CALL 38th COUNCIL TO ORDER
APPROVAL OF AGENDA
INVOCATION – PASTOR ZACK DUNLAP
PLEDGE OF ALLEGIANCE
PUBLIC COMMENT — ITEMS ON THE AGENDA
ORDER OF BUSINESS

Consent Agenda

1. **APPROVAL OF THE MINUTES:** Matter of approving the minutes of the 38th Regular City Council Meeting on Monday, June 15, 2020.

Regular Agenda

1. **PRESENTATION:** The City Council will receive a presentation from representatives of the Clinton River Watershed Council WaterTowns program.

2. **PRESENTATION:** The City Council will receive a presentation on the 2019 Planning Commission Annual Report and 2020 Work Plan.


4. **ORDINANCE NO. O-13-20:** Matter of considering the First Reading of an Ordinance of the City Council of the City of Berkley, Michigan to Amend Section 138-298 of Article V, Division 2 of Chapter 138, Zoning, to Update the Citation to the City’s Adopted Building Codes, and to Prescribe a Penalty for Violations.

5. **ORDINANCE NO. O-14-20:** Matter of considering the First Reading of an Ordinance of the City Council of the City of Berkley, Michigan to Amend Section 138-526 of Article V, Division 17 of Chapter 138, Zoning, to Add Local Business to the Schedule of Regulations.

6. **PUBLIC HEARING:** Matter of holding a public hearing regarding proposed vacation of portion of public alley.

7. **RESOLUTION NO. R-24-20:** Matter of authorizing a resolution to vacate portion of public alley.

8. **RESOLUTION NO. R-25-20:** Matter of approving a resolution for Election Services between Oakland County and the City of Berkley.

9. **RESOLUTION NO. R-26-20:** Matter of approving a Resolution to expand voting and registration access beyond the minimum required by the Michigan Constitution for even-year November general elections.

PUBLIC COMMENT — ITEMS NOT ON THE AGENDA

COMMUNICATIONS

ADJOURN

The City of Berkley is hosting electronic meetings in cooperation with Gubernatorial Executive Order 2020-129. The City of Berkley will provide necessary reasonable auxiliary aids and services to individuals with disabilities at the meeting upon four working days’ notice to the City. Individuals with disabilities requiring auxiliary aids or services should contact the City by writing or calling: Victoria Mitchell, ADA Contact, Berkley City Hall, 3338 Coolidge Highway, Berkley, MI 48072 (1-248-658-3310).
THE ELECTRONIC REGULAR MEETING OF THE THIRTY-EIGHTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, JUNE 15, 2020 BY MAYOR TERBRACK

PRESENT:    Steve Baker         Jack Blanchard
             Dennis Hennen        Bridget Dean
             Natalie Price        Ross Gavin
             Daniel Terbrack

APPROVAL OF AGENDA
Councilmember Blanchard moved to approve the Agenda
Seconded by Councilmember Gavin
Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack
Nays: None
Motion Approved.

INVOCATION: Deacon Daniel Darga

PUBLIC COMMENT – ITEMS ON THE AGENDA

Christopher Copacia, Berkley, spoke in favor of declaring June 19, 2020 to be Juneteenth Celebration Day. He discussed the importance of this time in history and the importance of education of this historical event. He said his experience in Berkley Public Schools reflects his exposure to diversity and desire to be inclusive of others. Mr. Copacia also stated he would like to support approval of the expansion of use of streets for businesses.

Consent Agenda

Councilmember Price moved to approve the following Consent Agenda, seconded by Mayor Pro Tem Dean:

APPROVAL OF THE MINUTES: Matter of approving the minutes of the 38th Regular City Council Meeting on Monday, June 1, 2020.

WARRANT: Matter of approving Warrant No. 1351.

RESOLUTION NO. R-19-20: Matter of considering a resolution to receive a partial reimbursement of larvicide product costs from Oakland County. This is an annual program involving the placement of larvicide tablets in approximately 1,600 City catch basins to inhibit the growth of mosquito larvae.

PROCLAMATION NO. P-12-20: Matter of declaring June 19, 2020 to be Juneteenth Celebration Day.

PROCLAMATION NO. P-13-20: Matter of proclaiming July 2020 as Parks and Recreation Month in the City of Berkley.

Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.
Regular Agenda

**MOTION NO. M-32-20:** Matter of approving the purchase of one 2020 Ford Police Interceptor Utility AWD marked police vehicle for $34,139 and one 2020 Ford Fusion SE AWD unmarked police vehicle for $24,249 for the Department of Public Safety from Signature Ford, 1960 East Main Street, Owosso, MI 48867 at a total cost of $58,388 from the Vehicles Account 101-310-985-000.
Councilmember Blanchard moved to approve Motion No. M-32-20
Seconded by Councilmember Baker
Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack
Nays: None
Motion Approved.

**MOTION NO. M-33-20:** Matter of authorizing Hubbell, Roth & Clark (HRC) for Proposal for Professional Engineering Services for the Public Safety Main Entrance Improvement Project at a cost not to exceed $25,781.86 from the Building Improvements Account 101-310-976-000.
Councilmember Hennen moved to approve Motion No. M-33-20
Seconded by Councilmember Price
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack
Nays: None
Motion Approved.

**MOTION NO. M-34-20:** Matter of authorizing Hubbell, Roth & Clark (HRC) for professional engineering services to conduct the Phase 1 Sign Inventory at a cost not to exceed $13,650 from the Street Signs – Contractual Services Account 202-475-818-000.
Councilmember Blanchard moved to approve Motion No. M-34-20
Seconded by Councilmember Baker
Ayes: Price, Baker, Blanchard, Dean, Gavin, Hennen, and Terbrack
Nays: None
Motion Approved.

**MOTION NO. M-35-20:** Matter of authorizing the purchase of a John Deere 3033R Compact Utility Tractor (24PTO hp) at a cost not to exceed $39,323.34 from AIS Construction Equipment at 65809 Gratiot Avenue, Lenox, MI 48050. Funds for this expenditure will come from account 614-950-982-000.
Mayor Pro Tem Dean moved to approve Motion No. M-35-20
Seconded by Councilmember Hennen
Ayes: Baker, Blanchard, Dean, Gavin, Hennen, Price, and Terbrack
Nays: None
Motion Approved.

**MOTION NO. M-36-20:** Matter of approving an agreement with Ecoworks, located at 22400 W. Seven Mile Rd, Detroit, MI 48219, to provide Community Energy Management Services at a cost not to exceed $9,947.70. This expenditure will be charged to account 101-172-817-000.
Councilmember Gavin moved to approve Motion No. M-36-20
Seconded by Councilmember Blanchard
Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack
Nays: None
Motion Approved.

**RESOLUTION NO. R-20-20:** Matter of approving a resolution for temporary COVID-19 outdoor dining/seating and outdoor sales and services.
Mayor Pro Tem Dean moved to approve Resolution No. R-20-20
Seconded by Councilmember Price
Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.
RESOLUTION NO. R-21-20: Matter of approving a resolution for temporary COVID-19 temporary sign standards with an additional clause in item #2 of the resolution stating A-frame signs are allowed in the right-of-way on Coolidge Highway sidewalks.
Mayor Pro Tem Dean moved to approve Resolution No. R-21-20
Seconded by Councilmember Hennen
Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack
Nays: None
Motion Approved.

Councilmember Gavin moved to approve Motion No. M-37-20
Seconded by Councilmember Baker
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack
Nays: None
Motion Approved.

MOTION NO. M-38-20: Matter of approving a 60-day extension to the terms of various Boards and Commissions and also approving the members’ appointments as listed for the Historical Committee (with the removal of David Hunter), Downtown Development Authority, Technology Advisory Committee, Environmental Advisory Committee, Library Board, Tree Board and Zoning Board of Appeals.
Councilmember Baker moved to amend Motion No. M-38-20
Seconded by Mayor Pro Tem Dean
Ayes: Price, Baker, Blanchard, Dean, Gavin, Hennen, and Terbrack
Nays: None
Motion Approved.

RESOLUTION NO. R-22-20: Matter of authorizing the amendment of the FY 2019/2020 Budget as presented.
Councilmember Hennen moved to approve Resolution No. R-22-20
Seconded by Councilmember Blanchard
Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack
Nays: None
Motion Approved.

RESOLUTION NO. R-23-20: Matter of recognizing that the City’s designated official newspaper, the “Woodward Talk,” has resumed publication and that, therefore, until further notice, the City hereby designates the “Woodward Talk” as the City’s official newspaper, effective immediately, for the publication of the City’s notices, ordinances, and other pertinent items.
Councilmember Baker moved to approve Resolution No. R-23-20
Seconded by Councilmember Price
Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.
PUBLIC COMMENT – ITEMS NOT ON THE AGENDA

Valerie West, Berkley, spoke regarding the Because We #Matter Berkley March and thanked Council for its endorsement of the event. She discussed her history and the importance to continually understand racism and its impact. She shared stories of colleagues and friends. She stated the root of so many of our problems are caused by racism and bigotry. She asked Council to continue its momentum by creating an anti-discrimination commission.

COMMUNICATIONS

COUNCILMEMBER GAVIN: stated the Planning Commission has not met since the last City Council meeting and the next meeting is 7 p.m. June 23rd via Zoom. He stated the Master Plan Steering Committee will meet 7 p.m. June 16th and is also continuing its series of webinars with the next one at 11 a.m. tomorrow via Zoom on the topic of the major corridors within the city. Councilmember Gavin said the Environmental Advisory Committee will meet 6:30 p.m. June 18th via Zoom. Councilmember Gavin spoke regarding the marches that took place in the City over the past couple of days. He stated the marches show a real solidarity with the need to reform the criminal justice system and systemic racism. He stated he is thankful for the organizers and to the Department of Public Safety (DPS) for its role in ensuring safety for everyone protesting peacefully. He stated he believes we are at a tipping point to make real change in this country and he appreciates the showing in our little corner of Berkley.

COUNCILMEMBER HENNEN: stated the Zoning Board of Appeals did not meet this month. He said the Tree Board met and discussed the new street tree program. He discussed the program and stated it is at no cost to residents. He stated there will be about 100 trees available for placement by the City on the public greenbelt on a first-come, first-served basis. He stated residents who also had a tree removed from the greenbelt can request a replacement. Those interested may contact the Department of Public Works (DPW) at 248-658-3490. He said the deadline is 3 p.m. August 14th and city workers would plant the trees in the late fall. Councilmember Hennen also discussed the Memorial Tree Program. He stated the cost includes the tree, planting, and plaque. He stated the City would help identify a location. He said to contact the DPW for more information. Councilmember Hennen stated he echoes some of Councilmember Gavin’s comments. He said he was able to attend the demonstrations on Friday and Sunday. He stated both events were very touching and it meant a lot to hear first-hand accounts from individuals. He said it helps bring a face to the issue and shows how much work there is to be done to bring liberty and justice for all.

MAYOR PRO TEM DEAN: stated the Parks & Recreation Department is beginning outdoor classes in the park in the next couple of weeks and social distancing practices will be adhered to. She stated to check the Department’s website and Facebook page for details. She stated Parks & Rec virtual programming begins the week of June 22nd. She announced that parks and playgrounds are open and people are encouraged to get out and play, but also be safe. Mayor Pro Tem Dean stated the wellness checks concluded as the City reopens. She thanked Berkley Parks & Recreation Director Theresa McArleton and her staff, Berkley Public Library Director Matt Church and his staff, and Councilmember Gavin for their involvement. She said she thoroughly enjoyed the conversations she had with residents and said this experience has shown her how much Berkley does care. Mayor Pro Tem Dean congratulated Charlotte Terbrack for taking the initiative and organizing the Friday march in Berkley. She stated her support for the DPS in keeping everyone safe.

COUNCILMEMBER BAKER: stated the Downtown Development Authority (DDA) Board met last week on Wednesday and continues to look at innovative ways and programs to support local businesses. He provided an update on the MoGo bikes. He stated there are two stations — one on Robina, south of 12 Mile Road and one on Earlmont, east of Coolidge — with great signage and directions for use. He stated for more information on happenings, visit downtownberkley.com. Councilmember Baker said the Historical
Committee has not met, but members are having conversations about how to open the museum to the public. He stated the museum is looking at different phases of opening in mid-July. He stated when the museum does reopen, there will be new displays offering a new and fresh experience. Councilmember Baker said the Technology Advisory Committee meets this week on Wednesday via Zoom. He said members are getting excited to move forward. Councilmember Baker recited a quote by Dalai Lama, “Compassion and tolerance are not a sign of weakness, but a sign of strength.” Councilmember Baker said he too is thankful and encouraged by the outpouring of focused energy and constructive dialogue in recent weeks. He stated he believes the quote he recited and knows that sometimes that is not easy. He said the City does not have the best past with these matters and it takes generations to work things out. He discussed the demonstrations and wanting to be the change that is seen in the world. He said, “Change begins with me.” He stated he is proud of the Juneteenth Proclamation. He discussed his thoughts regarding Juneteenth, how to observe the day, and how to look within. Councilmember Baker urges everyone to wear a face mask and said although we may be done with the pandemic, it is not done with us.

COUNCILMEMBER PRICE: thanked the city directors and staff for cautiously and systematically reopening city services to the public, especially Berkley Public Library Director Matt Church. She said residents may start returning materials, but remember they are not due until July 6th so please take your time. She stated in one week from today, curbside pickup and local delivery will begin. She said those interested need to call ahead. She said for more information, visit the library’s website or give them a call. She said the Summer Reading Program will take place virtually and will be for adults, teens and children. Councilmember Price said she supported and attended both events held this weekend to raise awareness of systemic racism and violence against people of color. She said she is incredibly grateful to the organizers of each event. She stated her desires to find specific concrete ways to continue to amplify the voices of people of color and create meaningful, lasting changes. She thanked Valerie for her words during public comment and for the unanimous support of the Juneteenth proclamation. She discussed the wording in the proclamation.

COUNCILMEMBER BLANCHARD: stated most of the Berkley Area Chamber of Commerce events have been canceled, so members have been diligently working to push out information coming from the state to the local businesses. Councilmember Blanchard said we still have COVID-19. He said it is vacation season and people will begin moving around and trying different things. He said as people do that, please remember there could be a second wave. He said stay safe, follow the state guidelines, and return safely to Berkley after your vacation. Councilmember Blanchard thanked the organizers of the march. He said he attended the march on Friday and it was very well done.

CITY MANAGER BAUMGARTEN: highlighted the hard work of the city clerk. He said the absentee ballot applications have been flowing in rapidly and the entire team along with Dan Hill have been processing the applications as well over 1,500 have come in already. He said there is a lot of interest in voting via absentee ballot. He stated people are making their voices heard by protecting themselves and not going to the polls. Mr. Baumgarten said the marijuana application period opened today. He said they have already received two submissions and applicants have until June 29th to get those turned in. Mr. Baumgarten said June 30th is the last day of the fiscal year, so when Council meets again it will be a brand-new fiscal year so, ”Happy New Year.”

