

**AN**  
**ORDINANCE**

**of the City Council of the City of Berkley, Michigan to Add Sec. 138-199, and to Amend Sec. 138-32, Section 138-387, Sec. 138-388, Sec. 138-418, Sec. 138-427, Sec. 138-428, Sec. 138-442, Sec. 138-443, Sec. 138-457, and Sec. 138-458 of Chapter 138 – Zoning to allow outdoor service areas as a principal permitted use and allow rooftop outdoor eating areas for restaurants and other food serving establishments as a special use.**

**THE CITY OF BERKLEY**  
**ORDAINS:**

**SECTION 1:** Section 138-32 of Chapter 138 of the Berkley City Code must be amended, as follows:

*Outdoor service area:* A porch, patio, deck, sidewalk, parking lot, parking space, or other public or private land area used for seated dining and/or beverage service, which is adjacent and accessory to, but not located within the interior building walls of food and/or beverage establishments. Rooftop outdoor eating areas are not considered outdoor service areas.

*Rooftop outdoor seating area:* An exterior area, located on the roof of a building at least one story above grade, that is used for seated consumption of food and/or beverages, is operated by and is accessory to a food and/or beverage establishment within the building.

**SECTION 2:** Section 138-199 must be added to Division 6 of Chapter 138 of the Berkley City Code, as follows:

**Sec. 138-199. – Outdoor service areas.**

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

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

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

- (1) Sketch Plan: A sketch plan (top-view drawing of the outdoor service area) with:
  - a. The location of an outdoor service area in relation to the business it will serve; the entrance to the business; adjacent properties (include addresses) and their building entrances; and existing landscaping, road, trees, catch basins, fire hydrants, and other utilities.
  - b. The dimensions of the outdoor service area footprint.
  - c. The location of the access ramps, platforms, and enclosures.

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

- (b) *Location.* Outdoor service areas are allowed in on-site parking spaces or lots, sidewalks, and similar areas, with the following limitations:
- (1) When located in the side or rear yard of a site, an outdoor service area must be a minimum 50 feet from the property line of any single-family or multiple-family zoning district.
  - (2) Outdoor service areas must be setback at least 2 feet from adjacent vehicle traffic lanes, vehicle circulation aisles, or alleys.
  - (3) Outdoor service areas must be at least 3 feet from adjacent parking spaces not used as an outdoor service area.
  - (4) Outdoor service areas only may be allowed in on-site parking spaces or parking lots when parking provided without the spaces to be used for the outdoor service area still meets the minimum parking requirements for the principal building on-site as well as for any existing parking agreements.
- (c) *Time of Operation.* Permitted outdoor service areas may be operated all year. However, outdoor service areas in the public right-of-way are limited to April 1<sup>st</sup> through October 31<sup>st</sup>.
- (d) *Temporary Shelters.* Outdoor service area permittees may be allowed to erect temporary shelters, such as tents, igloos, bubbles, garden sheds, or similar type when in compliance with the following regulations:
- (1) Non-electric heating elements are prohibited inside any temporary shelters.
  - (2) The location of all non-electric portable heating elements must be a minimum of ten (10) feet from temporary shelters.
- (e) *Access.* All outdoor services areas, whether located on a sidewalk or accessed from a sidewalk, must allow a minimum of five (5) feet of unobstructed pedestrian access along the sidewalk, as well as ingress/egress to the principal use for which the outdoor service area is accessory. Unobstructed pedestrian access along the sidewalk may be reduced to no less than three (3) feet when street furnishings, such as but not limited to street trees, fire hydrants, benches or trash receptacles, are present and dedicated passing areas are immediately adjacent.

Outdoor service areas must comply with Michigan Barrier Free Code, including but not limited to the following:

- (1) Entrances must be a minimum of 48 inches wide.
- (2) Connections between platforms, ramps, sidewalks, or parking spaces must be flush, and must not leave a horizontal gap greater than 1/2 inch, or a vertical separation greater than a quarter inch. 1:4 bevels are required for vertical differences that exceed a quarter inch.
- (3) For outdoor service areas proposed on parking spaces with grades that exceed 5%, level platforms must be provided.

