CALL 38th COUNCIL TO ORDER
APPROVAL OF AGENDA
INVOCATION – PASTOR ADAM GROH
PLEDGE OF ALLEGIANCE
PUBLIC COMMENT
ORDER OF BUSINESS

Consent Agenda

1. APPROVAL OF THE MINUTES: Matter of approving the minutes of the 38th City Council and Special Joint meetings on Monday, December 16, 2019.


Regular Agenda

1. RECOGNITIONS/PRESENTATIONS: Matter of any recognitions or presentations from the Consent Agenda.

2. PRESENTATION: Matter of receiving a presentation by Community Engagement Officer Torri Mathes regarding reallocating IT funds to purchase new video playback hardware and cloud/streaming service.

3. MOTION NO. M-02-20: Matter of amending the City of Berkley’s Fee Schedule to increase the credit card payment fee from 2.75% to 3%.

4. MOTION NO. M-03-20: Matter of approving the Intergovernmental Agreement between the City of Berkley and the City of Huntington Woods for Shared Resources and Services.

5. MOTION NO. M-04-20: Matter of awarding the Sewer Maintenance Services Contract to LiquiForce/Granite Inliner located at 28529 Goddard Road, Romulus, Michigan for a five (5) year term. Funding of $350,000 has been allocated in the Fiscal 2019-2020 Budget under Account #592-940-974-000.

6. RESOLUTION NO. R-01-20: Matter of approving a resolution of the Council of the City of Berkley, Michigan approving the Marihuana Business License Application Evaluation Point System to be utilized in evaluating Marihuana Business License applications.

7. MOTION NO. M-05-20: Matter of approving Special Land Use request (SU-02-19) at 2485 Coolidge Highway for outdoor dining at the proposed restaurant to be located at the northwest corner of Coolidge Highway and Sunnyknoll Avenue.

8. RESOLUTION NO. R-02-20: Matter of approving a resolution of the Council of the City of Berkley, Michigan correcting the charges for Non-Residential Surcharge to certain commercial water and sewer customers, effective with the January 2020 billing.

9. ORDINANCE NO. O-01-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to Add New Article III, Snow Emergencies, to Chapter 38, Civil Emergencies, of the City of Berkley Code of Ordinances to Establish Snow Emergency Procedures and Parking Prohibition.

10. ORDINANCE NO. O-02-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to Add New Article V, Small Cell Wireless Facilities, to Chapter 118, Telecommunications, of the City of Berkley Code of Ordinances to Provide for the Regulation of Small Cell Wireless Infrastructure and the Activities of Wireless Infrastructure Providers and Wireless Services
Providers Regarding the Placement and Siting of Wireless Facilities, Support Structures, and Utility Pole Attachments.

11. ORDINANCE NO. O-03-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to adopt Section 2-41 of Article II of Chapter 2, Officers and Employees, of the City of Berkley Code of Ordinances to Establish Standards of Conduct for City Officials, Officers and Employees.

12. ORDINANCE NO. O-04-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to Repeal and Replace Section 2-40 of Article II of Chapter 2, Officers and Employees, of the City of Berkley Code of Ordinances to Adopt a New Code of Ethics for City Officers, Officials and Employees.

13. ORDINANCE NO. O-05-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to add Division 1, Attendance and Training, to Article V of Chapter 2, Administration, of the City of Berkley Code of Ordinances, and to Amend City Code Sections 2-273, 66-21, 86-36, and 90-20 to Adopt Minimum Attendance and Training Requirements and to modify removal from office procedures for Appointed Boards and Commissions.


15. MOTION NO. M-07-20: Matter of consideration of approving a proposed Consent Judgement to settle and resolve pending litigation, namely, 27799 Woodward LLC v City of Berkley, Oakland County Circuit Court Case No. 2017-159355-CZ.

COMMUNICATIONS

ADJOURN

Note: The City of Berkley will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, 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).

Note: Official minutes of City Council Meetings and supporting documents for Council packets are available for public review in the City Clerk’s Office during normal working hours.
THE THIRD REGULAR MEETING OF THE THIRTY-EIGHTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, DECEMBER 16, 2019 BY MAYOR PRO TEM DEAN

PRESENT: Steve Baker Jack Blanchard
Dennis Hennen Bridget Dean
Eileen Steadman Ross Gavin
Daniel Terbrack (arrived at 7:29 p.m.)

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

INVOCATION Pastor Zack Dunlap

CITIZENS COMMENTS
No one was present who wished to speak

Consent Agenda
Councilmember Blanchard moved to approve the following Consent Agenda, seconded by Councilmember Hennen

APPROVAL OF THE MINUTES: Matter of approving the minutes of the 38th City Council meeting on Monday, December 2, 2019.

WARRANT: Matter of approving Warrant No. 1345

ORDINANCE NO. O-14-19: Matter of considering the Second Reading and Adoption of a Zoning Ordinance of the City Council of the City of Berkley, Michigan to Amend Sections 138-363, 138-387, 138-417, 138-427, 138-442, 138-457, 138-472, 138-487 and Add New Section 138-528 to Chapter 138 Zoning, to Establish Zoning Requirements for Marihuana Businesses. (Full copy of this ordinance is posted for 10 days at the Berkley City Hall, Library, and Community Center.)

RESOLUTION R-42-19: Matter of adopting a resolution honoring the 60th Anniversary of the founding of Berkley/Huntington Woods Youth Assistance.
Ayes: Gavin, Hennen, Price, Baker, Blanchard, and Dean
Nays: None
Absent: Terbrack
Motion Approved.

Regular Agenda

RECOGNITIONS/PRESENTATIONS: Matter of any recognitions or presentations from the Consent Agenda.

Councilmember Blanchard read Resolution R-42-19 in its entirety. Berkley/Huntington Woods Youth Assistance Board Chair Pete Kelly was in attendance to accept the resolution along with five of the
Mr. Kelly said he has seen some of the group’s crucial interventions that have made a difference. He stated it chokes him up to this day when he recalls one intervention he was personally involved with. Mr. Kelly stated the group is hosting a hat and mitten drive. He stated there is a drop box at the library. He thanked the Council for the recognition. He said the endeavor is a great partnership with Huntington Woods.

Mayor Pro Tem Dean said she is truly grateful for all of the work Berkley/Huntington Woods Youth Assistance does. She acknowledged Betty Smith, who has been involved with the group since 1972. She stated the community is fortunate and grateful for the worthwhile work.

Mr. Kelly Accepted the resolution.

**OATH OF OFFICE**: Oath of Office to newly appointed Public Safety Officer Brianna Berge.

City Clerk Victoria Mitchell administered the Oath of Office to City of Berkley Public Safety Officer Brianna Berge.

Public Safety Director Matt Koehn welcomed officer Berge. He stated she was formerly in the military. He welcomed her. Director Koehn stated Officer Berge will be going to the fire academy in February.

Officer Berge thanked the City for this opportunity.

Mayor Pro Tem Dean said there is an incredible showing of those in the military on the public safety department and welcomed officer Berge.

**MOTION NO. M-96-19**: Matter of approving the appointments to various Boards and Commissions.
Councilmember Price moved to approve Motion No. M-96-19
Seconded by Councilmember Baker
Ayes: Hennen, Price, Baker, Blanchard, Gavin, and Dean
Nays: None
Absent: Terbrack
Motion Approved.