CITY ATTORNEY STARAN: stated as conditions related to the pandemic improve, we need to be mindful of Councilmember Blanchard’s caution. He said we are starting to see elements of the emergency measures, orders taken during the Governor’s lockdown expire or be withdrawn. He said for example, the executive order regarding the Freedom of Information Act has expired. He stated this would likely be Council’s last meeting with this format as June 30th is the expiration under the current executive order for remote participation. He stated it is not clear if at this time that order would be extended. Mr. Staran said the marijuana licensing application process is off the ground as the city manager mentioned and we are expecting a Christmas Day rush of sorts at the end.
MAYOR TERBRACK: stated there were two demonstrations and marches organized by two different activist groups specifically in support of racial equality in our country. He said he was asked to speak at both and he did. He said he thought both demonstrations were effective in spreading the message of needing systemic change in our country at the macro level and political level. Mayor Terbrack said without the work of our Public Safety to keep people safe at those events, we could have had different headlines. He said to be clear, some were protesting against those officers that were charged with keeping everyone safe. He said those same officers that were and are still on the frontlines battling COVID and serving and protecting all of our families and everyone else that comes through our community. He said there are people in this world filled with racism and hatred toward anyone that is different and yes some of them are in positions of power. He said some have committed heinous crimes, but that does not mean that all police officers are bad people. He said if you want to look at change, look at our past. Mayor Terbrack said Berkley was one of the epicenters of race and hatred about 100 years ago. He provided the history of Berkley regarding KKK and driving while black incidents. He said we no longer see this in our community and more recently our City has been leading change for years including de-escalation training, implicit bias training, and a great deal more. He said there now exists a constant effort to be more competent and professional. He discussed other ways our DPS has been working hard to implement new policies and hire the best new people. He said the City of Berkley is consistently striving to be better. Mayor Terbrack discussed how our officers community police in the truest sense of the word. He said no one is perfect, but we are constantly striving to be better and learn from our mistakes. Mayor Terbrack said he does not want this to become an us vs. them issue. He said you do not have to choose to either support the Black Lives Matter movement or our Public Safety Department. He said he whole-heartedly supports the Black Lives Matter movement and was proud to attend both events, but you can be sure he supports our DPS. Mayor Terbrack said we are all stronger together. He said change in this country will not happen if there is a pervasive mentality of us or them. He said change will happen when we unite and when we elect people to represent all of us who share the belief that all men and women are created equal. He said that is the only way to create true and authentic change in our country.

ADJOURNMENT
Mayor Pro Tem Dean moved to adjourn the Regular Meeting at 9:15 p.m.
Seconded by Councilmember Baker
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack
Nays: None
Motion Approved.
MEMORANDUM

To: Mr. Mayor & City Councilmembers

From: Berkley Planning Commission
Erin Schlutow, Community Development Director

Subject: 2019 Planning Commission Annual Report and 2020 Work Plan

Date: June 29, 2020

It is my pleasure to provide the 2019 Planning Commission Annual Report and 2020 Work Plan. The annual report is required per the Michigan Planning Enabling Act, Public Act 33 of 2008, as amended, which states in part:

“A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.”

The Planning Commission held 12 meetings during 2019 and reviewed:

- 9 site plans
- 2 special land uses
- 2 rezonings
- 5 zoning text amendments

A. SITE PLAN REVIEW:

1. **SP-04-18 – 2685 Coolidge Hwy.** Jenna In White proposed to construct a second floor addition, increasing the size of the building to 1,847 sq. ft. Planning Commission gave conditional approval of the site plan at the January 22, 2019 meeting. Building permits have not been submitted to the City for this project.

2. **SP-01-29 – 2838 / 2850 Coolidge Hwy.** FSZ Holdings LLC proposed a façade change for the FOLIO offices. Planning Commission reviewed the plans at the February 26, 2019 meeting and approved the plans, subject to minor lighting conditions to be reviewed administratively. The building permits were secured and all inspections were conducted in accordance with City code.
3. **SP-02-19 – 3171 Twelve Mile Rd.** Stumar LLC proposed a façade change for the building. Planning Commission reviewed the plans at the February 26, 2019 meeting and approved the façade change, as presented. All necessary permits were secured and all inspections were conducted in accordance with City code.

4. **SP-03-19 – 2395 Twelve Mile Rd.** The Department of Public Safety submitted plans to expand the existing emergency vehicle bays facing Twelve Mile Rd. Planning Commission reviewed the plans at the April 23, 2019 meeting and approved the building expansion, as presented. All necessary permits were secured and all inspections were conducted in accordance with City code.

5. **SP-04-29 – 3212 Twelve Mile Rd.** St. Mary’s Orthodox Church requested site plan approval for the addition of a decorative dome to represent the Church. At the July 23, 2019, the Planning Commission approved the decorative addition to the building, as presented. The necessary building permits were secured and the construction was finished fall 2019.

6. **SP-05-29 – 3818 Twelve Mile Rd.** Tim and Nicolette Yanke requested site plan approval for a façade change for an art studio. At the July 23, 2019 meeting, the Planning Commission engaged in discussion with the applicant, noting the residential character of the design and requested minor changes be made to the exterior to address the residential character. The applicant returned to the Planning Commission with revised plans on August 27, 2019 and the Planning Commission granted conditional approval. The conditions are to be reviewed and approved administratively. The applicant and City staff have been working through the site plan conditions of approval and anticipate building permits to be issued in the next month.

7. **SP-07-19 – 1695 Twelve Mile Rd.** 814 LLC, requested site plan approval for the proposed site improvements related to the proposed child care facility. At the October 22, 2019 meeting, the Planning Commission gave conditional approval of the site plan. The applicant is working with City staff to address and correct all conditions. As soon as final site plan approval is granted by city administration, the applicant can pursue building permits.

8. **SP-06-19 – 2219 Coolidge Hwy; La Salette School.** After the approved conditional rezoning approval from City Council, the developer moved forward with site plan approval. At the November 26, 2019 meeting, the Planning Commission granted conditional approval of the site plan. The outstanding issues are being addressed administratively with city staff.

   Height and sideyard setback variances were also approved by the Zoning Board of Appeals at the September 9, 2019 meeting.

9. **SP-08-19 – 2485 Coolidge Hwy.** Tomina Group LLC requested site plan approval to construct a new multi-tenant building including Aqua Tots, two retail establishments and a restaurant with outdoor seating. At the December 17, 2019 meeting, the Planning Commission gave conditional approval of the site plan. The applicant has addressed the outstanding conditions with City staff.
and HRC and was granted final site plan approval. A pre-construction meeting shall be scheduled prior to securing permits to ensure all questions have been answered.

B. SPECIAL LAND USES

1. **SU-01-19 – 1695 Twelve Mile Rd.** 814 LLC, requested special land use approval for a day care facility for a property in the Office District. The applicant proposed to redevelop the first floor of the existing structure for child care and general office use. At the October 22, 2019 meeting, the Planning Commission held a public hearing and recommended approval of the special land use request. At the November 18, 2019 meeting, the City Council approved the special land use request for the child care facility.

2. **SU-02-19 – 2485 Coolidge Hwy.** Tomina Group requested special land use approval for outdoor seating for a proposed restaurant in a multi-tenant building to be constructed at Farina’s Banquet Hall. At the December 17, 2019 meeting, the Planning Commission held a public hearing and recommended approval of the special land use request. At the January 6, 2020 meeting, the City Council approved the special land use request for outdoor seating.

C. REZONINGS

1. **RZ-01-19 – 2219 Coolidge Hwy; La Salette School.** 2219 Coolidge, LLC requested a conditional rezoning of the former La Salette school building from Office District (O-1) to Multiple-Family Residential District (RM). The conditional rezoning is part of a larger project to retrofit the existing structure for apartments and townhouses. At the July 23, 2019 meeting, the Planning Commission held a public hearing and recommended approval of the conditional rezoning to City Council. The first reading of the rezoning request was approved at the August 12, 2019 meeting and the second reading was approved on September 16, 2019.

2. **RZ-02-19 – 3339 Cummings Ave.** Atex Builders, LLC requested a conditional rezoning of 3339 Cummings Ave from Parking District to Single Family Residential District (R-1D). The conditional rezoning was necessary in order to demolish the existing single family structure and construct a new single family residential structure on the parcel. At the August 27, 2019 meeting, the Planning Commission held a public hearing and recommended approval of the rezoning to City Council.

   At the September 16, 2019 meeting, City Council denied the first reading of the conditional rezoning request.

D. ZONING ORDINANCE TEXT AMENDMENTS

June 29, 2020
1. **DESIGN OVERLAY DISTRICT.** Amendment to create a Design Overlay District to include all properties within the Downtown Development Authority. The Overlay District is proposed to accompany the Downtown Design Guidelines, approved by the DDA. A public hearing was held on January 22, 2019 and the Planning Commission recommended the City Council to adopt the proposed Design Overlay District. The City Council has not yet reviewed the Ordinance text in a public meeting.

2. **RESIDENTIAL GRADING.** At the May 28, 2019 meeting, the Planning Commission held a public hearing and recommended to City Council to repeal Residential Grading Section 138-132, wherein new standards for residential grading and stormwater management would be moved to the regulatory ordinances. New ordinance language was adopted by City Council in May 2019 and later amended in September 2019.

3. **NURSERY SCHOOLS, DAY NURSERIES, CHILD CARE CENTERS.** Amendments to permit nursery schools, day nurseries, and child care centers as Special Land Uses in the Office District (O-1) and Local Business District (LB). At the June 25, 2019 meeting, the Planning Commission held a public hearing and recommended approval of the text amendments permitting child care facilities in the Office and Local Business Districts with Special Land Use approval.

   City Council approved the first reading of the ordinance amendment on August 12, 2019, and approved the second reading on September 16, 2019.

4. **CONVERT MISDEMEANORS TO MUNICIPAL CIVIL INFRINGEMENTS.** The amendments were proposed to convert misdemeanors to municipal civil infractions. At the September 24, 2019 meeting, the Planning Commission recommended approval of the text amendments.

   City Council approved the first reading of the text amendment on October 7, 2019, and approved the second reading on October 21, 2019.

5. **MARIHUANA BUSINESSES.** City staff proposed amendments to the Zoning Ordinance to permit marihuana businesses in the Coolidge, Downtown, Eleven Mile, Gateway, Industrial, Local Business, Office, Twelve Mile, and Woodward Districts. At the September 24, 2019 meeting, the Planning Commission recommended approval of the proposed amendments to City Council.

   At the October 7, 2019 meeting, the City Council requested additional revisions to the ordinance amendments.

   At the November 26, 2019 meeting, the Planning Commission reviewed revised ordinance language to permit medical provisioning centers and adult use retail marihuana businesses in Eleven Mile, Coolidge, Gateway, Twelve Mile, Industrial, Woodward, Local Business and Downtown Districts. The Planning Commission held a public hearing and recommended approval of the ordinance amendment to City Council.
City Council approved the first reading of the revised text amendment on December 2, 2019, and approved the second reading on December 16, 2019.

2020 WORK PLAN

The Planning Commission is excited to continue its work and serve the residents of Berkley. The upcoming projects include:

1. **Update Community Master Plan.** The City of Berkley has begun the process of updating the Berkley Master Plan, last updated in 2007. Carlisle Wortman Associates has been retained to assist Berkley with this project and a Master Plan Steering Committee has been assembled to advise CWA accordingly. We anticipate the final adoption of the document end 2020/early 2021.

2. **Redevelopment Ready Community Certification.** City staff has begun the process to become certified and has completed the RRC Self-Evaluation Form from the Michigan Economic Development Corporation (MEDC). Based on the checklist, City staff is working to address the deficiencies identified in City processes and procedures. One of the major components that needs to be addressed is the Master Plan, which is currently underway.

3. **Zoning Ordinance Technical Review.** Once the Master Plan has been adopted, it is crucial that we comprehensively review the Zoning Ordinance to ensure compatibility with the MP and to make sure there aren't any holes or inconsistencies that should be addressed.

The Community Development Department is excited to continue working with the Planning Commission, DDA, City Council and other community groups to serve Berkley residents.
July 6, 2020 City Council Meeting

Moved by Councilmember __________________________ and seconded by Councilmember __________________________ to approve the Berkley Downtown Development Authority amended by-laws from August 2019.

Ayes:
Nays:
Motion:
MEMORANDUM

To: Mr. Mayor and Berkley City Council

From: Matt Baumgarten, City Manager
        Jennifer Finney, Executive Director DDA

Subject: Berkley DDA Amended By-Laws

Date: June 26, 2020

The DDA completed an overhaul of its outdated bylaws in 2017. The Board of Directors spent several months reviewing and refining those Bylaws to create a document that supported the DDA’s Strategic Plan and DDA best practices.

In July/August 2019, the DDA’S Organization Committee recommended additional refinements that were approved by the DDA Board of Directors at the 08.14.19 Board Meeting. Following is a synopsis of those updates:

- Article I, Sec. 1. A & B: Update Act 157 to the recently passed Public Act 57 of 2018
- Article II, Sec 1. Offices: Update to clearly allow for DDA offices to be located at a location designated by the DDA Board of Directors
- Article III, Sec. 1, General Powers: Strengthen language for board appointments
- Article III, Section 2, Number Tenure, and Qualifications: Add Robina to 12 Mile and change community at large to require at least three residents
- Article III, Section 3, Selection of Board Members: strengthen language for board appointments and the DDA’s role in the process; add language that the City Manager shall submit all known application to the DDA board at least two weeks prior to the DDA Board approval in June of each year; no appointments can be made to the board without review by the DDA board.
- Article III, Section 4, Expiration of Terms, Continuation in Offices, Reappointment, Filling Vacancies, Resignations: Strengthen language as to how appointment of new director is made
- Article III, Sec. 7, Strategic Planning Session: Updated to make the strategic planning session bi-annual instead of annual
- Article III, Sect 8, Regular Meetings: Updated to require that any document presented to the Board of Directors that the board will take possible action on or impacts the approved budget must be presented at least four business days in advance of a Board Meeting
- Article IV, Section 2: remove “to be held in first quarter”
- Article IV, Section 8: Update duties of Treasurer in case of the absence of an Executive Director and City Finance Director
- Article V, Section 1: Update when City budget is due and to whom it is submitted
- Article VII, Section 4: Change the word “set” to “review”

Please don’t hesitate to contact me with any questions.
Berkley
Downtown Development Authority, DDA
Board Vacancy Policy

Whereas it is the desire of the DDA to create a policy whereby it establishes general guidelines to assist in determining how DDA Board Appointments are made, the following policy is proposed:

This policy simply establishes the criteria upon which the DDA Board of Directors will make recommendations to fill its vacant Board of Director positions.