- (4) Ramps must be provided for parking space outdoor service areas that are accessed from curbed sidewalks.
- (f) *Ramps and Platforms.* Ramps and platforms for outdoor service areas must comply with the following regulations:
- (1) Bolting of ramps and platforms into the road or penetrating the surface of the road/parking space is prohibited. Ramps and platforms may be bolted to the existing curb, but curbs must be restored to the satisfaction of the City of Berkeley DPW.
  - (2) Ramps and platforms must be designed and constructed to maintain unobstructed drainage flow along the gutter.
  - (3) Platform and ramp substructures must be made of quality materials: i.e., wood, treated wood or composite materials. Platform and ramp surfaces must be of a non-slip, composite material.
- (g) *Enclosures.* Enclosures are required for outdoor service areas in the following circumstances: when alcohol is served, when outdoor service areas on the sidewalk are within one foot of the back of the curb, and when using parking spaces. Enclosures must comply with the following regulations:
- (1) The enclosures must be clearly marked, using railings, planters, fencing, or similar materials.
  - (2) Enclosures must not block the view of traffic, including pedestrian traffic, or block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.
  - (3) The minimum height of an enclosure is 36 inches and maximum height is 42 inches.
  - (4) For outdoor service areas serving alcohol, the enclosure must define and secure the outdoor service area for alcohol consumption.
  - (5) For sidewalk outdoor service areas within one foot of the back of the curb, the enclosure must be located along the curb separating the outdoor service area from the roadway.
  - (6) For outdoor service areas using parking spaces, the enclosure must be a continuous, rigid physical separation with a height of 42 inches on all sides of the outdoor service area adjacent to vehicle traffic lanes, vehicle circulation aisles, alleys, and parking spaces not used as an outdoor service area.
- (h) *Alcohol service.* Alcoholic beverages may be served in an outdoor service area, as licensed by the State, for consumption by customers of the licensee.
- (i) *Street furniture and furnishings.* Street furniture and furnishings are allowed in outdoor service areas when the following regulations are met:

- (1) Outdoor service area street furniture/fixtures must not block the view of traffic, including pedestrian traffic, or block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.
  - (2) All outdoor service area street furniture/fixtures must be of substantial weight so that at no time could the outdoor service area furniture present an obstruction or risk to public safety, especially during inclement weather. All umbrellas must be closed or removed each evening.
  - (3) Hanging or overhead objects, including umbrellas, must have a minimum clearance of at least 7 feet.
  - (4) All outdoor service area furniture/fixtures must be maintained in a state of good repair. Any outdoor service area furniture/fixtures having broken, peeling, or rusting features or are showing other signs of disrepair must be promptly removed and replaced.
  - (5) All sun shading must be constructed of fire-retardant materials.
- (j) *Lighting.* Temporary, decorative outdoor lighting, such as string lights or electric candles, may be permitted in outdoor services areas when such lighting is limited to the hours of operation of the outdoor service area, does not create glare that negatively impacts public safety or adjacent properties, and is secured in a manner to prevent trip or electrical hazard. All other lighting must meet the requirements in Section 138-143(b).
  - (k) *Heating elements.* Electric and non-electric heating elements may be permitted in outdoor services areas. Non-electric heating elements must be placed a minimum of 10 feet from all permanent or temporary structures. Electric heating elements must be secured in a manner to prevent tripping or electrical hazard.
  - (l) *Maintenance.* The maintenance of an outdoor service area is the responsibility of the establishment. Maintenance includes, but is not limited to surface treatment and cleaning, litter control, sweeping, and snow and ice removal. Any sidewalk or public property permitted to be used as an outdoor service area must be kept neat and clean at all times and free from any substance that may cause pedestrian injury or damage to the sidewalk or public property.

**SECTION 4:** Section 138-387 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-387. – Principal Uses permitted.**

Principal uses permitted in the LB district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, pharmaceutical, apothecary items, flowers, dry goods, furnishings, jewelry, clothing millinery, shoes, books and periodicals, stationery and office supplies and hardware.

- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, radios, televisions, small appliances, vacuum and sewing machines, etc.), beauty salons, hair salons, barber shops, manicuring studios, tanning salons, massage facilities, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, seamstress/dressmaker, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
- (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, loan companies, insurance offices, travel services, and real estate offices. Bank, savings and loan associations and credit unions may include drive-up facilities only as an accessory use subject to the required provisions for stacking or waiting space, apart from required off street parking areas, at the rate of 4 car spaces for each service window or pedestal, in addition to providing a full car length space at the window or pedestal.
- (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales, subject to the limitations contained in section 138-390.
- (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions subject to the limitations contained in section 138-390.
- (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions, subject to the limitations contained in section 138-390.
- (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (11) Places of worship.
- (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
- (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in or drive-through eating establishments.

