Manual" will be used as a reference as well as the following manuals: "Controlling Urban Runoff" by the Metropolitan Washington Council of Governments; "Designing Stormwater Quality Management Practices" by the University of Wisconsin, Madison; and the "Design of Stormwater Filtering Systems" by the Center for Watershed Protection.

(D) Retention and detention basins shall have an emergency overflow system. The overflow system shall be designed to accommodate flow from a 100-year storm event, or as otherwise required by the appropriate State of Michigan agency.

(E) If the storm water facilities for a 50-year storm cannot discharge to a stream, lake or wetland without causing scouring, flooding or pollution on site or downstream, then the basin shall be designed to hold or infiltrate storm water from a 100-year, 24-hour frequency storm event.

(F) Sites that are located in areas serviced with a municipal storm system, and that have the prior approval of the municipal system owner, may discharge storm water to that system after it has been treated with an approved separator system that removes 60% of sediments. The applicant shall be responsible for all costs incurred to the municipal system to accommodate any storm water discharged to the system from the site.

(G) The rainfall amounts for Charlevoix County shall be the numbers given by the Natural Resources Conservation Service for a 24-hour duration and are as follows: one-year storm equals 1.8 inches; two-year storm equals 2.2 inches; five-year storm equals 2.7 inches; ten-year storm equals 3.0 inches; 25-year storm equals 3.5 inches; 50-year storm equals 3.9 inches; 100-year storm equals 4.2 inches.

(H) The maximum grade for the side slopes of any storm water retention or detention basin shall be no greater than 3:1 (horizontal to vertical) for vegetated basins. Where, due to site limitations, this maximum side slope grade cannot be met, the agent may grant an increase in the slope, provided additional stabilization (beyond seed and mulch) is proposed.

(I) Storm water basins with permanent pools of water of three foot depth or greater with side slopes steeper than one on six shall have one or more of the following safety features:

(1) Safety ledges at the basin perimeter which are at least ten feet wide.

(2) Aquatic vegetation surrounding the basin which discourages wading.

(3) Fencing to prevent unauthorized access to the basin.

(J) Storm water detention basins shall not be constructed in regulated wetlands unless approved by the appropriate State of Michigan agency and/or the Army Corps of Engineers.

(K) Storm water detention basins which impound five acres or more and have a head of six feet or more shall meet dam construction permit requirements in Part 315 of Act 451 of 1994, as amended, administered by the Michigan Department of Environmental Quality.

(L) Whenever possible, a created wetland or other bio-filtration area shall be incorporated into storm water management facilities to assist removal of soluble pollutants that cannot be removed by conventional settling. Sediment carried off by runoff shall be required to settle out prior to discharge into the created wetland or other bio-filtration area.

(M) Storm water management basins designed for retention, detention or infiltration shall be isolated from septic systems and water wells by 50 feet or more. Variations in the required setback may be granted by the Health Department of Northwest Michigan prior to the issuance of a Charlevoix County Storm Water Management Permit.

(N) New fueling stations will be required to install an approved separator system for sites that discharge storm water off-site. Existing fueling stations that are modifying more than 25% of their existing impervious surfaces will be required to install an approved separator system if they discharge storm water off-site.

Retention Basin Design

(A) Small projects in areas that have less than one-half (0.5) acre of impervious surface shall be allowed to have runoff retention stored at two inches of runoff from all impervious surface areas in lieu of detailed hydrologic calculations.

(B) At a minimum, retention basins created in soils with permeability greater than 1.3 inch per hour shall have the storage capacity to hold the increase in runoff volume generated by the earth change.

(1) The required volume shall be calculated by comparing the undeveloped conditions for a two-year, 24-hour frequency storm event to the developed condition for a 25-year, 24-hour frequency storm event. Soil permeability rates are listed in the following table:

Soil Texture & Structure	***Permeability (Inches/Hour)***
Coarse sand and medium sand	6 or more
Fine sand and loamy sand	3 - 6
Sandy loam	2 - 3
Loam, sandy clay loam	1.3 - 2
Clay loam, silt loam, clays, silts, muck, peat, marl	Less than 1.3

The retention basin shall be designed to drain within 72 hours.

(C) At a minimum, retention basins, which are created in soils with permeability less than 1.3 inch per hour, shall be designed to store runoff from back-to-back 50-year, 24-hour rainfall events.

Detention Basin Design Standards

(A) When using the Natural Resource Conservation Service Method, the volume of a detention pond is to be calculated based upon a 50-year, 24-hour storm with the developed site conditions and with an allowable outflow of a ten-year, 24-hour storm based upon the pre-existing site conditions or 10% of the flow rate calculated by the 50-year developed site conditions analysis. [The TR-55 program does not accept lower values than 10% of the developed rate.]