**MOTION NO. M-97-19**: Matter of approving the appointments to the Master Plan Steering Committee.
Councilmember Gavin moved to approve Motion No. M-97-19
Seconded by Councilmember Baker
Ayes: Price, Baker, Blanchard, Gavin, Hennen, and Dean
Nays: None
Absent: Terbrack
Motion Approved.

**ORDINANCE NO. O-15-19**: Matter of considering the Second Reading and Adoption of an Ordinance of the City Council of the City of Berkley, Michigan to Add New Article XV, Marihuana Businesses, to Chapter 30, Businesses, of the City of Berkley Code of Ordinances to Adopt Local Licensing Regulations and Operational Standards for Marihuana Businesses. (Full copy of this ordinance is posted for 10 days at the Berkley City Hall, Library, and Community Center.)
Councilmember Blanchard moved to approve Ordinance No. O-15-19
Seconded by Councilmember Price
Ayes: Baker, Blanchard, Dean, Gavin, Price, and Terbrack
Nays: Hennen
Motion Approved.

**DISCUSSION**: Matter of discussing a draft system for scoring applications for Marihuana Business Licenses in Berkley.
Mayor Terbrack stated this is a discussion item and that no formal action would be taken this evening. He stated Council seeks feedback. Mayor Terbrack stated actual decision making would take place in January. He stated he wants to hear feedback on the MERIT system, no peoples' business plans.

City Manager Matthew Baumgarten said Assistant to the City Manager Daniel Hill will be providing the presentation.

Mr. Hill said the MERIT point system has been on the City’s website for prior review. He explained under the system, a person receives a given point or does not and no partial points would be given. He stated no duplicate points would be given.

Mr. Hill acknowledged the point system was devised with advanced difficulty in achieving 100% of the possible points.

Mr. Hill went over the basic requirements of the MERIT Point System including detail into each point category. The presentation is available on the City’s website.

Mayor Terbrack asked for feedback from the Council.

Councilmember Price said her overarching feedback relates to the term, “stakeholders.” She said she values the criteria value on stakeholders, disclosing, owner-occupied, etc. … She wants to know if others share the thought that they should bump up the point values of that criteria higher than some of the location-related point categories. Councilmember Price said instead of “stakeholders,” the State uses “applicant.” She described the terms the State uses. She discussed the State’s definition of “applicant.”

City Attorney John Staran said he had a good discussion with Ms. Price that day regarding this point. Mr. Staran said the use of “stakeholder” is an umbrella term. He described the concern with the State’s definition of “applicant” including they don’t want to eliminate anyone who creates a new entity. Mr. Staran stated he thinks they could work on the verbiage or possibly add a definition or two. Councilmember Price said they are on the same page. She said they want a defined, non-limiting term.

Councilmember Hennen said he thought they should deprioritize the stakeholder-related point values. He explained his rationale, including the stakeholder could leave the business. He further explained his position.

Councilmember Blanchard spoke regarding the eco-friendly 12-point category. He said they should keep the 12 points, but change some terms used for the details that add up to the 12 points. He said he would like to add green roofs, etc. He went into further detail on what he would like to equal the 12 points. Mayor Terbrack said he does not know if they can encompass all green terms and ideas in this point description. Councilmember Hennen voiced concern regarding the mentioned rain barrels. Councilmember Gavin agreed.

Councilmember Baker asked about Councilmember Hennen’s point of a possible switcheroo of the applicant vs. owner. Mr. Baumgarten said there is value to address this in the site plan approval process. Mr. Staran said there are some aspects of the process that they won’t be able to control or shouldn’t control. Mr. Staran continued to address this point. He said if there are changes of a magnitude to cause concern, which could trigger a review or careful evaluation at the site plan level with the City. Mr. Staran stated aspects of physical development will be baked into the site plan and changes would trigger a site plan amendment.

Councilmember Baker asked about the points in regards to the all-or-nothing approach described in the introduction. He asked about the sub numbers on two of the categories. Mr. Baumgarten discussed the sub scoring approach. He said they are trying to be very specific. Councilmember Baker said the all-or-nothing theme should be adjusted if subpoints would be awarded. He further discussed viewpoints on other point values assigned to specific categories. He discussed what optics is portrayed by the last item on the list.
Councilmember Hennen said he echoes Councilmember Baker’s thoughts on the last two points. He stated he would like to capture some commercial properties that are deeper than others. Councilmember Hennen discussed the notion of some sort of distance requirement. Mr. Staran said he agrees that maybe the City could capture that variable using depth or distance in lieu of abutting property.

Mayor Terbrack said the best part of a discussion is that they can work on the matter. He said he would like to see the last bullet point increased in points, but he disagrees with his colleagues on the other point. He said there are very few opportunities to spur development in other areas of the City than the downtown. Mayor Terbrack said he has never gone into the marijuana discussion thinking it would be some type of windfall. He said knowing that reality, he would like to use this as a development tool to help others areas of the City that are struggling. He said he would like some of these points to significantly change the landscape. Mayor Terbrack said he does not want to haggle over a few points, but does not want it to fall to the bottom. He said he is just one person. He reiterated that they all agree that these proposed businesses not abutting residential property should be worth more points.

Mayor Terbrack asked about point 24. He went into further detail on this point. He discussed the possible implications of someone with a potential marijuana businesses expecting a windfall, not primarily caring about the second business. He asked how they would attack that second use, as he sees it as the applicant’s side hustle and marijuana would be their main priority. Mr. Staran said he is not sure of legal ramifications. He said they struggled with this internally, especially regarding the point the mayor is raising. Mr. Staran said they don’t want a shell or sham of another business. He said they are looking to Council for feedback on this. He thought some ideas could be a minimum square footage requirement, minimum sales requirement, etc.

Mayor Pro Tem Dean said as a business owner in Berkley, it isn’t always easy. She said she knows what it takes to run a business and what point 24 essentially does is ask someone to open two businesses. She said she gets the point, but they have to be careful of what they are asking someone to do.

Mayor Terbrack opened the floor as he doesn’t see this as a long discussion, but rather the beginning of the conversation.

Dan Haberman spoke before Council. He said he felt Councilmember Price brought up a good point of owner occupied vs. owner operated. He said he thinks both are important. Mr. Haberman said in regard to non-DDA locations, he understands the City wants to increase the outside boundaries of Berkley. He urges that this could be an opportunity to reinvigorate the DDA district. He said it could be a help at a time when really good businesses have left or are leaving. He discussed design standards and said he is for some emphasis there.

Dan Amori spoke before Council. He asked about the 12 point category. He said he feels there are about 10 companies that could be eligible. He said there are about 30 other states that have licensing. He said he feels the City should open up to those licensed by other states. He said that could bring in talent. He thinks it is a great idea to have points for experience, but open up to other state’s experience.

Chris Klamkin spoke before Council. He said the actual facts are that crimes go down in dispensaries and property values go up. He said there are ways to look at it as a huge benefit to the community. He spoke about this in relation to abutting versus depth. He also discussed that there could be some stakeholders that don’t want their status with cannabis known. He echoed bringing in out-of-state licensees. He said it is his opinion that people from Michigan might not have as much experience as experienced folks from out of state.

Mayor Terbrack said he hopes Mr. Baumgarten and Mr. Hill have somewhat of an idea of the changes to make. He asked for further feedback from Council.