Board Vacancies will be addressed in the following manner:

1. The DDA’s Organization Committee will review the open Board vacancies and work with the Executive Director to put together a list of candidates as well as review applications that have been submitted directly to the Berkley City Clerk.
2. The DDA’s Organization Committee will review the overall make-up of the Board of Directors to determine which applicants best fit the DDA’s strategic vision.
3. Priority will be given to applicants that have worked as volunteers for the DDA at the committee and sub-committee level.
4. The Organization Committee will interview the top three candidates after which they will make a recommendation to the full Board at its regular monthly meeting.
5. The full Board will vote on the candidates presented by the Organization Committee after which the recommendation will be made to the City Manager for final board appointment.
6. It is the Board’s position that no candidate for the Board of Directors should be appointed by the City Manager without prior review by the DDA Board of Directors.
BYLAWS

ARTICLE I
PURPOSE

SECTION 1 – STATEMENT OF PURPOSE AND MISSION

A. The Berkley Downtown Development Authority is a community-driven organization striving to enhance the shopping experience, economic vitality and physical appearance of Coolidge Highway and Twelve-Mile Road — Berkley’s traditional commercial Districts.

We strive to achieve our mission by being creative, focused, transparent, forward-thinking and engaged with our Downtown stakeholders and community.

Also, the purposes of the authority are to implement Public Act 57 of 2018, as amended, (the “Act”), and include, but are not limited to the correction or prevention of the deterioration in the downtown district the encouragement of historic preservation, the creation and implementation of development plans in the downtown district, and the promotion of economic growth therein.

B. The Berkley DDA shall have the powers set forth in Public Act 57 of 2018 and Chapter 42 of the Berkley City Code.

ARTICLE II
REGISTERED OFFICE

SECTION 1 – OFFICES
The registered office and principal place of business of the Authority shall be in the City Hall in the City of Berkley or such location as may be designated by the Board of Directors of the Authority.
SECTION 1 – GENERAL POWERS
The Authority shall be under the supervision and control of a Board of Directors (the Board”) consisting of the City Manager and twelve (12) other Directors. The DDA Board shall make a recommendation to the City Manager regarding nominations to the Board. Members must be approved by the City Council, all in accordance with the Act.

SECTION 2 – NUMBER, TENURE, AND QUALIFICATIONS
The Directors shall be appointed for a term of four years in accordance with the City Code. In its recommendation to the City Manager, the Board shall seek to have confirmed four Directors that represent business/property owners on Coolidge Highway, four Directors that represent businesses/property owners on 12 Mile Road/Robina Avenue, four Directors from the community at large (with at least three of whom shall be Berkley residents), and one Director shall be the Berkley City Manager, or a designated replacement per House bill 4101.

The Board may seat three non-voting delegates to the Berkley DDA Board who shall be: two Berkley High School students (one male and one female) appointed annually by Berkley High School Staff members; a City Council Liaison appointed annually by the Mayor of Berkley.

Directors shall serve without compensation, but shall be reimbursed for actual and necessary expenses.

SECTION 3 – SELECTION OF BOARD MEMBERS
The DDA Board of Directors shall work with the City Manager to find qualified applicants to appoint as voting Directors of the Board, subject to approval by the City Council. The City Manager shall submit all known applications to the DDA Board at least two weeks prior to DDA Board approval in June of each year. Subsequent voting Board Directors shall be appointed in the same manner as the original appointments at the expiration of each Director’s term of office.

The DDA Board of Directors shall consult with the City Manager to find qualified applicants to appoint as voting Directors of the Board. The Berkley DDA Board of Directors shall recommend to the Berkley City Manager the best candidates for positions on the Berkley DDA Board of Directors based on the DDA’s recruitment process that considers the needs of the Berkley DDA Board of Directors, needs of the Berkley DDA and DDA review of applicants. A person appointed by the Berkley City Manager, and approved by City Council, shall be a voting Director on the Board of Directors upon taking the constitutional oath of office.
SECTION 4 – EXPIRATION OF TERM; CONTINUATION IN OFFICES; REAPPOINTMENT; FILLING; VACANCIES; RESIGNATIONS
Directors whose term of office has expired shall continue to hold office until his or her successor has been appointed. If a vacancy is created by the death, resignation, or removal of a Director, a successor shall be recommended by the Board of Directors and appointed by the Berkley City Manager for the unexpired term, subject to approval of the City Council. Resignations of Directors of the Board shall be effective upon delivery of the resignation in writing to the City Manager and the DDA Board Chair.

SECTION 5 – REMOVAL
Pursuant to notice and after an opportunity to be heard, a Director may be removed from office for neglect of duty, excessive absence, misconduct, malfeasance, or any other good cause as determined by the City Council.

SECTION 6 – CONFLICTS OF INTEREST
A Director who has a direct or indirect financial interest in any matter before the Authority shall disclose the interest prior to the Authority taking any action with respect to the matter. Said disclosure shall become a part of the record of the Authority’s official proceedings. Further, any Director making such disclosure shall not be permitted to participate in the Authority’s deliberation or decision relative to such matter.

SECTION 7 – STRATEGIC PLANNING SESSION
A meeting, in the form of a Strategic Planning Session, of the Berkley DDA Board of Directors shall be held bi-annually for the purpose of strategic planning and assessment of goals and accomplishments.

SECTION 8 – REGULAR MEETINGS
Regular meetings of the Berkley DDA Board of Directors shall be held at such time and place, as the Board shall from time to time determine. Regular meetings shall be held, at a minimum, once per month, unless the Berkley DDA Board of Directors determines otherwise. Any item of interest that the DDA Board of Directors will take possible action on, or impacts the budget, must be submitted at least four business days in advance of the Board of Directors meeting.

SECTION 9 – SPECIAL MEETINGS
Special meetings of the Berkley DDA Board of Directors may be called by or at the request of the City Council, the Board Chairperson or any Director. The person or person authorized to call special meetings of the Berkley DDA Board of Directors may fix any place within the City of Berkley as the place for holding any special meeting of the Berkley DDA Board of Directors called by them.
SECTION 10 – OPEN MEETINGS ACT
Except as otherwise provided by law, all meetings shall be preceded by public notice and conducted in accordance with Public Act 267 of the Public Acts of 1976, as amended.

SECTION 11 – QUORUM AND VOTING
A majority of the Directors of the Berkley Board of Directors then in office shall constitute a quorum for the transaction of business. In the event that effective membership is reduced because of Conflict of Interest (Article III, Section 6), a majority of the remaining Directors of the Berkley DDA Board of Directors eligible to vote shall constitute a quorum for the transaction of business.

The vote of the majority members present at a meeting at which a quorum is present shall constitute the action of the Berkley DDA Board of Directors unless the vote of the larger number is required by statute or elsewhere in these rules.

SECTION 12 – MINUTES OF ALL MEETINGS
The draft minutes of any meeting of the Berkley Board of Directors will be emailed to all Directors of the Berkley DDA Board of Directors for their review prior to the next regularly scheduled meeting. Minutes of closed meetings shall be maintained in conformity with and shall be subject to the provisions of the Open Meetings Act, act 267 of the Public Acts of 1976, as amended.

ARTICLE IV
OFFICERS

SECTION 1 – OFFICERS
The Board shall elect from its Directors the following Officers: a Chairperson, a Vice Chairperson, a Secretary, and a Treasurer.

SECTION 2 – ELECTION AND TERM OF OFFICE
Officers of the Berkley DDA Board of Directors shall be elected annually by the Board at a regular meeting of the Berkley DDA Board of Directors. If the election of officers shall not be held at the first meeting of the Fiscal year, such election shall be held within 60 days of such meeting. Each officer shall hold office until his successor shall have been duly elected and shall have qualified. The same person in the same office
may serve a maximum of two consecutive terms. A term of office is two years. No Director shall hold more than one office at a time. An officer must be a current Board Director.

SECTION 3 – REMOVAL
An officer may be removed by a two-thirds (2/3) vote of the Board whenever in its judgment the best interest of the Authority would be served.

SECTION 4 – VACANCIES
A vacancy in any office shall be filled for its unexpired term by a majority vote of the Directors of the Board.

SECTION 5 – AUTHORIZATION
The Board may authorize any officer, agent, employee, or Director to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority. Such authority may be general or confined to specific instances. Unless so authorized no officer, agent, employee, or member shall have any power or authority to bind the Authority by any contract or engagement or to pledge its credit or render it liable pecuniarily for any purpose or in any amount.

SECTION 6 – CHAIRPERSON
The Chairperson shall preside at all meetings of the Board and shall discharge the duties of a presiding officer. To qualify as a candidate for Chairperson in an election, the Board member must have served one full year on the Berkley DDA Board.

SECTION 7 – VICE CHAIRPERSON
In the absence of the Chairperson or in the event of his / her inability or refusal to act, the Vice Chairperson shall perform the duties of the Chairperson and when so acting shall have all the powers and be subject to all the restrictions of the Chairperson.

SECTION 8: – TREASURER
The Treasurer shall review and present to the Berkley DDA Board of Directors for approval all Berkley DDA fund and expense reports created by the Executive Director of the Berkley DDA or Finance Director of the City of Berkley. In the absence of the Executive Director of the Berkley DDA, the Finance Director
for the City of Berkley and the Board Treasurer will be responsible for tracking all funds, expenses, revenues and keeping the financial records of the Authority and shall sign off on all invoices for the expenditure of funds of the Authority, which have been approved by the Board. The Treasurer shall perform such other duties as may be delegated by the Board and shall furnish bond in an amount as prescribed by the Board.

SECTION 9 – SECRETARY
The Secretary shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the Treasurer. The Secretary shall attend meetings of the Board and keep a record of its proceedings, and shall perform such other duties delegated by the Board. By majority vote the Board of Directors can assign the responsibilities of the Secretary to another officer position if they determine that it is in their best interests to do so.

SECTION 10 – EXECUTIVE COMMITTEE MEMBERS
The Executive Committee shall be an advisory committee made up of the Chairperson, Vice-Chairperson, Secretary, Treasurer and Executive Director.

SECTION 11 – EXECUTIVE COMMITTEE RESPONSIBILITIES
The Executive Committee shall meet as necessary to discuss items to be brought before the full Board at their regularly scheduled monthly meetings for approval. The Executive Committee may discuss economic, operational and management needs for the district.

ARTICLE V
SUBMISSION OF BUDGET

SECTION 1 – BUDGET
On or before March 31 of each year, the Authority shall prepare a budget and submit it to the City Finance Director and the City Manager for transmittal to the City Council.

ARTICLE VI
EMPLOYMENT OF PERSONNEL
The Berkley DDA Board of Directors may employ personnel or hire independent contractors as deemed necessary by the Berkley DDA Board of Directors. Such personnel or independent contractors may include, but not be limited to an Executive Director, recording secretary, legal counsel, and others as necessary to achieve the goals and objectives of the Berkley DDA.

SECTION 1 – THE EXECUTIVE DIRECTOR ROLE
The Executive Director shall report directly to the Berkley DDA Board of Directors. The Executive Director shall supervise all other staff, contractors, and consultants of the Berkley DDA. The Executive Director shall have the authority to spend DDA funds within the approved budget line items up to $5,000 and up to $7,500 for budgeted items that are approved in advance by the Board of Directors.

SECTION 2—INDEPENDENT CONTRACTOR CONTRACT & HIRING
The Executive Director shall act as an independent contractor and sign a written contract signed and approved with majority support from the board of Directors.

ARTICLE VII:
ADVISORY STANDING COMMITTEES

SECTION 1 – ADVISORY STANDING COMMITTEES
Standing committees of the Berkley DDA Board of Directors shall be the Design Committee, Business Development Committee, Marketing & Promotions Committee and the Organization Committee. These committees shall meet monthly and may be restructured or eliminated by the DDA Board of Directors at any time. Additional committees may be formed if necessary to accomplish goals and objectives as outlined in the Strategic Plan.

SECTION 2 – ADVISORY STANDING COMMITTEE STRUCTURE
No more than four Berkley DDA Board members shall serve on a single committee. Each Director of the Berkley DDA is required to participate in one of the standing committees. The DDA Executive Director shall act as a consultant to each committee without needing to be in attendance at all meetings. The committees may include outside consultants, residents of the city, business people and other stakeholder participants relative to the DDA district.

ARTICLE VIII:
SECTION 1 – CONTRACTS
The Board may authorize the chairperson, executive director, agents or agents of the Berkley DDA, to enter into any contract or execute and deliver any instrument in the name of and on the behalf of the authority, and such authorization may be general or confined to specific instances. The Executive Director shall enter into contracts without further consideration by the DDA Board of Directors for those items that are included in an approved budget.

SECTION 2 – CHECKS, DRAFTS, ETC.
All orders for the payment of money, notes or other evidences of indebtedness shall be signed by the executive director and forwarded on to the Finance Department of the City of Berkley for the issuance of payment. If for any reason the Berkley DDA establishes a bank account outside of the City of Berkley’s bank account, then all checks, drafts, and orders for payment of money, notes or other evidences of indebtedness shall be co-signed by two persons of the Executive Board.

SECTION 3 – GIFTS
The Board of Directors may accept on behalf of the Berkley DDA any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Berkley DDA. The Executive Director shall inform the City of Berkley of the receipt of such gifts. The identity of the donor need not be reported should the donor wish to remain anonymous.

SECTION 4 – BUDGET
The committees of the Berkley DDA shall submit proposed objectives and goals to the Berkley DDA Board of Directors starting in December 2017 for the development of an annual budget. The Berkley DDA Board of Directors shall review goals and objectives annually in January and February to develop and approve a budget for the fiscal year beginning the first day of July. The Berkley DDA Board of Directors shall submit an annual budget to the City of Berkley Finance Department by the end of March for inclusion in the annual budget presentation to City Council.

ARTICLE IX:
FISCAL YEAR
The fiscal year of the corporation shall begin on the first day of July and end the last day of June each year.

ARTICLE X:
AMENDMENTS

SECTION 1: APPROVAL
These bylaws are subject to the approval of the City Council.

SECTION 2: ALTERATIONS, AMENDMENTS, REPEAL
These bylaws may be altered, amended, or repealed only by the affirmative vote of the two-thirds (2/3) of the Directors of the Board of the Authority, subject to notice and quorum requirements as set forth in these bylaws, provided, however, that any such alteration, amendment, or repeal shall require the approval of the City Council and shall be consistent with the provision and requirements of the Act.

ARTICLE XI:
POLITICAL CAMPAIGN ACTIVITY

The Berkley DDA shall not expend funds of the Berkley DDA or otherwise contribute to the advocacy of any political candidate or ballot question.

ARTICLE XII:
PARLIAMENTARY AUTHORITY

The rules contained in the current edition of Robert’s Rules of Order Newly Revised shall govern the Berkley DDA Board of Directors in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the DDA Board of Directors may adopt.