- (14) Single-family, two-family and multiple-family dwellings when located on the second floor or above a first floor permitted or special use. Single-family detached dwellings and first floor dwelling units are prohibited.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.
- (16) Marihuana retailers and medical marihuana provisioning centers.

**SECTION 5:** Section 138-388 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-388. Special uses.**

The following special uses must be permitted in the LB local business district, subject to the regulations in article VI, division 6, Special Uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-389.
- (2) Drive-in and drive-through eating establishments.
- (3) Drive-through retail/service establishments.
- (4) Open air business uses when developed as uses accessory to primary uses and structures in the LB local business district as follows:
  - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.
  - b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
  - c. Businesses in the character of open store fronts.
- (5) Commercial amusement device centers.
- (6) Nursery schools, day nurseries and child care centers, provided:
  - a. Applicants are licensed through the Michigan Department of Licensing and Regulatory Affairs (LARA). Proof of licensing must be provided to the city when submitting an application for a business license.
  - b. Facilities meet the minimum requirements established by the Michigan Department of Licensing and Regulatory Affairs (LARA) and meet the minimum standards of section 138-391 Area and bulk requirements and section 138-392 Building design requirements.
  - c. Facilities meet screening requirements as deemed reasonable by the planning commission, including masonry walls up to six feet in height, decorative fencing or landscaping.
  - d. Applicants, staff, and facilities meet the minimum standards established by the Michigan Child Care Organizations, MCL 722.111 et seq., as amended.

**SECTION 6:** Section 138-418 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-418. Special uses.**

The following special uses must be permitted in the downtown district, subject to the regulations in article VI administration and enforcement, division 6 special uses, of this chapter:

- (1) Offices or agencies, when located on the first floor.
- (2) Banks.
- (3) Convenience stores.
- (4) Outdoor sales or rooftop outdoor eating areas, when developed as accessory to primary uses and structures.
- (5) Repair shops or workshops such as, but not limited to, clothing, shoes, watches, televisions, small appliances, electrician, painter, and upholstery.
- (6) Resale shops.

**SECTION 7:** Section 138-427 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-427. Principal uses permitted.**

Principal uses permitted in the Gateway district are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, pharmaceutical, apothecary items, flowers, dry goods, furnishings, jewelry, clothing millinery, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, radios, televisions, small appliances, vacuum and sewing machines, etc.), beauty salons, hair salons, barber shops, manicuring studios, tanning salons, massage facilities, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, seamstress/dressmaker, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.



- (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, loan companies, insurance offices, travel services, and real estate offices. Bank, savings and loan associations and credit unions may include drive-up facilities only as an accessory use subject to the required provisions for stacking or waiting space, apart from required off street parking areas, at the rate of 4 car spaces for each service window or pedestal, in addition to providing a full car length space at the window or pedestal.
- (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales, subject to the limitations contained in section 138-410.
- (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions subject to the limitations contained in section 138-410.
- (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions, subject to the limitations contained in section 138-410.
- (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (11) Places of worship.
- (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
- (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in or drive-through eating establishments.
- (14) Single-family, two-family and multiple-family dwellings when located on the second floor or above a first floor permitted or special use. Single-family detached dwellings and first floor dwelling units are prohibited.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.
- (16) Marihuana retailers and medical marihuana provisioning centers.

**SECTION 8:** Section 138-428 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-428. Special uses.**

The following special uses must be permitted in the Gateway district, subject to the regulations in article IV, division 6, special uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-429.
- (2) Drive-in and drive-through eating establishments.
- (3) Drive-through retail/service establishments.
- (4) Commercial amusement device centers.

- (5) Open air business uses when developed as uses accessory to primary uses and structures in the Gateway district as follows:
  - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.
  - b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
  - c. Businesses in the character of open store fronts.

**SECTION 9:** Section 138-442 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-442. Principal uses permitted.**

Principal uses permitted in the Coolidge Districts are as follows:

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, drugs, apothecary items, flowers, dry goods, furnishings, jewelry, clothing, shoes, books and periodicals, stationery and office supplies and hardware.
- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, small appliances, etc.), hair salons, barber shops, manicuring studios, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
- (6) Business establishments which perform services on the premises such as, but not limited to, banks, credit unions, savings and loan associations, insurance offices, travel services and the like. Banks and other financial institutions may include drive-up facilities only as an accessory use subject to the required provisions for stacking spaces.
- (7) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales.
- (8) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions.
- (9) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions.