Councilmember Price reiterated her stance of prioritizing stakeholders.
Councilmember Hennen reiterated his positions. He added it is hard to rank the categories in a particular order. He said if point scores started at 50 or 100, the point scores differential becomes less. Mr. Hennen said that would take away some of the large disparity from top to bottom.

Mayor Terbrack said he doesn’t think they are going too far. He agrees they have to spend some time thinking about how to fix that secondary business requirement.

Terbrack thanked everyone for their input.

COMMUNICATIONS:

COUNCILMAN BLANCHARD: discussed that the Christmas season is one of the worst seasons for fires. He wants everyone to be careful. He urges everyone to keep their Christmas trees watered. He asks that no one puts Christmas trees by a fire. He also asks that everyone is careful with candles. He urges everyone to use common sense for a safe holiday season.

COUNCILMAN PRICE: stated she attended the Citizens Engagement Advisory Committee. She said members reviewed the communications plan. She thanked Torri Mathes for the thoroughness of the plan. Councilmember Price said the Committee hopes to compliment the master plan process. She said the committee recommended appointing Eileen Steadman as a new member. She said the next meeting is Jan. 9th. Councilmember Price said library board meets Wednesday, December 18th. She said upcoming programs include Hiking Ecuador on January 9th; Getting Started with Your Genealogy Research on January 23rd, and Aaron Jonah Lewis: Fiddle and Banjo Genius on January 28th. She said the holiday lights parade was absolutely wonderful and it was a magical evening.

COUNCILMEMBER BAKER: stated the Historical Commission meets in January. He said they did a lot of work leading up to the Holiday Lights Parade. He said he noticed a lot of folks going into the museum before, during, and after the event. He said the museum is open 10 a.m.-1 p.m. Wednesdays and 2-4 p.m. Sundays. Councilmember Baker said the Technology Advisory Committee (TAC) meets Wednesday January 18th. He said they are working with the historical committee regarding technology needs. He provided a quick cyber tip for the holiday season. He explained there is way to set your credit cards to notify you when a charge has been incurred on your account. He said that is an immediate way to fight fraud. Councilmember Baker said the Downtown Development Authority (DDA) met on December 11th. He said members continue to prepare to report the DDA executive opening. He said everyone involved with the DDA thanks everyone who participated in Merry Month events. For more details on upcoming events, visit Downtownberkley.com. Councilmember Baker closed with a quote from Charlie Brown. “It is not what’s under the Christmas tree that matters, it’s who is around it.” He asked all to spread the holiday thoughts to those around us.

MAYOR PRO TEM DEAN: congratulated officer Briana Berge again on joining the Berkley Public Safety Department. She said she was thinking about the Berkley motto, “We Care.” Mayor Pro Tem Dean said if you know someone who is alone, go visit. If someone is food insecure, take a meal. She said that we are the gifts to each other. Mayor Pro Tem Dean said Open Door talks with her will begin 6 p.m. Tuesday, Jan. 21st at the Library. She invites everyone to come who would like to have a conversation. She stated Parks & Recreation tickets are now on sale for upcoming dances. She stated the mother-son dance is January 25th and the daddy-daughter dance is January 18th. She said limited space is available for winter vacation camp. She urges anyone interested in these upcoming events to call the Parks & Recreation Department for more information. Mayor Pro Tem Dean thanked Cinda Coon and the committee along with Lisa Kempner and her group for a fabulous Holiday Lights Parade. She Wishes everyone a happy holiday season and all the best in the coming year.
COUNCILMEMBER HENNEN: stated the Zoning Board of Appeals denied a request for a screened porch that would have encroached in a side-yard setback and parking variances for a trailer-mounted MRI machine at the Family Video location during its last meeting.

COUNCILMEMBER GAVIN: stated the Planning Commission meets tomorrow, December 17th. He said the Environmental Advisory Committee and the Coolidge Task Force resume meetings in January. Councilmember Gavin said he echoes the previous comments regarding the success of the Holiday Lights Parade event. He said there are many blessing to be thankful for. He wishes everyone happy holidays.

CITY MANAGER BAUMGARTEN: announced the Coolidge update meeting open to the public takes place 6:30 p.m. December 19th in the public safety conference room. The next day, the Berkley Public Library and City Hall will be closed for ALICE training. He said it is a very important skill set to have. Mr. Baumgarten said his family also had a great time at the Holiday Lights Parade and he thanked all volunteers. He gave a plug for Moonbeams for Sweat Dreams at Beaumont Hospital. He said it is very heartwarming. Mr. Baumgarten said it is great to be surrounded by those doing well, but tear producing to see the kids shine their lights back. He wished everyone happy, joyous holidays.

CITY ATTORNEY STARAN: pointed out another community with a banner addressing Councilmember Blanchard’s point to keep your Christmas tree watered. He wishes everyone happy holidays and a happy new year.

MAYOR TERBRACK: thanked Mayor Pro Tem Dean for sitting in for him during the beginning of the meeting. He said it is his 8-year-old daughter’s birthday today. He gave a shout out to his mother, reminding her of the upcoming mother-son dance. He echoed the earlier sentiments that the Holiday Lights Parade event is such an enjoyable experience. Mayor Terbrack said it reiterates the fact to his children that he knows Santa. He thanked Cinda Coon and Lisa Kempner for their dedication to the event every year. He said Cinda is a true warrior. He said this year she tripped and had a little fall, but it didn’t even stop her. He said she just made sure everything went off as it should. He thanked all involved again and wished everyone in the community a happy holiday season.

ADJOURNMENT:

Mayor Pro Tem Dean moved to adjourn the Regular Meeting at 8:49 p.m.
Seconded by Councilmember Baker
Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.
Community Development Director Erin Schlutow introduced the kickoff for the City of Berkley Plan to Plan Master Plan Kickoff meeting.

Ms. Schlutow introduced Carlisle Wortman & Associates, the planning firm moderating the meeting.

Ben Carlisle, Carlisle Wortman principal, discussed his background with Berkley and the great opportunity. He introduced his team present to help facilitate the workshop.

Mr. Carlisle explained developing a master plan is a process. He stated it is an opportunity to bring the community together. He stated community input is key for buy-in to the plan.

Mr. Carlisle said he doesn’t want anything in the plan that can’t be achieved, that didn’t come from the community, nor that he couldn’t explain to the community.

Mr. Carlisle explained the three phases of the master plan process:

1. What is vision
2. Site Plan and Drafting
3. Final Plan and Adoption

Mr. Carlisle stated there are stopping points along the way of each phase. He stated this is a 12-14 month process and tonight is the first step.

Mr. Carlisle went through the background of the Berkley community. He discussed population trends throughout the decades. He discussed age cohorts. He discussed projections from 2020 through 2045.

Mr. Carlisle went over groups of people in the community. “No place like home” is the largest group. He stated the largest group coming in is “Status Seeking Singles” second cohort is “Fast Track Couples.”

Mr. Carlisle introduced a rough draft of existing land use plan. He stated 90 percent is single-family residential. He stated where we will focus on is the edges and how do we develop commercial areas without disrupting residents.

Mr. Carlisle stated the goal at the end of this meeting is to define the “Whats.” He discussed the three-what method. He said what is important to your community is first what.
Ms. Megan Masson-Minock, Carlisle Wortman planner, reviewed the next portion of the presentation. Ms. Masson-Minock stated they looked at previous City of Berkley planning initiatives throughout the past.