Date:Approved by:
1. Goals

- Improve communication and processes between city and businesses;
- Increase awareness of Downtown Berkley;
- Create a business base that will support and complement one another;
- Increase foot traffic and business sales in Downtown Berkley;
- Improve the physical and visual appearance of Downtown Berkley;
- Improve the efficiency and effectiveness of the operating board, staff and volunteers;
- To nurture community pride in and support of Downtown Berkley;
- To promote Downtown Berkley through marketing, public relations and communications strategies;
- To establish a coordinated effort among various organizations and agencies to support the revitalization of Downtown Berkley;
- To promote economic growth and increase property values in Downtown Berkley and to eliminate the causes of deterioration; 11. To enhance the image of Downtown Berkley;
- To expand and diversify the retail mix in Downtown Berkley; 13. To encourage future residential development and renovation;
- To maintain and increase private sector investment and expansion;
- To encourage business excellence and quality in merchandise, services, and building appearance;

2. Goals will be achieved by following the Annual Strategic Plan and focusing on projects that include, but are not limited to:

- Providing business resources;
- Branding, Marketing, and Communications;
• Creating a strong volunteer base with a variety of experience and expertise;
• Gathering, organizing, and providing relevant data;
• Creating annual work plans for a committee structure that includes: Business Development, Design, and Marketing
AN ORDINANCE

of the City Council of the City of Berkley, Michigan to Amend Section 138-298 of Article V, Division 2 of Chapter 138, Zoning, to Update the Citation to the City’s Adopted Building Codes, and to Prescribe a Penalty for Violations.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Section 138-298 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-248. – Mobile homes in single-family residential districts.

One individual mobile home located on a parcel of land or lot in a single-family residential district shall be permitted, provided that all of the following conditions are met:

(1) It shall comply with all pertinent building and fire codes for single-family dwellings including but not limited to the BOCA code Michigan Residential Code.

(2) It shall be firmly and permanently attached to a solid foundation or basement not less in area than the perimeter area of the dwelling. The foundation and/or basement shall be constructed in accordance with the BOCA code Michigan Residential Code.

(3) It shall not have any exposed wheels, towing mechanism or undercarriage.

(4) It shall be connected to a public sewer and water supply.

(5) It shall be aesthetically comparable in design and appearance to conventionally constructed homes in the zoning district in which it is located. It shall be the responsibility of the city council to determine whether this standard is met. The city council shall make a determination that this standard has been met if it finds that all of the following conditions exist:

a. The proposed mobile home will have a combination of roof overhang and pitch comparable to the overhang and pitch of conventionally constructed homes typically found in the zoning district in which it is to be located.

b. The proposed mobile home will have steps and/or porches which provide access to exterior doors, which are permanently attached to the ground and to the mobile home structure, and which are comparable to steps and/or porches of conventionally constructed homes typically found in the zoning district in which it is to be located.

c. The proposed mobile home will be covered with a siding material which is in color, texture, malleability, direction of joints, and method of fastening to the structure comparable to siding of conventionally constructed homes typically found in the zoning district in which it is to be located.

d. The proposed mobile home will have the glass on its windows recessed at
least 1½ inches behind the exterior surface of its siding.

e. The proposed mobile home will have front and rear or front and side exterior doors if such combination of doors is found in a majority of homes in the zoning district in which it is to be located.

f. The proposed mobile home will have a 1-car garage or a 2-car garage if such a garage is found in a majority of the homes in the zoning district in which it is to be located.

The city council may approve a mobile home as aesthetically comparable in design and appearance to conventionally constructed homes in the district in which it is to be located even if all of the above conditions do not exist, provided that it finds that the mobile home and/or its site has other design features which make it aesthetically comparable to conventionally constructed homes in the district.

SECTION 2: 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 3: Penalty

All violations of this ordinance shall be municipal civil infractions and upon a 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 4: Effective Date

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

SECTION 5: 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 Monday, July 6, 2020.

________________________________
Daniel J. Terbrack
Mayor

Attest:

____________________________
Victoria Mitchell
City Clerk
MEMORANDUM

To: Mr. Mayor and City Councilmembers

From: Berkley Planning Commission
       Erin Schlutow, Community Development Director

Subject: Zoning Ordinance Amendment – Section 138-298 to Remove BOCA and Replace with Michigan Residential Code

Date: June 29, 2020

As we have previously discussed, the Building Department has been working closely with Public Safety to update all applicable building and fire codes. During our review, it was noted that the BOCA code was referenced several times in the Code of Ordinances and once in the Zoning Ordinance.

The BOCA code is outdated and has been out of use for several years and it is necessary to remove all references of BOCA in Berkley’s ordinances.

In order to expedite the process, the regulatory ordinances were reviewed by the City Council at the May meetings; however, as Section 138-298 is located in the Zoning Ordinance, it is required to be reviewed by Planning Commission prior to City Council.

The Planning Commission held the required public hearing at the June 23, 2020 meeting and unanimously recommended approval to amend Section 138-298 to remove references to BOCA and replace with the Michigan Residential Code.

If you have any questions related to this case, please do not hesitate to contact me.

Thank you.
AN ORDINANCE

of the City Council of the City of Berkley, Michigan to Amend Section 138-526 of Article V, Division 17 of Chapter 138, Zoning, to Add Local Business to the Schedule of Regulations.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Section 138-526 of Chapter 138 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 138-526. – Schedule of regulations.

<table>
<thead>
<tr>
<th>Districts</th>
<th>Minimum Size of Lot per Unit</th>
<th>Maximum Height of Buildings</th>
<th>Minimum Yard Setback</th>
<th>Minimum Floor Area Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Area in Square Feet (a)</td>
<td>Width in Feet</td>
<td>In Feet</td>
<td>Front</td>
</tr>
<tr>
<td>R-1A</td>
<td>12,000</td>
<td>100</td>
<td>40</td>
<td>25(b)</td>
</tr>
<tr>
<td>R-1B</td>
<td>8,800</td>
<td>80</td>
<td>30</td>
<td>25(b)</td>
</tr>
<tr>
<td>R-1C</td>
<td>6,600</td>
<td>50</td>
<td>30</td>
<td>25(b)</td>
</tr>
<tr>
<td>R-1D</td>
<td>4,400</td>
<td>40</td>
<td>30</td>
<td>25(b)</td>
</tr>
<tr>
<td>R-2</td>
<td>4,000</td>
<td>40</td>
<td>30</td>
<td>25(b)</td>
</tr>
<tr>
<td>R-M</td>
<td>(e)</td>
<td>(e)</td>
<td>30</td>
<td>25(b)</td>
</tr>
<tr>
<td>R-M-H</td>
<td></td>
<td>(See article V, division 5, High-Rise Multiple-Family Residential District)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greenfield</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community centerpiece</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office</td>
<td>—</td>
<td>—</td>
<td>30</td>
<td>10(j, k)</td>
</tr>
<tr>
<td>Downtown</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(n)</td>
</tr>
</tbody>
</table>
### SECTION 2: 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 3: Effective Date

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

### SECTION 4: 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 Monday, July 6, 2020.

________________________________
Daniel J. Terbrack
Mayor

Attest:

____________________________
Victoria Mitchell
City Clerk
MEMORANDUM

To: Mr. Mayor and City Councilmembers

From: Berkley Planning Commission
Erin Schlutow, Community Development Director

Subject: Zoning Ordinance Text Amendment - Site Regulations in Local Business District (LB)

Date: June 29, 2020

In reviewing several sections of the Zoning Ordinance, I found that the Schedule of Regulations, Section 138-526, does not contain site regulations for the Local Business District (LB).

There were several amendments made to the Schedule of Regulations table in 2007 and 2008, and it appears that the regulations for Local Business District (LB) may have been inadvertently omitted during an update in 2008. This is due to the extensive changes made to Division 6.5, Local Business District (LB), regulations for principle, special land uses, and building desing requirements, O-04-08, which has been included in the packet.

The Local Business District (LB) includes nine (9) parcels on the south side of Twelve Mile Rd. from Berkley to just east of Henley. There are six (6) structures located within the District, including Knights of Columbus, a residential structure, MacQueen Insurance Group, Sawyer-Fuller Funeral Home, American Legion Post 374, and a Beaumont Medical Office building.

There have not been any major site improvements to these nine (9) parcels within the District that would require reference to the Schedule of Regulations since before 2007, when the last instance of Local Business District (LB) was included in the Schedule of Regulations. Permits have been issued for many of these properties since 2007 but they include roof repairs, parking area repairs, signs, interior remodeling, etc.

The Planning Commission held the required public hearing at the June 23, 2020 meeting and unanimously recommended approval of the proposed ordinance amendment to amend Section 138-526, to include site regulations for the Local Business District (LB).

If you have any questions, please do not hesitate to contact me.
AN ORDINANCE

of the Council of the City of Berkley, Michigan
renumbering, Chapter 138 Zoning, Article V District Regulations,
Divisions 5.5, 6.5, and 7 –18
of the Berkley City Code

THE CITY OF BERKLEY ORDAINS:

SECTION 1: That Chapter 138 Zoning, Article V District Regulations, be renumbered as follows:

Division 5.5 Industrial District
Sections 138-362—138-366

Division 6.5 Local Business District
Sections 138-386—138-392

Division 7 Greenfield District
Sections 138-391 – 138-405 Reserved.

Division 8 Parks and Recreation District
Sections 138-406 – 138-415 Reserved.

Division 9 Downtown District
Sections 138-416 – 138-425

Division 10 Gateway District
Sections 138-426 – 138-440 Reserved.

Division 11 Coolidge District
Sections 138-441 – 138-455 Reserved.

Division 12 Twelve Mile District
Sections 138-456 – 138-470 Reserved.

Division 13 Woodward District
Sections 138-471 – 138-485

Division 14 Eleven Mile District
Sections 138-486 – 138-495 Reserved.

Division 15 Parking District
Sections 138-496 – 138-515

Division 16 Cemetery District
Sections 138-516—138–525

Division 17 Schedule of Regulations
Sections 138-526—138-530
SECTION 2: That the City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991 and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, October 6, 2008.

Approved on the Second Reading at the Regular City Council Meeting on Monday, October 20, 2008.

Marilyn V. Stephan
Mayor

Attest:

Mary V. Hughes
City Clerk
AN ORDINANCE

of the Council of the City of Berkley, Michigan
amending, Chapter 138 Zoning,
Article V District Regulations, Division 17 Schedule of Regulations
of the Berkley City Code

THE CITY OF BERKLEY ORDAINS:

SECTION 1: That Article V District Regulations, Division 17 Schedule of Regulations, Sections 138-526 and 138-527 of the Berkley City Code be and hereby are amended as follows:
### DIVISION 17. SCHEDULE OF REGULATIONS

Section 138-526 Schedule of Regulations.

<table>
<thead>
<tr>
<th>Districts</th>
<th>Minimum Size of Lot per Unit</th>
<th>Maximum Height of Buildings</th>
<th>Minimum Yard Setback</th>
<th>Maximum Percentage of Lot Coverage (Area of All Structures)</th>
<th>Minimum Floor Area per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Area in Sq. Ft. (a)</td>
<td>Width in Feet</td>
<td>In Feet</td>
<td>Front</td>
<td>At least one side yard</td>
</tr>
<tr>
<td>R-1A</td>
<td>12,000</td>
<td>100</td>
<td>40</td>
<td>25 (b)</td>
<td>5 (c, d)</td>
</tr>
<tr>
<td>R-1B</td>
<td>8,800</td>
<td>80</td>
<td>30</td>
<td>25 (b)</td>
<td>5 (c, d)</td>
</tr>
<tr>
<td>R-1C</td>
<td>6,600</td>
<td>50</td>
<td>30</td>
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<td>R-1D</td>
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<td>R-M-H</td>
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**Note:**
- R-M-H: See Article V, Division 7 Greenfield District
- R-2, R-1B, R-1C, R-1D, R-2: See Article V, Division 5 High Rise Multiple Family Residential District
- R-1A: See Article V, Division 4 Parks and Recreation District
- R-1A, R-1B, R-1C, R-1D, R-2: See Article V, Division 8 Parks and Recreation District
- R-1A, R-1B, R-1C, R-1D, R-2: See Article V, Division 11 Cemetery District
- R-1A, R-1B, R-1C, R-1D, R-2: See Sections 138-483 through 138-489

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**Districts:***
- **Districts**: This column lists the various districts within the schedule of regulations.
- **Minimum Size of Lot per Unit**: The minimum area required for a lot, measured in square feet.
- **Width in Feet**: The width of the lot, measured in feet.
- **Area in Sq. Ft. (a)**: The area of the lot, measured in square feet.
- **Minimum Height of Buildings**: The minimum height allowed for buildings within the district, measured in feet.
- **Minimum Yard Setback**: The minimum setback required for the front, at least one side yard, and the total of two side yards, measured in feet.
- **Maximum Percentage of Lot Coverage (Area of All Structures)**: The maximum allowed percentage of the lot area that can be covered by all structures.
- **Minimum Floor Area per Unit**: The minimum floor area required per unit, measured in square feet.
- **With Basement**: The minimum floor area requirement for units with a basement.
- **Without Basement**: The minimum floor area requirement for units without a basement.
Section 138-527 Notes to the Schedule of Regulations

(a) In calculating the area of a lot that adjoins an alley, one half the width of such alley abutting the lot shall be considered as part of such lot.

(b) The front yard setback shall be 25 feet or equal to the average setback of the 6 adjacent buildings on the same block, whichever is greater.

(c) Exterior side yards on corner lots:

   When a rear yard abuts a rear yard, the exterior side yard setback shall not be less than ten (10) feet.

   When a rear yard abuts a side yard, the exterior side yard setback shall not be less than 25 feet.

(d) There shall be a distance of at least fifteen (15) feet between dwellings.

(e) Maximum lot coverage for corner lots shall not exceed 45%. See Article III General Provisions, Division One Accessory Buildings and Structures for additional requirements.

(f) No multiple dwelling shall be erected on a lot or parcel of land that has an area of less than 10,000 square feet. The total number of rooms (other than kitchen and sanitary facilities) provided shall not be more than the area of the parcel in square feet divided by 500.

   \[
   \text{Total number of rooms} = \frac{\text{Area of parcel}}{500}
   \]

(g) Every lot on which a multiple dwelling is erected shall be provided with a side yard on each side of such lot. Each side yard shall be increased by one-half foot for each 10 feet or part thereof by which the length of the multiple dwelling exceeds 50 feet in overall dimension along the adjoining lot line.

(h) The following minimum floor areas shall be met (the number of rooms listed is in addition to the kitchen and sanitary facilities):

   Efficiency apartment: One-room—250 square feet minimum floor area per unit.

   One-bedroom: Three-room—450 square feet minimum floor area per unit.

   Two-bedroom: Four-room—600 square feet minimum floor area per unit.

   Three-bedroom: Five-room—750 square feet minimum floor area per unit.

   The maximum floor area for an efficiency apartment shall not exceed three hundred (300) square feet (in addition to the kitchen and sanitary facilities).

(i) Reserved.
(j) Parking shall be permitted in the front yard after approval of the parking plan layout and points of access by the planning commission. The setback shall be measured from the nearest side of existing and/or proposed right-of-way lines.

(k) Front yard setbacks shall be 10 feet or equal to the setback of the adjacent buildings, whichever is less.

(l) Reserved.

(m) No side yards are required along the interior side lot lines except as otherwise specified in the building code. On the exterior side yard that borders on a residential district, there shall be provided a setback of at least 10 feet on the side or residential street.

(n) No setback shall be permitted, unless the Planning Commission finds that the proposed setback shall be developed as a defined plaza, outside eating area, or other pedestrian space.

Secs. 138-528--138-530. Reserved.

SECTION 2: That the City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991 and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, October 20, 2008.

Approved on the Second Reading at the Regular City Council Meeting on Monday, November 3, 2008.