(B) The allowable peak discharge rate from a permanent storm water management measure may be a staged rate. The maximum allowable peak discharge rate shall not exceed the peak discharge rate from the project site prior to the proposed development for all of the following 24-hour storm events: two-year, five-year, ten-year, 25-year, and 50-year. In no event shall the discharge exceed the ability of the downstream condition to convey the flow without damage to abutting properties.

(C) All sites with greater than one acre of impervious surface will require the detention outflow to be directed to approved storm systems or have the approval of adjacent property owners, with documented easements, or one can release at a two-year before construction rate if it can be determined that there is not a flooding hazard on the adjacent property. Low porosity in the soils in the area of discharge and depressions in the land would be examples of reasons to deny detention out-flowing at a two-year rate. Sites that have three acres or more of parking area must in addition have an approved separator system to remove impurities before discharging to the detention/retention pond or install an approved treatment forebay.

Storm Water Separator Design Standards

(A) Approved separators are to remove a minimum of 60% of sediments.

(B) *Treatment forebay criteria* - the treatment forebay is designed to store the “first flush” of pollutants typically found in urban storm water runoff, and to capture initial flush pollutant loads.

(1) The treatment forebay shall be a wet basin or approved structure with an impermeable bottom and sides to the design high water level.

(2) *Sizing* - the treatment forebay shall be sized to store the water quality volume (V_{wq}) defined as one-half (0.5) inch of runoff from the directly connected impervious area. This volume can be included in the overall flood control volume.

(3) The minimum required water quality volume is given by the equation:

$V^{wq} = 1815\ A\ 1$

Where: V^{wq} = Water quality volume (cft)

1815 = 0.5 inch of runoff x 3,630 to convert ac-in to cft

A = Contributing drainage area (ac)

1 = Percent impervious expressed as a ration

(4) Capacity for the water quality volume shall be provided above the normal water level.

(5) The overflow structure from the treatment forebay shall be sized for the peak inflow from the design rainfall event.

(6) The top-of-berm elevation between the treatment forebay and the infiltration basin shall be a minimum of one foot below the outer berm elevation.

(7) The treatment forebay shall have a minimum one-foot-deep sump below the inlet pipe for sediment accumulation.

(8) The outlet structure from the treatment forebay shall be designed to draw water from the central portion of the water column with the forebay to trap floatables and contain sediments. The top of the inlet structure shall be located a minimum of one foot below the normal water level, and the invert shall be a minimum of one and one-half (1.5) feet above the bottom of the treatment forebay.

(9) *Material* - treatment forebays shall be lined with impermeable materials extending up to the design high water elevation. A minimum 18-inch-thick clay layer, or an impermeable liner protected with a minimum of 12 inches of soil cover are acceptable alternatives. Maximum allowable permeability shall be 0.0001417 inch/hour as determined by a geotechnical engineer for clay placement, or manufacturer’s certificate for line products.

Underground Storm Water Management Facilities

(A) If the use of storm water retention or detention basins, either on-site or off-site is not feasible and the permeability of the soils is greater than 1.3 inch per hour, the installation of underground drainage systems (catch basins / manholes with open bottoms with stone and/or run(s) of perforated piping) may be allowed if they provide for detention or retention volumes as stated in these Charlevoix County Storm Water Ordinance guidelines. The perforated piping and dry basin structure(s) cannot be considered to provide for any outflow when calculating volumes for the detention system design. All underground drainage systems must provide the following:

(1) Catch basins or separator systems, sediment basins, silt traps for storm water flowing to the underground drainage system.

(2) An approved overflow system.

(3) Adequate provisions for maintenance.

(B) The required detention volume may be reduced by the agent by an amount not to exceed 50% if rain gardens are implemented and demonstrate the ability to accommodate an equivalent amount of storm water.

(Ord. 810, passed 11-18-2019)

TABLE OF SPECIAL ORDINANCES

Table

TABLE I: HISTORIC DISTRICTS

Ord. No.	*Date Passed*	*Description*
-	- -	Charlevoix Train Depot Historic District; 307 Chicago Avenue (Prior Code, § 1.550)
778	4-18-2016	Earl Young Historic Buildings District; 300 Park Avenue, 302 Park Avenue, 304 Park Avenue (non-contributing), 306 Park Avenue, 308 Park Avenue, 310 Park Avenue, 101 Grant Street, 103 Grant Street, 303 Clinton Street, 305 Clinton Street and 316 Park Avenue (Prior Code, § 1.551)

TABLE II: FRANCHISE AGREEMENTS

Ord. No.	*Date Passed*	*Description*
-	- -	Gas system franchise with Michigan Consolidated Gas Company (Prior Code, §§ 11.1.1 through 11.3.10)