Ms. Masson-Minock recapped statements that came out of these findings and went over each statement asking if these statements still stand today. This was an all-inclusive process including members of the audience that included members of the Planning Commission, Master Plan Steering Committee, City officials and residents.

Ms. Masson-Minock next reviewed the Parks & Recreation Plan from 2016. She went over statements that came out of that plan. She asked what needs to be in the plan for the completed 2021 master plan update. She received input from City Council and attendees. Input included a future community center, study of what the Parks & Recreation has and what gaps exists, a possible dog park, etc. Storm water management was also discussed.

Ms. Masson-Minock then looked at the Transportation Plan from 2012. She stated it was a very wide-sweeping plan. She stated what came through to them is that multimodal is already built in. She asked if this should this be a primary part of the master plan, i.e. bikes, buses, roads, etc. She asked if this a core value of the masterplan.

Members of the Planning Commission and City Council provided input on public transportation and being a part of the Woodward Avenue Corridor.

Ms. Masson-Minock went over the Residential Plan from 2017. She stated information regarding this topic came from different plans. She stated multifamily and different types of housing are like a third rail. She asked how in-depth should housing opportunities be discussed.

Discussion on this matter continued. Topics of conversation included aging in place, affordable housing options, senior housing, maintaining the feel of the City, etc.

Mr. Carlisle said housing is the most difficult aspect to plan for. He said he has run into every single issue in differing communities. He said this is something they are prepared to discuss.

The issue of people buying existing homes, tearing them down and rebuilding larger homes, was also discussed along with the future of the Our Lady of La Salette property.

The issue of affordability and what that means was discussed.

Ms. Masson-Minock said the key is to define what affordability is here and what that means. She thinks the key is that in the plan and process, it is important to discuss what polices should be put in place and consequences.

Mr. Carlisle said the master plan is hard. He said this is a hard one because you are talking about affordable, housing options, etc. He said this may be the one issue that may cause some friction. He said ultimately it will be the community’s decision.

Ms. Masson-Minock said they looked at the 2007 Master Plan and it was very different. She said it didn’t have goals and objectives. She said eventually they will want to know the stories behind the proposed catalytic projects – the projects that were listed out. She said the real question is what do people like and dislike about the current master plan.

The discussion on this aspect of the process continued.

Ms. Masson-Minock showed the master plan right now. She said they will want to know what has changed. She said for one thing, the economy is drastically different now, desires change too. She recapped some of the things that she has heard. She discussed the Woodward Avenue corridor. She
discussed taking all of these previous planning efforts and combining them into an easily combinable manner.

Ms. Masson-Minock then initiated a “Brainwiriting” exercise where she asked everyone from City Council and Planning Commission to brainstorm one important idea impacting the City. She stated she wants to know what the “Whats” are and said it could be anything.

Mr. Carlisle summarized the ideas that were presented. Topics included:

1. Housing – 11 votes
2. Parking – 13 votes
3. Energy Plan – 8 votes
4. Zoning & Development – 9 votes
5. Roads & Infrastructure & Multi-modal – 10 votes
6. Trees and Vegetation – Greening of Streets – 8 votes
7. Mixed Use – corridors, mixed use, development – 10 votes
8. Parks and recreation space – community center and pocket parks and downtown community area – 12 votes
9. Maintaining Community Character – 11 votes
10. Community Center – 11 votes
11. One offs: Recycling Center, Clear actionable implementation style, offer childcare for town hall sessions, etc.

Ms. Masson-Minock asked members of public if there was anything else that needs to be in the plan. Ideas included parking overflow from businesses into residential streets and creating downtown plazas to encourage downtown visitors to linger rather than shop and leave.

Ms. Masson-Minock asked participants to continue communicating with Ms. Schlutow regarding a survey of scope of work. She discussed online surveys for the interested public. She said to think about if you want that to be statistically valid or online. Mr. Carlisle said they would work with the Steering Committee regarding the survey. The discussion on surveys continued.

Ms. Masson-Minock concluded the meeting by asking all attendees to share one takeaway from their time together. She reiterated that Ms. Schlutow would be the point of contact moving forward. She stated she looks forward to working with the Master Plan Steering Committee.

Mr. Carlisle thanked everyone for coming and said this is one of the most positive groups he has worked with. He said most communities focus on the negatives during this stage, but this group pointed out the positives in the community.

The meeting concluded at 6:30 p.m.
January 6, 2020 City Council Meeting

Moved by Councilmember ________________ and seconded by Councilmember ________________ to accept the Berkley Public Library's annual report for FY 2018-19.

Ayes:

Nays:

Motion:
Total Circulation 157,256
Included in total:
- Downloads 19,625
- Music CDs 5,087
- DVDs 18,304
- Books on CD 6,048

16,108 public computer sessions
843 library cards issued
6,368 Berkley cardholders

2,230 likes on the library’s Facebook page
Library staff responded to 12,710 requests from the public
11 press releases → 65 library articles in local media
111,901 visits to the library

Library Collection
- Books 59,188
- Audiobooks 3,156
- DVDs / BluRays 7,512
- Downloadable audiobooks 13,038
- e-Books 48,274
- Downloadable videos 761
- Hoopla content 685,000
- Downloadable magazines 341
- Music CDs 2,735
- Newspapers 11
- Periodicals 100

236 programs were attended by 5,959 people
17,191 items borrowed from other shared system libraries
16,660 items loaned to other shared system libraries

Donations, Grants & Gifts Received
- Community Foundation of Southeast Michigan $ 5,436
- Friends of the Library $ 10,082
- State Aid $ 13,070
- Michigan Humanities Council $ 140
- Vibe Credit Union donation $ 1,086
- Telecommunications (USF) grant $ 1,892
- Memorial/gift books $ 3,936
- Included in Memorial/gift books:
  - Giving Tree donations $ 1,930

46,029 items borrowed at Berkley by consortium cardholders
19,471 items borrowed by Berkley cardholders at consortium libraries
January 6, 2020 City Council Meeting

Moved by Councilmember __________________________ and seconded by Councilmember __________________________ to amend the City of Berkley’s Fee Schedule to increase the credit card payment fee from 2.75% to 3%.

Ayes:
Nays:
Motion:
MEMORANDUM

TO: Matt Baumgarten, City Manager & Mark Pollock, Finance Director
FROM: Matt Church, Library Director
DATE: December 26, 2019
RE: Fee schedule change

For more than two years, the library has been accepting credit cards as a form of payment through Square. We have been pleased with Square’s service and rates. Square recently modified the rates that it charges its customers for credit card processing. It was previously a flat 2.75% that we then passed onto the customer. Square now charges 2.65% plus 10 cents per transactions. Overall, this change is a negative for us since it is no longer a flat fee and will cost us slightly more to accept credit card payments.

After tracking the impact of the change and reviewing with Mark Pollock, Finance Director, we decided it would be best to slightly increase the fee we charge our patrons to a flat 3%. This will bring in a little additional revenue to offset the new charge by Square and will also be easier to communicate to patrons.

Suggested motion:
Moved by Councilmember________________________ and seconded by
Councilmember________________________ to amend the City of Berkley’s Fee Schedule to increase the credit card payment fee from 2.75% to 3%.