Marilyn V. Stephan
Mayor

Attest:

Mary V. Hughes
City Clerk
AN ORDINANCE
of the Council of the City of Berkley, Michigan
amending, Chapter 138 Zoning,
Article II Definitions, Section 138-32 and
Article V District Regulations, Division 12 Schedule of Regulations,
Sections 138-526 through 138-527
of the Berkley City Code

THE CITY OF BERKLEY ORDAINS:

SECTION 1: That Article II Definitions, Section 138-32 Definitions of the Berkley City Code be and hereby are amended as follows:

Floor Area, Minimum Residential: The total area of each floor measured from the exterior faces of the exterior walls or from the centerline of the walls separating two dwelling units. The first floor shall be the lowest floor which is at every point above the average grade line around the structure.
SECTION 2: That Article V District Regulations, Division 12 Schedule of Regulations, Sections 138-526 and 138-527 of the Berkley City Code be and hereby are amended as follows:

DIVISION 12. SCHEDULE OF REGULATIONS

Section 138-526 Schedule of Regulations.

<table>
<thead>
<tr>
<th>Districts</th>
<th>Area in Sq. Ft. (a)</th>
<th>Width in Feet</th>
<th>In Feet</th>
<th>Front</th>
<th>Minimum Yard Setback</th>
<th>Maximum Percentage of Lot Coverage (Area of All Structures)</th>
<th>Minimum Floor Area per Unit</th>
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<td>At least one side yard</td>
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(See Article V, Division 5, High Rise Multiple Family Residential District)

(See Sections 138-483 through 138-489)
**Section 138-527 Notes to the Schedule of Regulations**

(a) In calculating the area of a lot that adjoins an alley, one half the width of such alley abutting the lot shall be considered as part of such lot.

(b) The front yard setback shall be 25 feet or equal to the average setback of the 6 adjacent buildings on the same block, whichever is greater.

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   When a rear yard abuts a rear yard, the exterior side yard setback shall not be less than ten (10) feet.

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(e) Maximum lot coverage for corner lots shall not exceed 45%. See Article III General Provisions, Division One Accessory Buildings and Structures for additional requirements.

(f) No multiple dwelling shall be erected on a lot or parcel of land that has an area of less than 10,000 square feet. The total number of rooms (other than kitchen and sanitary facilities) provided shall not be more than the area of the parcel in square feet divided by 500.

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   \text{Total number of rooms} = \frac{\text{Area of parcel}}{500}
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   One-bedroom: Three-room—450 square feet minimum floor area per unit.

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   The maximum floor area for an efficiency apartment shall not exceed three hundred (300) square feet (in addition to the kitchen and sanitary facilities).

(i) Reserved.
(j) Parking shall be permitted in the front yard after approval of the parking plan layout and points of access by the planning commission. The setback shall be measured from the nearest side of existing and/or proposed right-of-way lines.

(k) Front yard setbacks shall be 10 feet or equal to the setback of the adjacent buildings, whichever is less.

(l) Reserved.

(m) No side yards are required along the interior side lot lines except as otherwise specified in the building code. On the exterior side yard that borders on a residential district, there shall be provided a setback of at least 10 feet on the side or residential street.

(n) No setback shall be permitted, unless the Planning Commission finds that the proposed setback shall be developed as a defined plaza, outside eating area, or other pedestrian space.

SECTION 3: That the City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991 and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, December 17, 2007.

Approved on the Second Reading at the Regular City Council Meeting on Monday, January 7, 2008.

CERTIFICATION:

I certify that the foregoing is a true and correct copy of an Ordinance approved by the Berkley City Council at a Regular Meeting on January 7, 2008 and that I did publish the synopsis of this Ordinance in the Royal Oak Daily Tribune and posted the complete Ordinance for ten days at City Hall, Library, and Community Center.

Karen L. Brown
Clerk/Treasurer
(j) Parking shall be permitted in the front yard after approval of the parking plan layout and points of access by the planning commission. The setback shall be measured from the nearest side of existing and/or proposed right-of-way lines.

(k) Front yard setbacks shall be 10 feet or equal to the setback of the adjacent buildings, whichever is less.

(l) Reserved.

(m) No side yards are required along the interior side lot lines except as otherwise specified in the building code. On the exterior side yard that borders on a residential district, there shall be provided a setback of at least 10 feet on the side or residential street.

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SECTION 3: That the City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991 and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, December 17, 2007.

Approved on the Second Reading at the Regular City Council Meeting on Monday, January 7, 2008.

Marilyn V. Stéphan
Mayor

Attest:

Karen L. Brown
City Clerk
RESOLUTION TO VACATE PORTION OF PUBLIC ALLEY

WHEREAS, the Berkley City Council has been requested to vacate, discontinue and abolish the following described portion of the public alley located in the City of Berkley and under the jurisdiction and control of the City of Berkley:

REFER TO ATTACHED EXHIBIT OF PART ALLEY VACATION AND PROPORTIONMENT

WHEREAS, the Berkley City Council has held a public hearing and has heard and considered any public comments or objections pertaining to such vacation, discontinuance and abolition; and

WHEREAS, the Berkley City Council determines it is advisable and beneficial for the health, welfare, and safety of the people of the City of Berkley to vacate, discontinue and abolish the described public alley portion.

THEREFORE, IT IS RESOLVED:

1. The above-described public alley portion is hereby vacated, discontinued and abolished.

2. The City reserves an easement in, over, through, across and under the former alley for present and future municipal and public utility purposes.

3. The City Clerk is directed to, within thirty (30) days, record a certified copy of this resolution with the Oakland County Register of Deeds, and to send a copy to the State Treasurer, as required by statute.

4. Upon recording at the Register of Deeds, this resolution shall have the force and effect of vacating, discontinuing and abolishing the described public alley portion.

Certificate

I, Victoria Mitchell, Clerk for the City of Berkley, do hereby certify that the foregoing is a true and complete copy of a resolution, the original of which is on file in my office, adopted by the Berkley City Council at a Regular Meeting thereof held on July 6, 2020.

________________________________________
Victoria Mitchell, Clerk
City of Berkley

When recorded return to:

Victoria Mitchell, Clerk
City of Berkley
3338 Coolidge Hwy
Berkley, Michigan 48072

Dated: _______________________, 2020
EXHIBIT OF PART ALLEY VACATION AND PROPORTIONMENT

SCALE: 1" = 30'

EATON ROAD 50' WIDE

AREA:
(A) 623 SQUARE FEET, OR 0.014 ACRES, MORE OR LESS.
(B) 385 SQUARE FEET, OR 0.009 ACRES, MORE OR LESS
(C) 300 SQUARE FEET, OR 0.007 ACRES, MORE OR LESS.
DESCRIPTION OF PART OF ALLEY TO BE VACATED

All that part of a 20 foot wide alley adjoining Lots 343, 344 and 345 to the East and Lots 336, 337 and 346 to the West lying North of the South line of Lot 343 extended West to the West line of said Alley, "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records. Said description contains 1,308 square feet, or 0.03

(A.) DESCRIPTION OF VACATED ALLEY TO BE PROPORTIONED TO LOTS 336, 337 AND 346

All that part of the Southwesterly ½ of the 20 foot wide Alley adjoining Lots 336, 337 and 346 lying North of the South line of Lot 343, extended West to the West line of said Alley, "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records. Said description contains 623 square feet, or 0.014 acres, more or less.

(B.) DESCRIPTION OF VACATED ALLEY TO BE PROPORTIONED TO LOTS 344 AND 345

All that part of the Northeasterly ½ of the 20 foot wide Alley adjoining Lots 344 and 345 lying North of the South line of Lot 344, extended West to the Center line of said Alley, "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records. Said description contains 385 square feet, or 0.009 acres, more or less.

(C.) DESCRIPTION OF VACATED ALLEY TO BE PROPORTIONED TO LOT 343

All that part of the Northeasterly ½ of the 20 foot wide Alley adjoining Lot 343 lying North of the South line of Lot 343, extended West to Centerline line of said Alley, "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records. Said description contains 300 square feet, or 0.007 acres, more or less.
RESTATED AND AMENDED COLLABORATION AGREEMENT

This Restated and Amended Collaboration Agreement (herein “Agreement”), with an effective date of June 7, 2020, is made among the City of Berkley (“City”), a municipal corporation, whose address is 3338 Coolidge Hwy., Berkley, MI 48072; 27799 Woodward, LLC (“Vinsetta”), whose address is 90 N. Main St., Clarkston, MI 48346, as the successor-in-interest to Vinsetta Garage Holding LLC; and Lugo Properties, LLC (“Lugo”), whose address is 40700 Woodward Ave., Ste. 250, Bloomfield Hills, MI 48304.

Whereas, the City, Vinsetta Garage Holding LLC, and Lugo entered into an Agreement entitled, Collaboration Agreement Among City of Berkley, Vinsetta Garage Holding, LLC and Lugo Properties, LLC, Concerning Creation of Off-Street Parking on Eaton Road Property (the “Collaboration Agreement”), with an April 4, 2016 effective date; and

Whereas, in 2018, Lugo withdrew from the Collaboration Agreement; and

Whereas, the City, Vinsetta (as successor-in-interest to Vinsetta Garage Holding LLC) and Lugo now mutually desire to enter into a restated and amended Collaboration Agreement with the modified and additional terms herein.

THEREFORE, based on the mutual benefits and considerations provided for therein, the City, Vinsetta and Lugo hereby agree to restate and amend the Collaboration Agreement as follows;

Vinsetta owns the real property parcels at 1010 and 1046 Eaton, and Lugo owns 1036 Eaton; and

Vinsetta and Lugo desire to exchange portions of, reconfigure, improve and use these 3 parcels for off-street parking lots for their businesses located at 27799 Woodward and 27861 Woodward, respectively; and

The City deems it is in the public interest to encourage, facilitate and assist Vinsetta and Lugo, through this Collaboration Agreement, to create additional, nearby off-street parking for their businesses in the manner proposed.

Therefore, the parties agree:

1. Vinsetta and Lugo will cooperate (time being of the essence) to effect an exchange, combination, division and reconfiguration of the 3 Eaton parcels to create 2 resulting legal parcels, split north and south, as shown in attached Exhibit A, with the southern portion (fronting on Eaton Road) to be owned by Vinsetta (the “Vinsetta Parcel”), and the northern portion (fronting on the bank property to the north and the public alley to the east) to be owned by Lugo (the “Lugo Parcel”). The City will assist, at its cost, with preparing, delivering and recording any necessary documents of conveyance to effectuate this exchange of property. The boundary survey and legal description attached as Exhibit A shall be used for all purposes concerning this Agreement and for processing the Application for land division/combination and reconfiguration for review or approval.
2. Vinsetta will grant Lugo an easement across the Vinsetta Parcel in connection with development of the Lugo Parcel, in order to connect the Lugo Parcel to the storm drain and/or public utilities located on Eaton. The easement agreement attached as Exhibit B will be recorded with the conveyance documents contemplated herein upon fulfillment of the terms and conditions of this Agreement. Lugo will grant Vinsetta an easement across the Lugo Parcel in connection with development of the Vinsetta Parcel, in order to connect the Vinsetta Parcel to the Ameritech Easement and DTE electric pole and meter located on the Lugo Parcel. The easement agreement attached as Exhibit C will be recorded with the conveyance documents contemplated herein upon fulfillment of the terms and conditions of this Agreement.

3. The parties shall execute any and all documents necessary to fulfill their respective obligations as recited in this Agreement and all such documents shall be held in escrow by the Title Company (defined below) pursuant to the escrow instructions set forth herein below. The exchange of property shall be completed and all documents shall be recorded within 30 days after all of the following conditions have occurred; (a) the City approves the land division/combination and obtains tax parcel identification numbers; (b) the site plan for the parking lot on the Vinsetta parcel has been approved by the City, and (c) Vinsetta shall have completed the requirements set forth in Paragraph 5 below.

4. The City will resolve to discontinue, abandon and vacate the portion of the public alley adjacent to and behind Lugo’s property at 27861 Woodward to cause the vacated portion of the public alley to attach to and become part of Lugo’s adjacent property by way of a warranty deed. It is the parties’ intention that by including the portion of the alley to be vacated, the exchange, division and reconfiguration of the three (3) Eaton parcels will leave Vinsetta and Lugo with parcels approximately equal in size to the real property they are each contributing for the land division/combination, so that neither party ends up with less land than they currently own and are contributing to the division/combination. Vacating the alley shall only take place if the conditions in 3(a)-(c) above are met, and no portion of the vacated alley shall interfere with or impair the ingress, egress, and traffic circulation to and from Vinsetta’s parcel to Eaton Street or the non-vacated portion of the alley. Nothing in this Agreement is intended, nor shall it be construed, to grant or imply any right of ingress or egress over or through the Lugo Parcel or Lugo’s property located at 27861 Woodward or the vacated portion of the alley.

5. Vinsetta will be responsible, at Vinsetta’s sole cost, and in compliance with the City’s ordinary and customary residential property demolition permit requirements, for the simultaneous demolition and removal of any existing structures, trees, and landscaping on both the Vinsetta and Lugo parcels so that both parcels are vacant dirt parcels prior to commencement of any improvements on the Vinsetta parcel. Lugo hereby agrees to permit Vinsetta to perform and Vinsetta shall perform the demolition and removal of the existing structures on the Lugo parcel.

(a) As part of the work to be performed in order to deliver the Lugo Parcel (Vinsetta’s Work”), Vinsetta, at Vinsetta’s sole cost and expense, shall:

   (i) demolish and remove from the Lugo Parcel any and all existing buildings, structures, foundations, footers, slabs, asphalt, curbing, water meters, trees and landscaping in order to deliver the Lugo Parcel to Lugo as described below;
(ii) clear and grade the Lugo Parcel as required by the City’s demolition permit criteria and remove from the site any excess fill, rock and/or debris;

(iii) any basement and footings excavations and other holes on the Lugo Parcel shall be filled with clean soil and graded to match the existing grade so that it is a flat and level area. The property shall be seeded. Underground pipes and utilities will not be removed and any existing underground water and sewer lines shall be capped at their main;

and

(v) obtain any and all necessary permits and install any and all erosion, silt, and dust controls required by the City to complete all of the foregoing.

(b) All Vinsetta's Work shall be performed in compliance with all applicable laws and ordinances, in a good and workmanlike and lien-free manner, and in accordance with industry standards. Vinsetta shall be responsible for the supervision of such construction work, but shall advise Lugo as to all elements of the work and its progress as it relates to the Lugo Parcel. Lugo may visit the Lugo Parcel to inspect the progress and performance of the work and the materials furnished to determine whether such work is being performed in accordance herewith.

(c) Vinsetta shall provide full unconditional lien waivers for any and all of Vinsetta’s Work when completed and hereby agrees to indemnify and defend Lugo from and against any and all claims, liens, and causes of action which may in any way arise out of Vinsetta’s Work and or any of the work performed by Vinsetta on either the Vinsetta Parcel and/or the Lugo Parcel arising in any way from the acts or omission of Vinsetta. This provision shall survive any termination or expiration of this Agreement and shall be subject to applicable statute of limitation periods. Vinsetta, during the demolition process and until approval by the City of completion of the demolition, shall maintain general liability insurance with limits of $3 Million Dollars, naming Lugo as an additional insured.