- (10) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (11) Places of worship.
- (12) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
- (13) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in or drive-through eating establishments.
- (14) Dwellings above a business use.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.
- (16) Marihuana retailers and medical marihuana provisioning centers.

**SECTION 10:** Section 138-443 of Chapter 138 of the Berkley City Code must be amended, as follows:

The following special uses must be permitted in the Coolidge district, subject to the regulations in article VI, division 6, special uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-444.
- (2) Drive-in and drive-through eating establishments.
- (3) Drive-through retail/service establishments.
- (4) Open air business uses when developed as uses accessory to primary uses and structures in the Coolidge district as follows:
  - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.
  - b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
  - c. Businesses in the character of open store fronts.
- (5) Commercial amusement device centers.

**SECTION 11:** Section 138-457 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-457. Principal uses permitted.**

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

- (1) Any generally recognized retail business whose principal activity is the sale of commodities on the premises, in a completely enclosed building including, but not limited to, the sale of groceries, meats, dairy products, baked goods and other food items dispensed for consumption off the site, pharmaceuticals, apothecary items, flowers, dry goods, furnishings, jewelry, clothing, shoes, books and periodicals, stationery and office supplies and hardware.

- (2) Specialty shops such as, but not limited to, antique shops, craft shops and shops for the sale of gifts and notions.
- (3) Personal service establishments which perform services on the premises directly for the consumer such as, but not limited to, repair shops (shoes, watches, jewelry, small appliances, etc.), hair salons, barber shops, manicuring studios, spa service facilities, self-service laundries, reproduction/copy centers, printing, mailing/shipping centers, while prohibiting service facilities of package shipping providers, but which may require a retail adjunct.
- (4) Any service establishments including a showroom or workshop of an electrician, decorator, caterer, baker, painter, upholsterer, tailor, photography studios and similar service establishments that require a retail adjunct.
- (5) Dry cleaning establishments of a retail nature. Strictly wholesale dry cleaning establishments must be prohibited.
- (6) Offices for any of the following occupations: executive, administrative, manufacturer representatives, building/construction company or contract sales headquarters, professional, accounting, writing, clerical, stenographic, drafting and real estate sales.
- (7) Professional offices for medical (doctors, osteopaths, chiropractors, psychologists, and psychiatrists) dental and optical, including clinics (outpatient service only); and other similar or allied professions.
- (8) Professional offices for lawyers, architects, landscape architects, urban planners, engineers and other similar or allied professions.
- (9) Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings.
- (10) Places of worship.
- (11) Commercial recreational uses such as bowling alleys, billiard halls, indoor archery ranges, indoor skating rinks, indoor tennis courts, athletic or health clubs, schools of dance, schools of martial arts, or similar forms of indoor commercial recreation.
- (12) Restaurants, bars, lounges or other places serving food or beverage within enclosed buildings, not including drive-in or drive-through eating establishments.
- (13) Apartments or townhouses,
- (14) Dwellings above a business use.
- (15) Accessory structures and uses customarily incidental to the above permitted uses.
- (16) Marihuana retailers and medical marihuana provisioning centers.

**SECTION 12:** Section 138-458 of Chapter 138 of the Berkley City Code must be amended, as follows:

**Sec. 138-458. Special uses.**

The following special uses must be permitted in the twelve mile district, subject to the regulations in article VI, division 6, special uses, of this chapter:

- (1) Automobile service stations, subject to the requirements of section 138-409.

- (2) Drive-in and drive-through eating establishments.
- (3) Open air business uses when developed as uses accessory to primary uses and structures in the twelve mile district as follows:
  - a. Rooftop outdoor seating areas for restaurants or other food serving establishments.
  - b. Outdoor retail sales of fruits, vegetables and plant materials not grown on site and sales of lawn furniture, playground equipment, hardware supplies and other home garden supplies.
  - c. Businesses in the character of open store fronts.

**SECTION 13: Severability Clause**

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

**SECTION 14: Penalty**

All violations of this ordinance shall be municipal civil infractions and upon determination of responsibility therefore shall be punishable by a civil fine of not more than \$500, and/or such other sanctions and remedies as prescribed in Article IX of Chapter 82 of the Code of Ordinances.

**SECTION 15: Effective Date**

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

**SECTION 16: Publication**

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on *May 10, 2023* .

Adopted on the Second Reading at the Regular City Council Meeting on *May 15, 2023*.

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Bridget Dean, Mayor

Attest:

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Victoria E. Mitchell, City Clerk