Please let me know if I can answer any questions or provide you with additional information.
January 6, 2020 City Council Meeting

Moved by Councilmember ________________________ and seconded by Councilmember ________________________ to approve the Intergovernmental Agreement between the City of Berkley and the City of Huntington Woods for Shared Resources and Services.

Ayes:

Nays:

Motion:
CITY OF BERKLEY
TRANSMITTAL MEMO

Date: December 27, 2019

To: Matthew Baumgarten, City Manager

From: Derrick Schueller, Public Works Director

Subject: Intergovernmental Agreement between City of Berkley & City of Huntington Woods
Shared Resources & Services

In the interest of fiscal responsibility, the City of Berkley and the City of Huntington Woods desire to continue
an agreement for shared resources and services. As you know, this collaboration effort was initially formalized
in 2013 and the current agreement expires in December 2019. Please note a similar arrangement exists between
the City of Berkley and the Berkley School District.

Please find attached an updated agreement for your approval and Council consideration. The term has been
extended from two (2) years to three (3) years and Huntington Woods has also requested that fuel be removed
from the appendix. Huntington Woods recently purchased a small fuel tank and will no longer need to purchase
unleaded gasoline from Berkley.

While the agreement allows for a variety of collaboration efforts and resources, the primary component will be
rock salt for winter maintenance. The City of Berkley provides this commodity to Huntington Woods via the
Public Works facility located at 3238 Bacon Avenue. The Finance Department in turn invoices Huntington
Woods regularly according to current wholesale pricing.

The documents have been reviewed and approved by our City Attorney and also by Huntington Woods staff.
The appendix has also been updated to reflect current wholesale charges and labor/equipment rental rates.

Feel free to contact our department with any questions or concerns.

Attachment
DLS
J:\Huntington Woods\Collaboration for Fuel and Salt\2020\Council\Memo HW IGA 12-27-19.doc
INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is hereby entered into this ___ day of January, 2020 by and between the CITY OF BERKLEY ("Berkley") a Michigan municipal corporation, whose address is 3338 Coolidge Highway, Berkley, Michigan, 48072, and the CITY OF HUNTINGTON WOODS ("Huntington Woods"), a Michigan municipal corporation, whose address is 26815 Scotia, Huntington Woods, Michigan, 48070 (each a "Party" and collectively, "the Parties").

RECITALS

WHEREAS, Berkley and Huntington Woods desire to provide for shared services and resources between the Parties in order to carry out their respective fiscal responsibilities and functions in a more cost-effective manner; and

WHEREAS, pursuant to the Urban Cooperation Act of 1967, MCL 124.501 et seq., and the Intergovernmental Contracts between Municipal Corporations Act, 1951 PA 35, MCL 124.1, et seq., each Party to this Agreement may enter into this Agreement in order to establish the terms and conditions upon which they cooperatively perform and carry out services and functions they each may perform separately; and

WHEREAS, in accordance with the above-stated desires and interests, Berkley and Huntington Woods desire to enter into this Agreement whereby resources in the form of materials and equipment of their respective departments may be shared.

NOW THEREFORE, in consideration of the mutual promises, obligations, representations and assurances in this Agreement, the Parties agree as follows:

1. Providing of Materials

   A. Mutual Providing of Materials

      a. The Parties agree to make available to each other certain materials of their respective departments.

      b. Requests for such materials shall be documented by and between the Parties’ respective directors and/or their designees.

      c. These materials include, but are not limited to, rock salt.

   B. Subject to Availability

   The providing of materials under this Agreement shall be strictly subject to the availability as determined by the sole and uncontrolled discretion of the providing Party. The responsibility of each Party to provide materials within its own jurisdiction shall remain the first priority.

   C. Material Compensation
a. The requesting Party shall pay to the providing Party in an amount consistent with the Appendix A attached hereto.
b. Price per Ton may change on a monthly basis based on the current price paid by the providing Party.
c. All purchases for supplies, materials and equipment provided pursuant to this Agreement shall be in accordance with all applicable laws, rules and regulations.
d. The providing Party shall invoice the requesting Party for the providing of such materials on a monthly basis. Invoices shall itemize all charges. Disputes regarding amounts contained in any invoice will be communicated to the providing Party, in writing, within fifteen (15) business days of the receipt of the disputed invoice. Payments of disputed amounts will be delayed unless the providing Party is able to resolve the matter to the non-providing Party’s satisfaction prior to payment due date. The non-providing Party will not be assessed any late payment penalties, fines or charges for disputed amounts not timely paid due to the providing Party’s failure to timely resolve the matter as set forth above.

2. Providing of Equipment

A. Equipment Compensation

a. The requesting Party shall pay to the providing Party compensation in the amount of the normal hourly rental rate as established by the Michigan Department of Transportation for each piece of equipment requested and for the number of hours each piece of equipment is allocated to the requesting Party (MDOT Equipment Rental Rates Schedule C, Report 375).
b. The providing Party shall invoice the requesting Party for the providing of such equipment on a monthly basis. Invoices shall itemize all charges. Disputes regarding amounts contained in any invoice will be communicated to the non-providing Party, in writing, within fifteen (15) business days of the receipt of the disputed invoice. Payments of disputed amounts will be delayed unless the providing Party is able to resolve the matter to the non-providing Party’s satisfaction prior to payment due date. The non-providing Party will not be assessed any late payment penalties, fines or charges for disputed amounts not timely paid due to the providing Party’s failure to timely resolve the matter as set forth above.

B. Maintenance

Each respective Party shall be responsible for the maintenance of its own equipment; provided, however, that in the event such equipment is damaged while in the exclusive control of the requesting Party, the requesting Party shall be responsible for the full repair and/or replacement costs of the equipment, to the extent not covered by any applicable insurance of the providing Party.
C. **Insurance**

The owner of the equipment listed shall maintain what insurance relevant to theft, vandalism, and if it is moving equipment, general liability and vehicle liability.

3. **Additional Services**

The Parties agree that they may expand the scope of this Agreement upon the mutual written agreement of both Parties. Any mutually agreed upon expansion of the supplies, material, equipment or services shall be set forth in a written amendment to this Agreement, executed by both Parties, and shall take effect as of the effective date of the written amendment.

4. **Relationship of the Parties**

The relationship between Berkley and Huntington Woods shall be that of independent contracting parties. Nothing in this Agreement shall create an employment relationship between Berkley employees utilized by Huntington Woods or Huntington Woods’s employees utilized by Berkley. Nothing in this Agreement shall be construed to create a joint venture between Berkley and Huntington Woods. This Agreement shall not be construed as authority for any Party to act for another Party in any agency or other capacity or to make commitments of any kind for the account of, or on behalf of, another Party. It is expressly agreed that neither Berkley nor Huntington Woods are entitled to participate in any plans, arrangements, or distributions pertaining to or in connection with any fringe, pension, bonus, profit sharing, or similar benefits, or any medical, dental, life or disability insurance plans of the other Party.

5. **Workers Compensation, Insurance, and Benefits**

A. **Workers Compensation**

The Parties shall maintain workers’ compensation insurance and employer’s liability insurance on their respective employees. As between the Parties, the Parties shall be responsible for workers’ compensation coverage for their respective employees regardless of whether employees’ workers’ compensation claims may arise while work is performed within a requesting Party’s jurisdiction or the providing Party’s own jurisdiction.