6. Vinsetta shall, as soon as reasonably possible after the land combination/division, reconfiguration, and rezoning are approved, and in accordance with any applicable time limitations set forth in the Consent Judgment between the City and 27799 Woodward, LLC involving the Oxford Parking Lot Property (herein “Consent Judgment”), Oakland County Circuit Court, Case No. 2017-159355-CZ, file for site plan approval for its parking and related improvements. After receiving site plan approval from the City, Vinsetta will obtain any necessary permits and commence and diligently proceed, cooperatively with or separately from Lugo, to construct parking and related improvements on its respective portions of the reconfigured Vinsetta Parcel in accordance with the approved site plan(s). It is anticipated that Lugo will proceed to develop and construct the parking lot on its parcel at a later date as determined by Lugo. All construction shall be done in accordance with applicable City codes and regulations. Vinsetta and Lugo, in their sole discretion, may construct and use their parking areas on a shared use arrangement or separately, as they may mutually agree in the future.
7. The City, at the City’s sole cost and expense, shall retain the services of ATA National Title Group, 36800 Gratiot Avenue, Clinton Township, Michigan 48035 (the "Title Company") for the purpose of delivering policies of title insurance showing clear title to the properties, drafting of closing and transfer documents, and for the purpose of holding all of the foregoing in escrow as escrow agent until such time that all of the requirements of Paragraph 3 have been fulfilled and ninety (90) days after Vinsetta completes Vinsetta’s Work as required in Paragraph 5 and delivers any and all lien waivers and other documents required by the Title Company to insure clear title to the Lugo Parcel. The parties shall deposit fully executed and acknowledged recordable deeds, easement agreements, and other documents which will transfer the respective portions of their properties as contemplated by this Agreement. The Title Company shall release, record and close on the transactions contemplated by this Agreement as the case may be upon the satisfaction of the foregoing and the City has indicated that the Vinsetta Parcel and the Lugo Parcel are in full compliance with the City’s requirements and pursuant to this Agreement. In the event that Vinsetta has not completed its obligations as required by this Agreement or if for any reason not the fault of Lugo the escrow is not closed within 180 days after the date of the full execution of this Agreement (except for the 90-day waiting period for the elimination of liens and any weather delays) and subject to the time periods contained in the Consent Judgment, the later date of which shall apply, Lugo shall have the right to terminate this Agreement and the items placed in escrow by Lugo and Vinsetta shall be returned to each respective party and neither party shall have any further obligation to the other. The foregoing notwithstanding, if Vinsetta has begun to perform under this Agreement but fails to complete its demolition requirements, and any lien is attached to the property, or there is otherwise a charge or assessment arising out of the acts or omissions of Vinsetta, its contractors, and or agents and representatives, and this Agreement is terminated by Lugo in accordance with the terms referenced above, Vinsetta shall bond over or indemnify and hold Lugo harmless from and against any such claims.

8. There is no other or additional consideration for this Agreement and the parties’ mutual promises, rights and obligations hereunder beyond what is set forth herein. Nothing in this Agreement shall impair, release, or waive Vinsetta’s or its affiliated or related companies’ rights and interests in its Oxford street lots.

9. Any breach, dispute or enforcement of the parties’ rights and obligations under this Agreement shall be adjudicated in the 44th District Court or 6th Circuit Court in Oakland County, as applicable. In addition to any available remedies at law, and regardless of the adequacy of those remedies, the parties may obtain equitable relief to enforce rights and obligations under this Agreement.

10. The mutual promises, rights and obligations under this Agreement shall run with the land and shall inure to the benefit of, and be binding on, the parties and their successors, assigns and grantees.
11. This Agreement comprises the entire agreement and understanding among the
parties with respect to the subject matter contained in the Agreement. Any amendment or
supplementation thereof shall be in writing signed and dated by the parties.

12. Following the partial vacating and abandonment of the subject public alley pursuant
to this Agreement, the City agrees to not vacate the remaining portion of the alley, and agrees to
keep open for vehicular access, the remaining segment of the alley all the way to Eaton Street. The
City further agrees that after the partial vacating of the alley, Lugo may install a gate across the
vacated portion of the alley, subject to Lugo obtaining any necessary permit(s) or site plan
approvals from the City. The City will reasonably seek to accommodate such plans for the
installation of a gate, and such gate where installed shall not encroach upon the parking or ingress
and egress to or from the parking on the Vinsetta Parcel.

13. In the event that any existing utility easement or utility lines, poles or guy wires are
located on any portion of the Lugo Parcel or that portion of the vacated alley which Lugo intends
to use for the purpose of parking and such items cause the loss of one or two parking spaces due
to their location, the City shall count such lost spaces in determining any off-street parking
requirements for any of Lugos' future development of the Lugo property.

The Parties further agree to proceed diligently, in good faith, and without undue delay to
implement and fulfill the Collaboration Agreement.

27799 Woodward, LLC
By: [Signature]
Its: [Signature]
Date: 2/6/20

Lugo Properties, LLC
By: [Signature]
Its: [Signature]
Date: 2-7-2020

City of Berkley
By: [Signature]
Its: [Signature]
Date: 02/10/2020
EXHIBIT “A”
DESCRIPTION OF PROPERTY (28-17-428-524, 28-17-428-320 and 28-17-428-531 TAKEN FROM RECORD)

Lots 335, 336, 337 and 338 and that part of Lot 346 which lies adjacent to the North line of said Lots 335 and 336 of "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records.

Subject to reservations restrictions and easements of record, if any.

DESCRIPTION OF PARCEL 'A'

Lot 338 and part of Lots 335, 336 and 337 of "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 8 of plats, Page 8, Oakland County Records, described at: Beginning at the Southwest corner of said Lot 335; thence N03°28'40"W 81.64 feet along the West lot line of said Lot 335; thence N68°31'24"E 118.27 feet to a point on the Wostery right of way line of 20 foot wide public alley; thence along said right of way line S35°23'16"E 66.17 feet to the Southeast corner of said Lot 338; thence S89°31'24"W 170.11 feet along the South line of said Lots 335 thru 338 inclusive to the Point of Beginning. Said description contains 11,813 square feet, or 0.271 acres, more or less.

DESCRIPTION OF PARCEL 'B'

Part of Lots 335, 336, 337 and 346 of "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 8 of plats, Page 8, Oakland County Records, described at: Beginning at a point distant N03°28'40"W 81.64 foot along the West lot line of said Lot 336 from the Southwest corner of said Lot 335 for a Point of Beginning; thence continuing along said lot line N03°28'40"W 28.23 feet extended to the Northwest lot line of said Lot 346; thence along said lot line N54°37'00"E 81.04 foot to a point on the Wostery right of way line of 20 foot wide public alley, thence along said right of way line S35°23'16"E 90.49 feet; thence S89°31'24"W 118.27 feet to the Point of Beginning. Said description contains 6,149 square feet, or 0.141 acres, more or less.
EXHIBIT "B"
EASEMENT FOR STORM WATER DRAINAGE AND UTILITIES

In consideration of One Dollar ($1.00), 27799 Woodward, LLC ("Grantor"), a Michigan limited liability company, whose address is 90 N. Main Street, Clarkston, MI 48346, grants to Lugo Properties, LLC ("Grantee"), a Michigan limited liability company, whose address is 40700 Woodward Ave., Suite 250, Bloomfield Hills, MI 48304, a private, non-exclusive, perpetual easement for purposes of storm water drainage and utilities, over, upon, across, in, and through Grantor’s Property which is described in attached Exhibit A.

This easement is for the benefit of Grantee’s Property described in attached Exhibit B. Grantee, in connection with Grantee’s future development and use of Grantee’s Property shall be permitted to convey storm water over, across, through and under Grantor’s Property in order to connect and discharge to public drainage or sewage facilities on Eaton Road. Grantee shall similarly be permitted to extend utility service lines over, across, through and under Grantor’s Property in order to connect to public utilities on Eaton Road.

Grantor shall not unreasonably obstruct, impede or interfere with storm water drainage or utilities from Grantee’s Property. However, as part of an approved site plan, the Grantor may construct and/or install surface improvements to the property, including paved driveways, parking, walls, lights, walkways, landscaping, utilities, and/or similar improvements for Grantor’s development and use of Grantor’s Property as an off-street parking lot. And, Grantee shall convey Grantee’s storm water drainage and shall design and construct Grantee’s utility service lines to not unreasonably interfere with Grantor’s development and operation of said parking lot. At no time shall Grantee permit storm water from Grantee’s Property to obstruct, hinder, impede, erode, or flood Grantor’s Property and parking lot. In the event that Grantor has completed its improvements to Grantor’s property and Grantee disrupts the parking or use of the Grantor’s parcel for any easement or utility construction to service its parcel, then Grantee shall be responsible for the repair or replacement, as applicable, of any damage or destruction to Grantor’s Property at Grantee’s sole cost, and with such repairs or replacement to be approved by Grantor and completed within thirty (30) days of completion of the Grantee’s easement and utility construction, time being of the essence. In no event shall any easement or utility construction result in permanent loss of any of Grantor’s parking spaces nor shall Grantor erect any buildings on the easement area which would restrict Grantee from enjoying the benefit of this Agreement.

Grantee shall be permitted to enter upon Grantor’s Property for the purpose of exercising the rights and privileges granted herein. This Easement does not grant or convey to Grantee any right of ownership, possession or use of Grantor’s Property.
This instrument shall run with the land and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, representatives, successors and assigns.

GRANTOR:
27799 Woodward, LLC

By: ___________________________

Its: ___________________________

Date: _________________________, 2019

STATE OF MICHIGAN )
COUNTY OF OAKLAND )SS

On __________, 2019, before me personally appeared the above named __________________________, the __________________ of 27799 Woodward, LLC, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same on behalf of the company.

Notary Public, County, MI
Acting in __________________ County, MI
My commission expires:

GRANTEE:
Lugo Properties, LLC

By: ___________________________

Its: ___________________________

Date: _________________________, 2019

STATE OF MICHIGAN )
COUNTY OF OAKLAND )SS

On __________, 2019, before me personally appeared the above named __________________________, the __________________ of Lugo Properties, LLC, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same on behalf of the company.

Notary Public, County, MI
Acting in __________________ County, MI
My commission expires
Drafted by, and Return to:
John D. Staran, Esq.
2055 Orchard Lake Road
Sylvan Lake, MI 48320
EXHIBIT A

DESCRIPTION OF GRANTOR'S PROPERTY

Lot 338 part of Lots 335, 336 and 337 of "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.11N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records, described at: Beginning at the Southwest corner of said Lot 335; thence N03°28'40"W 81.64 feet along the West lot line of said Lot 335; thence N86°31'24"E 119.27 feet to a point on the Westerly right of way line of 20 foot wide public alley; thence along said right of way line S35°23'19"E 96.17 feet to the Southeast corner of said Lot 338; thence S86°31'24"W 170.11 feet along the South line of said Lots 335 thru 338 inclusive to the Point of Beginning. Said description contains 11,813 square feet, or 0.271 acres, more or less.
EXHIBIT B

DESCRIPTION OF GRANTEE'S PROPERTY

Part of Lots 335, 336, 337 and 346 of "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records, described at: Beginning at a point distant N03°28'40"W 81.64 feet along the West lot line of said Lot 335 from the Southwest corner of said Lot 335 for a Point of Beginning; thence continuing along said lot line N03°28'40"W 38.23 feet extended to the Northerly lot line of said Lot 346; thence along said lot line N54°37'00"E 81.04 feet to a point on the Westerly right of way line of 20 foot wide public alley; thence along said right of way line S35°23'19"E 95.49; thence S86°31'24"W 119.27 feet to the Point of Beginning. Said description contains 6,149 square feet, or 0.141 acres, more or less.
EXHIBIT "C"
EASEMENT FOR DTE ELECTRIC POLE AND AMERITECH

In consideration of One Dollar ($1.00), Lugo Properties, LLC ("Grantor"), a Michigan limited liability company, whose address is 40700 Woodward Ave., Suite 250, Bloomfield Hills, MI 48304 grants to 27799 Woodward, LLC ("Grantee"), a Michigan limited liability company, whose address is 90 N. Main Street, Clarkston, MI 48346, a private, non-exclusive, perpetual easement for purposes of access to the DTE electric pole and Ameritech easement over, upon, across, in, and through Grantor's Property which is described in attached Exhibit A.

This easement is for the benefit of Grantee's Property described in attached Exhibit B. Grantee, in connection with Grantee's future development and use of Grantee's Property shall be permitted to access through and under Grantor's Property in order to connect to the DTE electric pole and Ameritech easement on Grantor's property.

Grantee shall not unreasonably obstruct, impede or interfere with any use upon or any utilities from Grantor's Property. In the event that Grantor has completed its improvements to Grantor's property and Grantee disrupts the parking or use of the Grantor's parcel for any easement or construction to service its parcel, then Grantee shall be responsible for the repair or replacement, as applicable, of any damage or destruction to Grantor's Property at Grantee's sole cost, and with such repairs or replacement to be approved by Grantor and completed within thirty (30) days of completion of the Grantee's easement and construction, time being of the essence. In no event shall any easement or construction result in permanent loss of any of Grantor's contemplated parking spaces.

Grantee shall be permitted to enter upon Grantor's Property for the purpose of exercising the rights and privileges granted herein. This Easement does not grant or convey to Grantee any right of ownership, possession or use of Grantor's Property.

This instrument shall run with the land and shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective heirs, representatives, successors and assigns.

GRANTEE:
27799 Woodward, LLC

By: __________________________

Its: __________________________
STATE OF MICHIGAN  )
COUNTY OF OAKLAND  ) SS

On __________, 2019, before me personally appeared the above named ____________________________ of 27799 Woodward, LLC, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same on behalf of the company.

________________________________________
Notary Public, ___________ County, MI
Acting In ___________ County, MI
My commission expires

GRANTOR:
Lugo Properties, LLC

By: ________________________________

Its: ________________________________

Date: _____________________________, 2019
STATE OF MICHIGAN  
COUNTY OF OAKLAND 

On __________, 2019, before me personally appeared the above named __________________, the __________________ of Lugo Properties, LLC, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same on behalf of the company.