B. **Insurance and Benefits**

The Parties shall maintain other insurance and benefits, if any, with regard to their own respective employees.
6. Liability and Governmental Immunity

A. Liability

1. Each Party shall be responsible for its own acts or omissions. Notwithstanding the foregoing, 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 each Party and shall not be construed to waive the defense of governmental immunity held by any Party to this Agreement.

B. There are no third-party beneficiaries to this Agreement.

7. Applicable Law

A. Applicable Law

This Agreement shall be governed by the laws of the State of Michigan.

8. Term and Termination

A. Term

This Agreement shall continue for a term of three (3) years from the date of the last signature hereto. The Parties may, by subsequent written agreement(s), renew this Agreement for one or more additional three (3) year terms. A copy of this Agreement shall be filed with the Oakland County Clerk and with the Secretary of State in accordance with MCL 124.510(4).

B. Termination

This Agreement is terminable by either Party upon providing not less than thirty (30) days’ written notice to the other Party.

9. Miscellaneous

A. This Agreement shall be construed as having been drafted by both Parties.

B. This Agreement contains the entirety of the Parties’ understanding as to the subject matter of this Agreement are merged and integrated into this Agreement.

C. This Agreement may not be modified except by a mutual, duly-authorized, written agreement.
D. If any provision of this Agreement is deemed invalid or unenforceable as a matter of law, the remaining portions shall not be affected and shall be enforceable to the fullest extent of the law.

E. Notices and communications to Huntington Woods shall be provided to its City Manager or his/her designee. All notices and communications to Berkley shall be provided to its City Manager or his/her designee.

F. Each Party hereby authorizes its respective Director and/or their designee to request and to provide equipment and/or personnel as set forth in this Agreement and to receive notices hereunder at their respective business addresses.

G. Both Parties represent that their respective signatories below have been fully authorized by their respective legislative bodies to sign this Agreement and thereby bind their respective cities hereto.

The City of Huntington Woods and the City of Berkley, by the signatures of their respective authorized representatives below, do consent to be bound by the terms of this Agreement, as set forth herein.

THE CITY OF HUNTINGTON WOODS

By: ______________________________
Its: ______________________________
Date: ____________________________

THE CITY OF BERKLEY

By: ______________________________
Its: ______________________________
Date: ____________________________
# ROCK SALT

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Subtotal $181.65
3% Administrative Fee $5.45

**Total Cost per Scoop of Salt Received** $187.10

*Based Upon Current MDOT Equipment Rental Rates Schedule C, Report 375
^Includes Handling of the Bulk Loads from MITN Awarded Contractor
January 6, 2020 City Council Meeting

Moved by Councilmember ____________________________ and seconded by Councilmember ____________________________ to award the Sewer Maintenance Services Contract to LiquiForce/Granite Inliner located at 28529 Goddard Road, Romulus, Michigan for a five (5) year term. Funding of $350,000 has been allocated in the Fiscal 2019-2020 Budget under Account #592-940-974-000.

Ayes:

Nays:

Motion:
CITY OF BERKLEY
TRANSMITTAL MEMO

Date: January 2, 2020
To: Matthew Baumgarten, City Manager
Cc: Mark Pollock, Finance Director
From: Derrick Schueller, Public Works Director
Subject: Sewer Maintenance Services Contract Recommendation for Award-LiquiForce/Granite Inliner

As you know, the City of Berkley has a long and proud history with structural lining of existing sewer pipes. For over 25 years the City has annually lined public sewers to maintain structural integrity and extend the service life of the underground assets. This proactive approach to pipe rehabilitation has only gained popularity over the last few years as demand for this trenchless technology has increased.

The City of Berkley lining contract for Sewer Maintenance Services did expire in 2019. Given the last public bid was several years ago, recent bids were reviewed on the MITN/BidNet network. It was noted the City of Dearborn Heights recently went out to bid for sewer lining services using a Qualifications Based Selection (QBS) process. The Dearborn Heights bid specification, and the QBS process, is very similar to the last Berkley public bid in 2013. As opposed to spending engineering services for the creation of a nearly identical bid package, it makes sense to simply follow the Dearborn Heights competitive solicitation and contractor award.

Dearborn Heights received and reviewed a total of three (3) public bids. Proposals were evaluated by four (4) staff members based on local presence, references, ability to perform, product qualification, warranty, price and value added. The review committee assigned scores to each of the categories noted above to identify the most qualified contractor. Based on the overall highest score, Dearborn Heights selected LiquiForce/Granite Inliner as the contractor for as-needed Sewer Maintenance Services.

We also spoke and consulted with our professional engineers, Hubbell, Roth & Clark, Inc. (HRC). HRC also reviewed the bid package and noted the Dearborn Heights documents were acceptable and the unit pricing consistent with industry standards (see attached memo).

We recommend award of the Sewer Maintenance Services Contract to LiquiForce/Granite Inliner of Romulus, Michigan for a five (5) year term. Note unit pricing will be held firm during the five (5) year term.

Please find attached the appropriate award documentation including the Dearborn Heights Recommendation and Scoring Summary, Bid Bond, Proposal, Legal Status of Bidder, References and Proof of Insurance.

Funds have traditionally been allocated each year for structural sewer lining with $350,000 in place for Fiscal Year 2019-2020 under Water and Sewer Account # 592-940-974-000.

Feel free to contact our office with any questions or concerns.

Attachments
DLS
J:\Sewer\Relining Program\2019-2020\Council\Sewer Maintenance Services LiquiForce Granite Trans Memo 1-2-20.doc
December 30, 2019

City of Berkley
3238 Bacon
Berkley, Michigan 48072

Attn: Mr. Matthew Baumgarten, City Manager
Mr. Derrick Schueller, Director of Public Works

Re: Recommendation for Contract Award
Sewer Maintenance Services Contract
City of Berkley, MI

HRC Job No. 20181280

Dear Mr. Schueller and Mr. Baumgarten:

HRC understands that it is the intent of the City to enter into a Sewer Maintenance Services Contract with LiquiForce/Granite Inliners of Romulus, Michigan in January, 2020, for a five (5) year period. This Sewer Maintenance contract is part of a citywide proactive program to manage and maintain the City’s aging combine sewer infrastructure and extend the useful life of said system. LiquiForce will utilize the industry standard maintenance practice of Cured In Place Pipe (CIPP) sewer pipe rehabilitation.

At the request of Mr. Schueller, HRC has reviewed the July 17, 2019 City of Dearborn Heights Sewer Infrastructure Maintenance Qualifications Based Selection (QBS) contract specifications and bid results. By utilizing Dearborn Heights’ recent QBS bid process the City of Berkley has been saved the time expense of completing a nearly identical bidding process internally. HRC offers the following comments with regards to the Dearborn Heights Bid Package:
1. The Dearborn Heights Bid Package is complete and acceptable to HRC.
2. The as-bid unit pricing is comparable to industry standards.

The City’s intent to enter into a contract with LiquiForce/Granite is based on Dearborn Heights July 17, 2019 bid results; their local presence and ability to meet the needs of the City; the City of Berkley’s recent experiences with LiquiForce/Granite; their ability to perform the required sewer rehabilitation work; their professionalism in dealing with the residents; and their overall management and technical competence.

In addition, LiquiForce/Granite has agreed to hold their unit prices for all items in the 2020 Contract for the next five (5) year contract period. The City should also require that LiquiForce/Granite warranty their work for a period of one (1) year as identified in Dearborn Heights’ Bid Package.

This contract is intended to support the City’s continuing efforts to maintain the long-term structural integrity and extend the life of the existing combined sewer system.

Recommendation

Based on the recent Dearborn Heights Bid Results, their previous satisfactory performance and professional workmanship with the City of Berkley, HRC is in agreement and feels that it is in the best interest of the City to have the proposed 2020 Sewer Maintenance Services Contract be awarded to LiquiForce/Granite InLiners.
If you have any questions or require any additional information, please contact the undersigned.

Very truly yours,

HUBBELL, ROTH & CLARK, INC.

[Signature]

Roland N. Alix, P.E.
Vice President

pc: HRC; E. Zmich, File
December 10, 2019

City of Berkley
3238 Bacon
Berkley, MI 48072

Attn: Mr. Derrick Schueller
Re: Offer to Honor Agreement

We would like to take this opportunity to thank you and the City staff. It has been a pleasure to work with such a professional, highly organized and friendly group over the past several years. As a result of our positive experiences we purpose to honor the terms and conditions of the competitively bid and recently awarded Agreement with the City of Dearborn Heights, MI for Sewer Infrastructure Maintenance and Rehabilitation Services. This As Needed Agreement would provide the City the ability to address their rehabilitation needs for a period of five (5) years with the option of extending the Agreement two (2) additional years. Our offer includes maintaining the original unit prices listed (which are attached) for the full duration of the Agreement. We will continue to offer the same level of professionalism and high quality products / services we have delivered to the City of Berkley in the past.

We hope this offer is acceptable to you and the City and look forward to continuing to work together.

If you have any questions please feel free to contact me directly.

Sincerely,

John Thompson
Technical Representative
To: Honorable City Council

From: John Selmi, Public Works Director

Date: August 5, 2019

Re: Recommendation of Award for Sewer Infrastructure Maintenance Agreement

The City of Dearborn Heights, as part of a comprehensive and proactive program to control and manage its aging sewer infrastructure and to more efficiently maintain and extend the useful life of the system solicited bid proposals from qualified contractors to perform maintenance and rehabilitation services utilizing Cured In Place Pipe (CIPP) method. Bids were received on July 17, 2019 from the following contractors:

- LiquiForce/Granite Inliner from Romulus Michigan
- Inland Waters Pollution Control from Detroit Michigan
- Lanzo Trenchless Technologies from Roseville, Michigan

As defined in the bid documents, bids were evaluated using the Qualifications Based Selection (QBS) process. Bids were evaluated using the following criteria: Local Presence, References, Ability to Perform, Product Qualification, Warranty, Price and Value Added. The results of the scoring from the four evaluators were averaged and compared to identify the most qualified contractor. Through this process, LiquiForce/Granite Inliner had the highest score of the three contractors. A copy of the scoring evaluation is enclosed.

Based on the information provided in the bid packages and Qualifications Based Selection process the Department of Public Works recommends the contract for Sewer Infrastructure Maintenance be awarded to LiquiForce/Granite Inliner from Romulus Michigan and authorizes the Mayor and Clerk to sign the enclosed Agreement for Sewer Infrastructure Maintenance Services.

Enclosed for your reference is a copy of the bid tab for this program. If you have any questions regarding this approval, please contact my office.
John Selmi
Public Works Director

Daniel S. Paletko
Mayor

Sincerely,

John Selmi
Director of Public Works
## SEWER INFRASTRUCTURE MAINTENANCE
### EVALUATOR A SCORING MATRIX

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<thead>
<tr>
<th>Scoring Criteria</th>
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<th>LiquiForce Granite</th>
<th>Inland Waters Pollution Control</th>
<th>Lanzo Trenchless Technologies</th>
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## SEWER INFRASTRUCTURE MAINTENANCE
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## SEWER INFRASTRUCTURE MAINTENANCE
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## SEWER INFRASTRUCTURE MAINTENANCE
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Average of 4 Evaluators

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BID BOND

We, the undersigned, LiquiForce Services (USA) Inc. DBA Granite Inliner

As Principal, hereinafter called the Principal, and Travelers Casualty and Surety Company of America

A corporation duly organized under the laws of the State of Connecticut

As surety, hereinafter called the SURETY, are held and firmly bound unto:

The Owner: The City of Berkley, 3338 Coolidge Hwy., Berkley, MI 48072 (A Michigan Municipal Corporation

in the sum of Fifteen Thousand Dollars ($ 15,000.00),

For the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Sewer Maintenance Services

NOW, THEREFORE, if the OWNER shall accept the bid of the Principal and the Principal shall enter into a contract with the OWNER in accordance with the terms of such bid, and give such bond or bonds as may be specified in the CONTRACT DOCUMENTS with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the OWNER the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the OWNER may in good faith contract with another party to perform the work covered by said bid, then the obligation of the Principal shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 16th day of December, 2019

LiquiForce Services Inc. DBA Granite Inliner

(Principal) /S/ (Seal)

(Vice President)

(Surety) Travelers Casualty and Surety Company of America

(Title) Isabel Barron, Attorney-In-Fact

(Witness)

(Witness)
ACKNOWLEDGMENT

State of California
County of Santa Cruz

On December 16, 2019 before me, Maria Gomez, Notary Public
(insert name and title of the officer)

personally appeared Isabel Barron,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Maria Gomez, Notary Public

(Seal)
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Isabel Barron of WATSONVILLE, California, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.

State of Connecticut

City of Hartford ss.

By: Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021

Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her, and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary, and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this December 16, 2019

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-500-421-3880. Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.
PROPOSAL FOR
SEWER MAINTENANCE SERVICES
CITY OF BERKLEY
OAKLAND COUNTY, MICHIGAN

City of Berkley
3358 Coolidge Highway
Berkley, Michigan 48072

To Prospective Bidders:

Name of Bidder: LiquiForce/Granite Inliner

Address: 28529 Goddard Road, Suite 106, Romulus, Michigan 48174

Date: ___________ Telephone: 734-955-2508 Fax: 734-955-2504

The above, as Bidder, hereby declares this bid is made in good faith without fraud or collusion with any persons bidding, and that the Drawings, Specifications, and all other information referenced in the Contract Documents have been examined. Further, the Bidder is familiar with the location of the work described herein and is fully informed as to the nature of the work and the conditions relating to the performance of the Contract.

The Bidder acknowledges that no representations or warranties of any nature whatsoever have been received, or are relied upon from the City of Berkley, its agents or employees, as to any conditions to be encountered in accomplishing the work and that the bid is based solely upon the Bidder’s own independent judgment.

The above, as Bidder, hereby certifies that the Drawings, Specifications, and other data provided for bidding purposes have been examined. Further, the undersigned certifies that the proposed construction methods have been reviewed and found acceptable for the conditions which can be anticipated from the information provided for bidding.

The Bidder hereby affirms that the site of work has been inspected and further declares that no charges in addition to the Individual Unit Prices shall be made on account of any job circumstances or field conditions which were present and/or ascertainable prior to the bidding. In addition, The Contractor, as such and as Bidder, shall make the determination as to existing soil conditions and shall also complete the work under whatever conditions created by the Contractor/Bidder’s sequence of construction, construction methods, or other conditions the Contractor/Bidder may create, at no additional cost to the Owner.