Drafted by, and Return to:
Tom Kalas, Esq.
31350 Telegraph Road, Ste. 201
Bingham Farms, MI 48025
248-731-7243

Notary Public, __________ County, MI
Acting In __________ County, MI
My commission expires
EXHIBIT A

DESCRIPTION OF GRANTOR'S PROPERTY

Part of Lots 335, 336, 337 and 346 of "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records, described at: Beginning at a point distant N03°28'40"W 81.64 feet along the West lot line of said Lot 335 from the Southwest corner of said Lot 335 for a Point of Beginning; thence continuing along said lot line N03°28'40"W 38.23 feet extended to the Northerly lot line of said Lot 346; thence along said lot line N54°37'00"E 81.04 feet to a point on the Westerly right of way line of 20 foot wide public alley; thence along said right of way line S35°23'19"E 95.49; thence S86°31'24"W 119.27 feet to the Point of Beginning. Said description contains 6,149 square feet, or 0.141 acres, more or less.
EXHIBIT B

DESCRIPTION OF GRANTEE'S PROPERTY

Lot 338 part of Lots 335, 336 and 337 of "Larkmoor Boulevard Subdivision" of part of Sections 16 and 17, T.1N., R.11E., Royal Oak Township (now City of Berkley), Oakland County, Michigan, as recorded in Liber 9 of plats, Page 8, Oakland County Records, described at: Beginning at the Southwest corner of said Lot 335; thence N03°28'40"W 81.64 feet along the West lot line of said Lot 335; thence N86°31'24"E 119.27 feet to a point on the Westerly right of way line of 20 foot wide public alley; thence along said right of way line S35°23'19"E 96.17 feet to the Southeast corner of said Lot 338; thence S86°31'24"W 170.11 feet along the South line of said Lots 335 thru 338 inclusive to the Point of Beginning. Said description contains 11,813 square feet, or 0.271 acres, more or less.
John D. Staran

From: John D. Staran
Sent: Wednesday, February 12, 2020 3:20 PM
To: Baumgarten, Matt (mbaumgarten@berkleymich.net)
Subject: Berkley/Vinsetta Garage/Lugo --- alley vacation

Matt: Relating to the Reinstated and Amended Collaboration Agreement for parking lot on Eaton, please see the attached letter and other attachments concerning the City’s responsibility under the Agreement to vacate a portion of the alley west of Woodward, north of Eaton. Consideration of the advisability of vacating the public alley segment should be penciled-in for the next City Council meeting if possible. As my letter explains, it will be a 2-step process, with the Council first adopting a resolution declaring its intention to vacate the alley and scheduling a public hearing (at least 30 days later), and second, holding the public hearing followed by adopting a resolution to vacate. Afterward, the City Clerk records a certified copy of the res at the Register of Deeds and sends a copy to the State Treasurer, and we’re done.

The last attachment (the 2-page sketch and legal description) is referenced in and should be attached to both resolutions and the notice for public hearing.

Please contact me with any questions.

John D. Staran
2055 Orchard Lake Road
Sylvan Lake, MI 48320
(248) 731-3080 Fax (248) 731-3088
Direct (248) 731-3088
jstaran@hsc-law.com

www.hsc-law.com

Confidentiality Notice: This communication, including any attachments, is for the exclusive use of the intended recipient and may contain confidential and legally privileged information. If you are not the intended recipient, please promptly notify us by return email, permanently delete this email and any attachments, and destroy any printouts.

Treasury Circular 230 Disclosure: This communication is not intended or written to be used, nor may it be used or relied upon, by a taxpayer for the purpose of avoiding tax penalties that may be imposed under the Internal Revenue Code, as amended.
Mr. Matt Baumgarten, City Manager
City of Berkley
3338 Coolidge Highway
Berkley, MI 48072

Re:     Vacating Part of Public Alley

Dear Manager Baumgarten:

Among the implementation details of the settlement of the 27799 Woodward LLC v
Berkley case and associated Restated and Amended Collaboration Agreement for the parking lot
expansion on Eaton is that the City has the responsibility to vacate the portion of the platted
public alley abutting (on both sides) the Lugo property. This letter is intended to explain the
alley vacation process.

Under state law and Sec. 5.2 of the City Charter, the City Council has the authority to
establish and vacate its streets, alleys, bridges and public places. It is a discretionary decision on
the Council's part which the courts have construed to be legislative in nature and subject to
judicial review only for fraud, collusion or abuse of discretion. Forster v Pontiac, 56 Mich App
415, 419 (1974). After the alley is vacated, the public's interest and rights will be permanently
terminated. Ownership of the former alley segment will be deemed to transfer by operation of
law and will attach to and become part of the lots (both owned by Lugo) on both sides of the
vacated right-of-way (usually one-half to each side). So, in this case, the vacated alley will be
fully and solely owned by Lugo. There are no deeds involved, there is no consideration paid,
and the City does not direct to whose property the vacated right-of-way will attach. The transfer
of ownership occurs by operation of law upon recording the Council resolution vacating the
alley.

City Code Sec. 106-1 sets forth the procedure for vacating public streets and alleys. The
first step is for City Council to adopt a resolution deeming it advisable to vacate the alley and
scheduling a public hearing, at least 4 weeks later, to hear any objections. Notice of the public
hearing must be published in the newspaper for not less than 4 weeks before the hearing, and
notice must be given, at least 15 days prior to the public hearing, to all persons owning and
residing on property within 300 feet of the subject alley segment. Following the public hearing,
the City Council will vote on a resolution to vacate the alley segment. If any objections have
been received, a concurring vote of 2/3 of the Councilmembers (i.e., 5 votes) will be required to approve the alley vacation.

Although City Code sec. 106-1 does not require it, I recommend that the City provide additional notice similar to the procedure prescribed in the Land Division Act (formerly the Subdivision Control Act) for requests to the circuit court to amend, vacate, correct, alter or revise a subdivision plat. That involves also providing written notice to the the State Treasurer, the County Road Commission, MDOT, and to each public utility that has installations or equipment in the alley and vicinity.

For the City’s convenience, I have prepared and attach a proposed Council Resolution Declaring Intention to Vacate (which would be the action taken by Council at its initial meeting), a Notice of Public Hearing (which would be published and served after Council adopts the aforesaid Resolution), and a Resolution to Vacate (which would be the action considered by Council following the public hearing). I have also included the Exhibit which should be attached to all three of these documents, consisting of the sketch and description of the subject alley segment.

Very truly yours,

John D. Staran

JDS/ijd
Enclosure

2
A RESOLUTION
OF THE CITY COUNCIL OF THE CITY OF BERKLEY, MICHIGAN
TO APPROVE THE AGREEMENT FOR ELECTION SERVICES BETWEEN OAKLAND COUNTY AND THE CITY OF BERKLEY

Whereas, the passage of House Bill No. 5141 allows the City to enter into an agreement with Oakland County to count absentee ballots; and

Whereas, it is anticipated that more than double the workers and space would be needed to properly run an absentee counting board in a socially distant and safe manner; and

Whereas, the County is offering this service at zero cost to the City and additional cost savings would be recognized through wages and the reduction in PPE purchases to properly safeguard absentee counting board members; and

Whereas, the volume of absentee ballots has already reached a record high for the City of Berkley and continues to rise daily; and

Whereas, the August election would serve as an opportunity to test the process before the November General Election and the agreement may be canceled with 84 days’ notice; so be it

RESOLVED, that the City of Berkley via the City Clerk will enter into an agreement for election services with Oakland County to count its absentee ballots beginning with the August 4, 2020 election.

Introduced and passed at a Regular City Council Meeting on Monday July 6, 2020.

______________________________
Daniel J. Terbrack, Mayor

Attest:

______________________________
Victoria Mitchell, City Clerk
AGREEMENT FOR ELECTION SERVICES BETWEEN 
OAKLAND COUNTY AND
[City of Berkley]

This Agreement for Election Services Agreement (the "Agreement") is made between Oakland County, a Municipal and Constitutional Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and the [City of Berkley] ("Public Body") [3338 Coolidge Highway]. In this Agreement, the County shall be represented by the Oakland County Clerk, in her official capacity as a Michigan Constitutional Officer. County and Public Body may be referred to individually as a “Party” and jointly as "Parties".

PURPOSE OF AGREEMENT. County and Public Body enter into this Agreement pursuant to the Michigan Election Law, 1954 Public Act 116, MCL 168.764 et seq., for the purpose of County providing Ballot Counting Services for Public Body.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. DEFINITIONS. The following words and expressions used throughout this Agreement, whether used in the singular or plural, shall be defined, read, and interpreted as follows:


1.1. Agreement means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, Exhibit and attachment to this Agreement.

1.2. Claims mean any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against County or Public Body, or for which County or Public Body may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.

1.3. Confidential Information means all information and data that County is required or permitted by law to keep confidential, including records of County’s security measures, security plans, security codes and combinations, passwords, keys, and security procedures, to the extent that the records relate to ongoing security of County as well as records or information to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs relating to ongoing security measures, capabilities and plans for responding to violations of the Michigan Anti-terrorism Act, emergency response plans, risk planning documents, threat assessments and domestic preparedness strategies.

1.4. County means Oakland County, a Municipal and Constitutional Corporation, including, but not limited to, all of its departments, divisions, the County Board of Commissioners,
elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons’ successors.

1.5. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.

1.6. **Election Services** means the following individual Election Services provided by County’s Clerk’s Elections Division, if applicable:

1.6.1. **Absentee Ballot Counting** means processing, including, but not limited to, opening, tabulating and reporting absentee ballots and related results.

1.7. **Exhibits** mean the following descriptions of Election Services which are governed by this Agreement only if they are attached to this Agreement and incorporated in this Agreement under Section 2 or added at a later date by a formal amendment to this Agreement:

☐ Exhibit I: Absentee Ballot Counting Services

1.8 **Local Clerk** means the local elected or appointed Clerk for Public Body or their designee.

1.8. **Public Body** means the [City of Berkley] which is an entity created by state or local authority or which is primarily funded by or through state or local authority, including, but not limited to, its council, Board, departments, divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons’ successors. For purposes of this Agreement, Public Body includes any Michigan court, when acting in concert with its funding unit, to obtain Election Services.

1.9. **Public Body Employee** means any employees, officers, directors, members, managers, trustees, volunteers, attorneys, representatives of Public Body, licensees, concessionaires, contractors, subcontractors, independent contractors, agents, and/or any such persons’ successors or predecessors (whether such persons act or acted in their personal, representative or official capacities), and/or any persons acting by, through, under, or in concert with any of the above who use or have access to the Election Services provided under this Agreement. "Public Body Employee" shall also include any person who was a Public Body Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity.

1.10. **Points of Contact** mean the individuals designated by Public Body and identified to County to act as primary and secondary contacts for communication and other purposes as described herein.

2. **COUNTY RESPONSIBILITIES.**

2.1. County, through its County Clerk Elections Division, will provide the Election Services described in Exhibit I which is attached and incorporated into this Agreement. County is not obligated or required to provide any additional services that are not specified in this Agreement.

2.2. County, through its Board of Election Commissioners and authorized representatives, shall take the necessary and appropriate actions to comply with Section 764d(8) of the Act in the appointment of election inspectors to a County absent voter counting board and all other provisions under the Act governing such board.
2.3. County may access, use, and disclose transaction information and any content to comply with the law such as a subpoena, court order or Freedom of Information Act request. County shall first refer all such requests for information to Public Body’s Points of Contact for their response within the required time frame. County shall provide assistance for the response if requested by Public Body's Points of Contact, and if able to access the requested information. County shall not distribute Public Body’s data to other entities for reasons other than when it is required by law.

3. PUBLIC BODY RESPONSIBILITIES.

3.1. Public Body shall comply with all terms and conditions in this Agreement, including Exhibit I to this Agreement, and the Act.

3.2. Public Body shall deliver the Agreement executed by its authorized representative(s) to County within the time-frame set forth in Section 764d(5) of the Act and, upon County’s execution of the Agreement, the Agreement shall be deemed to be filed by Public Body with County in compliance with Section 764d(5) of the Act.

3.3. For each Election Service covered by an Exhibit to this Agreement, Public Body shall designate two representatives to act as a primary and secondary Points of Contact with County. The Points of Contact responsibilities shall include:

   3.3.1. Direct coordination and interaction with County staff.
   3.3.2. Communication with the general public when appropriate.

3.4. Public Body shall respond to and be responsible for Freedom of Information Act requests relating to Public Body’s records, data, or other information.

3.5. Third-party product or service providers may require County to pass through to Public Body certain terms and conditions contained in license agreements, service agreements, acceptable use policies and similar terms of service or usage, in order to provide Election Services to Public Body. Public Body agrees to comply with these terms and conditions. Public Body must follow the termination provisions of this Agreement if it determines that it cannot comply with any of the terms and conditions.

4. DURATION OF INTERLOCAL AGREEMENT.

4.1. This Agreement and any amendments shall be effective when executed by both Parties with resolutions passed by the governing bodies of each Party or other written notice evidencing such Party’s governing body’s approval, except as otherwise specified below. The approval and terms of this Agreement and any amendments, except as specified below, shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State. If Public Body is a court, a signature from the Chief Judge of the court shall evidence approval by Public Body, providing a resolution and minutes do not apply. If Public Body is the State of Michigan, approval and signature shall be as provided by law.

4.2. Notwithstanding Section 4.1, the Chairperson of the Oakland County Board of Commissioners is authorized to sign amendments to the Agreement to add Exhibits that were previously approved by the Board of Commissioners. An amendment signed by the Board Chairperson under this Section must be sent to the Elections Division in the County Clerk’s Office to be filed with the Agreement once it is signed by both Parties.

4.3. Unless extended by an amendment, this Agreement shall remain in effect until cancelled or terminated by any of the Parties pursuant to the terms of the Agreement.
5. **PAYMENTS.**

5.1. Election Services shall be provided to Public Body at the rates and for the charges specified in the Exhibits, if applicable.

5.2. If County is legally obligated for any reason, e.g. subpoena, court order, or Freedom of Information Request, to search for, identify, produce or testify regarding Public Body’s records, data, or information that is stored by County relating to Election Services that Public Body receives under this Agreement, then Public Body shall reimburse County for all reasonable costs County incurs in searching for, identifying, producing or testifying regarding such records, data, or information. County may waive this requirement in its sole discretion.

5.3. County shall provide Public Body with an invoice/explanation of County’s costs for Election Services provided herein and/or a statement describing any amounts owed to County. Public Body shall pay the full amount shown on any such invoice within sixty (60) calendar days after the date shown on any such invoice. Payment shall be sent along with a copy of the invoice to: Oakland County Treasurer – Cash Acctg, Bldg 12 E, 1200 N. Telegraph Road, Pontiac, MI 48341.

5.4. If Public Body, for any reason, fails to pay County any monies when and as due under this Agreement, Public Body agrees that unless expressly prohibited by law, County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other Public Body funds that are in County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by County shall be deemed a voluntary assignment of the amount by Public Body to County. Public Body waives any Claims against County or its Officials for any acts related specifically to County's offsetting or retaining of such amounts. This paragraph shall not limit Public Body's legal right to dispute whether the underlying amount retained by County was actually due and owing under this Agreement.

5.5. If County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay County any amounts due and owing County under this Agreement, County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid.

5.6. Nothing in this Section shall operate to limit County’s right to pursue or exercise any other legal rights or remedies under this Agreement or at law against Public Body to secure payment of amounts due to County under this Agreement. The remedies in this Section shall be available to County on an ongoing and successive basis if Public Body becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if County pursues any legal action in any court to secure its payment under this Agreement, Public Body agrees to pay all costs and expenses, including attorney fees and court costs, incurred by County in the collection of any amount owed by Public Body.

5.7. Either Party’s decision to terminate and/or cancel this Agreement, or any one or more of the individual Election Services identified herein, shall not relieve Public Body of any payment obligation for any Election Services rendered prior to the effective date of any termination or cancellation of this Agreement. The provisions of this Section shall survive the termination, cancellation, and/or expiration of this Agreement.
6. **ASSURANCES**

6.1. **Responsibility for Claims.** Each Party shall be responsible for any Claims made against that Party by a third party, and for the acts of its employees arising under or related to this Agreement.

6.2. **Responsibility for Attorney Fees and Costs.** Except as provided for in Section 5.6, in any Claim that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees.

6.3. **No Indemnification.** Except as otherwise provided for in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.

6.4. **Costs, Fines, and Fees for Noncompliance.** Public Body shall be solely responsible for all costs, fines and fees associated with any misuse of the Election Services and/or for noncompliance with this Agreement by Public Body Employees.

6.5. **Reservation of Rights.** This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.

6.6. **Authorization and Completion of Agreement.** The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.

6.7. **Compliance with Laws.** Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

7. **USE OF CONFIDENTIAL INFORMATION**

7.1. The Parties shall not reproduce, provide, disclose, or give access to Confidential Information to County or to a Public Body Employee not having a legitimate need to know the Confidential Information, or to any third-party. County and Public Body Employees shall only use the Confidential Information for performance of this Agreement. Notwithstanding the foregoing, the Parties may disclose the Confidential Information if required by law, statute, or other legal process provided that the Party required to disclose the information: (i) provides prompt written notice of the impending disclosure to the other Party, (ii) provides reasonable assistance in opposing or limiting the disclosure, and (iii) makes only such disclosure as is compelled or required. This Agreement imposes no obligation upon the Parties with respect to any Confidential Information when it can be established by legally sufficient evidence that the Confidential Information: (i) was in possession of or was known by prior to its receipt from the other Party, without any obligation to maintain its confidentiality; or (ii) was obtained from a third party having the right to disclose it, without an obligation to keep such information confidential.

7.2. Within five (5) business days after receiving a written request from the other Party, or upon termination of this Agreement, the receiving Party shall return or destroy all of the disclosing Party’s Confidential Information.

8. **DISCLAIMER OF WARRANTIES.**
8.1. THE ELECTION SERVICES, INCLUDING ANY GOODS, PARTS, SUPPLIES, EQUIPMENT, OR OTHER ITEMS THAT ARE PROVIDED TO PUBLIC BODY AS PART OF THE ELECTION SERVICES, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS "WITH ALL FAULTS."

8.2. COUNTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8.3. COUNTY MAKES NO WARRANTY THAT: (I) THE ELECTION SERVICES WILL MEET PUBLIC BODY’S REQUIREMENTS; OR (II) THE ELECTION SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

9. LIMITATION OF LIABILITY.

9.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AND/OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, REGARDLESS OF WHETHER THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF COUNTY UNDER THIS AGREEMENT (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY PUBLIC BODY TO COUNTY WITH RESPECT TO THE PARTICULAR ELECTION SERVICE GIVING RISE TO SUCH LIABILITY.

10. DISPUTE RESOLUTION. All disputes relating to the execution, interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties may first be submitted to County's Director of Elections and Public Body’s Agreement Administrator for possible resolution. County's Clerk and Public Body’s Agreement Administrator may promptly meet and confer in an effort to resolve such dispute. If they cannot resolve the dispute in five (5) business days, the dispute may be submitted to the signatories of this Agreement or their successors in office. The signatories of this Agreement may meet promptly and confer in an effort to resolve such dispute.

11. TERMINATION OR CANCELLATION OF AGREEMENT.

11.1. Either Party may terminate or cancel this entire Agreement or any one of the Election Services described in the attached Exhibit(s), upon eighty-four (84) days written notice, or such other notice period as otherwise required by the Act, to the clerk of the other Party if either Party decided, in its sole discretion, to terminate this Agreement or one of the Exhibit(s), for any reason including convenience. Each Party shall also comply with the requirements under the Act for filing the notice of termination, in which case, Public Body’s timely delivery of a notice of termination to County shall be deemed to comply with its filing requirement.

11.2. Early termination fees may apply to Public Body if provided for in the Exhibit(s).

11.3. The effective date of termination and/or cancellation shall be clearly stated in the written notice. Either the County Executive or the Board of Commissioners is authorized to terminate this Agreement for County under this provision. A termination of one or more of the Exhibits which does not constitute a termination of the entire Agreement may be accepted on behalf of County by its County Clerk.
12. **SUSPENSION OF SERVICES.** County, through its County Clerk, may immediately suspend Election Services for any of the following reasons: (i) requests by law enforcement or other governmental agencies; (ii) engagement by Public Body in fraudulent or illegal activities relating to the Election Services provided herein; (iii) breach of the terms and conditions of this Agreement; or (iv) unexpected technical or security issues. The right to suspend Election Services is in addition to the right to terminate or cancel this Agreement according to the provisions in Section 11. County shall not incur any penalty, expense or liability if Election Services are suspended under this Section.

13. **DELEGATION OR ASSIGNMENT.** Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.

14. **NO EMPLOYEE-EMPLOYER RELATIONSHIP.** Nothing in this Agreement shall be construed as creating an employee-employer relationship between County and Public Body. At all times and for all purposes under this Agreement, the Parties’ relationship to each other is that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants during the term of this Agreement. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Agreement.

15. **NO THIRD-PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right in favor of any other person or entity.

16. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

17. **SEVERABILITY.** If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.

18. **PRECEDENCE OF DOCUMENTS.** In the event of a conflict between the terms and conditions of any of the documents that comprise this Agreement, the terms in the Agreement shall prevail and take precedence over any allegedly conflicting terms and conditions in the Exhibits or other documents that comprise this Agreement.

19. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.

20. **FORCE MAJEUERE.** Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, national emergencies, insurrections, riots, wars, strikes, lockouts, work
stoppages, other labor difficulties, or any law, order, regulation, direction, action, or request of the United States government or of any other government. Reasonable notice shall be given to the affected Party of any such event.

21. **NOTICES.** Except as otherwise provided in the Exhibits, notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing first class or certified U.S. mail.

21.1. If Notice is sent to County, it shall be addressed and sent to: Oakland County Clerk, Election’s Division, 1200 N. Telegraph Road, Bldg. 16 East, Pontiac, MI 48341, and the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, Michigan 48341.

21.2. If Notice is sent to Public Body, it shall be addressed to: [3338 Coolidge Highway, Berkley, MI 48072].

21.3. Either Party may change the individual to whom Notice is sent and/or the mailing address by notifying the other Party in writing of the change.

22. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

23. **SURVIVAL OF TERMS.** The following terms and conditions shall survive and continue in full force beyond the termination, cancellation, or expiration of this Agreement (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Definitions (Section 1); Assurances (Section 6); Payments (Section 5); Use of Confidential Information (Section 7); Disclaimer of Warranties (Section 8); Limitation of Liability (Section 9); Dispute Resolution (Section 10); No Employee-Employer Relationship (Section 14); No Third-Party Beneficiaries (Section 15); No Implied Waiver (Section 16); Severability (Section 17); Precedence of Documents (Section 18); Force Majeure (Section 20); Governing Law/Consent to Jurisdiction and Venue (Section 22); Survival of Terms (Section 23); Entire Agreement (Section 24).

24. **ENTIRE AGREEMENT.**

24.1. This Agreement represents the entire agreement and understanding between the Parties regarding the specific Election Services described in the attached Exhibit(s). With regard to those Election Services, this Agreement supersedes all other oral or written agreements between the Parties.

24.2. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, [Victoria Mitchell, City Clerk] hereby acknowledges that she has been authorized by a resolution of the [City of Berkley City Council], a certified copy of which is attached, to execute this Agreement on behalf of Public Body and hereby accepts and binds Public Body to the terms and conditions of this Agreement.
EXECUTED: ____________________  DATE: ________________
[Victoria Mitchell, Clerk, City of Berkley]

WITNESSED: ____________________  DATE: ________________
[Gina Harold, Deputy Clerk, City of Berkley]

AGREEMENT
ADMINISTRATOR: ____________________  DATE: ________________
(IF APPLICABLE)

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of
Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland
County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on
behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of
this Agreement.

EXECUTED: ____________________  DATE: ________________
David T. Woodward, Chairperson
Oakland County Board of Commissioners

WITNESSED: ____________________  DATE: ________________
[insert name, title]

IN WITNESS WHEREOF, Lisa Brown, in her official capacity as the Oakland County Clerk, a
Michigan Constitutional Office, hereby concurs and accepts the terms and conditions of this
Agreement.

EXECUTED: ____________________  DATE: ________________
Lisa Brown, Clerk/Register of Deeds,
County of Oakland

WITNESSED: ____________________  DATE: ________________
EXHIBIT I

ABSENT VOTER BALLOT COUNTING SERVICES

1. COUNTY RESPONSIBILITIES.

1.1. County, through its Board of Election Commissioners, shall, subject to Public Body’s performance of its duties and obligations under this Agreement and the Act, render absent voter ballot counting services in compliance with the Act for absent voter ballots received by the clerk for Public Body prior to 4:00 p.m. on the day before an election. For clarification, County is not providing Election Services for absent voter ballots received by the clerk for Public Body after 4:00 p.m. on the day before an election; pursuant to Section 764d(10) of the Act, Public Body must deliver such ballots to the voting precinct of the elector on election day to be processed and counted.

1.2. Unless otherwise agreed upon in writing by the Parties, County shall cause absent voter ballots, including, the ballot return envelopes, secrecy sleeves, and ballots (collectively the “Ballots”), received by the clerk for Public Body prior to 4:00 p.m. on the day before an election to be picked up from the clerk by 6:00 p.m. that day by an authorized representative of County.

1.3. Upon completing the process for counting the ballots, County shall place the ballots in ballot containers either provided by Public Body that comply with the requirements described below or provided by County, as determined in County’s sole discretion, and seal the ballot containers in compliance with all applicable laws. County shall notify Public Body of its decision to require Public Body to provide ballot containers or to provide ballot containers at least sixty (60) days prior to each election for which County is providing Election Services to Public Body under this Agreement.

1.4. County shall retain the sealed ballot containers containing the Ballots for thirty (30) days after the day of the election for which the Ballots were submitted. County shall make arrangements with Public Body for an authorized representative(s) of Public Body to, after the expiration of the thirty (30) day period, pick-up from County the Ballots, mail trails, ballot envelopes, ballot boxes provided by Public Body, qualified voter list, and any other items related to the Ballots transferred by Public Body to County.

2. PUBLIC BODY RESPONSIBILITIES.

2.1. Public Body shall perform its duties and obligations under this Agreement and the Act and take any other action necessary or appropriate to assist, and cooperate with, County in rendering the absent voter ballot counting services under this Agreement.

2.2. Public Body shall, by 4:30 on the day before an election, have available for transfer to County immediately upon arrival of County’s representative, the Ballots received by the clerk for Public Body prior to 4:00 p.m. on that day properly organized in mailing trays, ballot containers, unless provided by County pursuant to this Agreement, in good condition and compliant with the required and appropriate sealing procedures, and a reconciled voter list from the qualified voter file that matches the number of Ballot envelopes received by County.

2.3. Public Body shall, during any period County is actively rendering Election Services, provide to County access to Public Body’s electronic qualified voter file for the sole purpose of County reconciling such list with the number of Ballot envelopes received by County and to make any necessary corrections to the list to reflect the number of Ballot envelopes received.
2.4. Public Body shall make arrangements with County to, no later than three (3) business days after the expiration of the thirty (30) day period described in Section 1.4, cause authorized representative(s) in number necessary to pick-up from County premises the Ballots, mail trays, ballot envelopes, ballot boxes provided by Public Body, qualified voter lists, and any other items related to the Ballots transferred by Public Body to County. At such time and on County premises, if County provided ballot boxes to seal the Ballots in providing the Election Services, Public Body shall bring ballot boxes for its authorized representatives to transfer into the Ballots from the County provided ballot boxes. If Public Body does not pick-up such items as required in this Section, at County’s election exercised in its sole discretion, Public Body shall, within thirty (30) days of receiving an invoice from County, pay to County $100 for each day beyond the three (3) period set forth above that County remains in possession of such items and/or County may have its authorized representatives deliver such items to Public Body on such date and at such time during Public Body’s clerk’s regularly scheduled office hours County determines, in which case Public Body shall deemed to have accepted possession of all such items.

2.5. Upon the earlier to occur of the expiration of the three (3) period set forth in Section 2.4 and the transfer of items to Public Body under Sections 1.4 and 2.5, above, Public Body shall be deemed to be responsible for all such items.

3. **PAYMENT; EXPENSES AND FEES.**

3.1. Except as otherwise provided in Section 5 of this Agreement, until such time as County notifies Public Body otherwise, County shall provide the Election Services to Public Body for each election at no cost to Public Body.

3.2. At such time County determines it will require the payment of a fee and/or reimbursement for costs and expenses by Public Body for County’s Election Services for an upcoming election(s), County shall provide written notice to Public Body in advance of such election(s) with sufficient time for Public Body to terminate this Agreement in accordance with its terms setting forth in detail such fees, costs, and expenses and Public Body shall pay such amounts in accordance with the terms of this Agreement for Election Services rendered by County.
A RESOLUTION
OF THE CITY COUNCIL OF THE CITY OF BERKLEY, MICHIGAN
TO EXPAND VOTING AND REGISTRATION ACCESS BEYOND THE MINIMUM
REQUIRED BY THE MICHIGAN CONSTITUTION FOR EVEN-YEAR NOVEMBER
GENERAL ELECTIONS

Whereas, the City of Berkley is committed to ballot access for all its citizens;

Whereas, extended voting hours and locations for voter registration and use of absentee ballots can increase access, particularly for new Berkley voters and people unable to accomplish these tasks during ordinary business hours;

Whereas, voter education about expanded hours, office location, and access lead to optimal voter participation; and

Whereas, Article II, Sections 4 (f) and (g) of the Michigan Constitution establish the following rights: 1) Absentee balloting for all voters who choose to vote in that manner; 2) Voter registration any time before and during election day; 3) Voting immediately upon registration; and 4) Availability of at least eight hours during the Saturday or Sunday prior to an election during which time citizens may register and/or vote;

RESOLVED, that for even-year, November general elections, the City Clerk will develop a plan to expand voting and registration access beyond the minimum required by the Michigan Constitution and include the cost of this plan in the budget request for the Office of the City Clerk;

RESOLVED, that the City Clerk’s office and satellite location, where applicable, should be open for in-person registration and absentee voting for a minimum of 16 open-office service hours beyond both ordinary business hours and the constitutionally mandated eight-hour weekend requirement.

RESOLVED, the City Clerk’s office will staff at least one satellite clerk location for the equivalent of at least (1) one day in a location reasonably believed to increase voter accessibility.

RESOLVED, the City Clerk’s office will create a plan to broadly publicize the expanded hours.

Introduced and passed at a Regular City Council Meeting on Monday July 6, 2020.

________________________________________
Daniel J. Terbrack, Mayor

Attest:

______________________________
Victoria Mitchell, City Clerk