The above, as Bidder, confirms knowledge of the location of the proposed Sewer Maintenance Services and appurtenant construction in the City of Berkley, Oakland County, Michigan, and the conditions under which it must be constructed; and also declares to have carefully examined the Drawings, Specifications, and Contract Documents which the Bidder understands and accepts as sufficient for the purpose of constructing said Sewer Maintenance Services and appurtenant work, and agrees to contract with the City of Berkley to furnish all labor, materials, tools, equipment, facilities and supervision necessary to do all the work specified and prescribed for the City of Berkley, in strict accordance with the Owner’s General Conditions, and with the full intent of the Drawings and Specifications and will accept in full payment therefore the sum of:
*****INSERT FULL UNIT PRICING HERE FROM DEARBORN HEIGHTS BID*****

OWNERS RIGHTS
The Owner reserves the right to add or delete quantities from the Contract and adjustments will be subject to the availability of funds at the time of bid letting. Deletion of quantities shall not be grounds for the low qualified bidder to adjust unit prices for the project that the Owner intends to execute as a Contract, nor shall the Contractor be entitled to compensation from unrealized profits resulting from the deletion of quantities.

The Owner reserves the right to award any combination of bid line items, depending upon the availability of funds.

The Owner, at its sole discretion, reserves the right to award to the Bidder who, in the sole determination of the Owner, will best serve the interest of the Owner. The Owner reserves the right to accept any bid, to reject any or all bids, to waive any and all informalities involving price, time, or changes in the work, and to negotiate contract terms with the successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional bids. However, it is the intention of the Owner to award to the low total bid to one bidder. Also, the Owner reserves the right to reject the bid of any Bidder if the Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the bid is not responsive or the Bidder is unqualified, of doubtful financial ability, or fails to meet any other pertinent standard or criteria established by the Owner.

Each bidder agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any bid.

Each Proposal must be accompanied by a bid deposit in the form of a certified check, cashier's check or bid bond, executed by the bidder and Surety Company, payable to the City of Berkley in the amount of $15,000.00.

**TAXES**

The Bidder affirms that all applicable Federal, State and Local taxes of whatever character and description are included in all prices stated in this Form of Proposal.

**ADDENDA**

The Bidder acknowledges the following Addenda, covering revisions to the drawings or specifications and the cost, if any, of such revision has been included in the quoted proposal:

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**CONSTRUCTION BONDS & INSURANCE**

The Bidder hereby agrees to furnish the required Bonds, Insurance Certificates, and Policies within fifteen (15) days after acceptance of this Proposal.

**BIDS TO REMAIN FIRM**
The price stated in this Proposal shall be guaranteed for a period of not less than sixty (60) days from the bid due date and if authorized to proceed within that period, the bidder agrees to complete the work covered by the Proposal at said price.

If this Proposal is accepted by the Owner and the undersigned shall fail to contract as aforesaid and to furnish the required surety bonds within fifteen (15) days after being notified of the acceptance of their bid, then the undersigned shall be considered to have abandoned the contract, and the Certified Check, Cashier’s Check or Bid Bond accompanying this Proposal shall be forfeited to the City of Berkley.

If the undersigned enters into the contract in accordance with their proposal, or if their proposal is not accepted, then the accompanying bid guarantee shall be returned to the undersigned.

Company Name: LIQUIFORCE/GRANITE INLINER
Signature: [Signature]
Title: Vice President
Address: 28529 Goddard Road, Suite 106, Romulus
County: Wayne
State: Michigan
Telephone No.: 734-955-2508
Fax No.: 734-955-2504
Email Address: John.Thompson@gcinc.com
LEGAL STATUS OF BIDDER

This Bid is submittal in the name of:

(Print) LIQUIFORCE/GRANITE INLINER

The undersigned hereby designates below the business address to which all notices, directions or other communications may be served or mailed:

Street 28529 Goddard Road, Suite 106

City Romulus

State Michigan Zip Code 48174

The undersigned hereby declares the legal status checked below:

( ) INDIVIDUAL

( ) INDIVIDUAL DOING BUSINESS UNDER AN ASSUMED NAME

( ) CO-PARTNERSHIP
   The Assumed Name of the Co-Partnership is registered in the County of __________ , Michigan

(X) CORPORATION INCORPORATED UNDER THE LAWS OF THE STATE OF __________
   Michigan __________, The Corporation is

( ) LICENSED TO DO BUSINESS IN MICHIGAN

( ) NOT NOW LICENSED TO DO BUSINESS IN MICHIGAN

The name, titles, and home addresses of all persons who are officers or partners in the organization are as follows:

A corporation duly organized and doing business under the laws of the State of ______________________

NAME AND TITLE HOME ADDRESS

Please See Attached ________________________________ ________________________________

______________________________ ________________________________

______________________________ ________________________________

Signed and Sealed this __16th____ day of December, 2019

By (Signature) ____________________

Max Gowdy Printed Name of Signer

Vice President Title
Manhole to Manhole CIPP

Completed Projects

City of Livonia, MI
Section 34 Sanitary Sewer Rehabilitation
16,000ft of 12" thru 36" CIPP completed Dec 2018
Project Total - $1,100,000.00
Contact - Mr. Don Rohraff, Director of Public Works
Phone - 734 466-2607

City of Southfield, MI
Annual Sanitary Sewer Rehabilitation
Project Total - $4,000,300.00
Contact - Mr. Larry Sirfs, Public Works Manager
Phone - 248 796-4860

City of Bay City, MI
Annual As Needed Sewer Rehabilitation Services
Completed over 45,500ft of 8" thru 48" CIPP between 2017 thru present
Project Total - $2,100,000.00
Contact - Mr. Terry Kiburn, Sewer Superintendent
Phone - (989) 891-1202

Charter Township of Waterford, MI
Annual As Needed Sanitary Sewer Rehabilitation
39,500ft of CIPP of 8" thru 15" completed between 2002 and present
Project Total - $4,000,000.00
Contact - Mr. Russ Williams
Phone - (248) 618-7482

Genesee County Water & Waste Services, MI
2016 Sanitary Sewer Manhole to Manhole Lining Project
Completed 13,000ft of 18" thru 30". 11,000ft of 30" completed April 2018
Project Total - $2,825,000.00
Contact - Mr. Davidek, Assistant Director
Phone - 810 732-7870

City of Flint, MI
2018 Sanitary Sewer Rehabilitation Program
40,100ft of 8" thru 30" CIPP completed in Sept 2018
Project Total - $1,995,000.00
Contact - Mr. Rob Bincsik, Director of Public Works
Phone - 810 766-7202

Additional Project information can be provided upon request.
# Certificate of Liability Insurance

**Certificate Number:** 57231170  
**Revision Number:**

**Produc**r LIC #4026061  
Allian Insurance Services, Inc.  
100 Pines Street, 11th Floor  
San Francisco, CA 94111  
INSURED: Liqui-Force Services (USA), Inc.  
889 West Beach Street  
Watsonville, CA 95076  

**Contact:**  
Name: Kimberly Leikam  
Phone: 415-403-1491  
Fax: 415-874-4818  
Email: klasikam@alliant.com  

**Insurer(s) Affording Coverage:**  
INSLER A: VALLEY FORGE INS CO  
INSLER B: TRANSPORTATION INS CO  
INSLER C:  
INSLER D:  
INSLER E:  

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<td>OCCUR</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>EXCESS LIABILITY</td>
<td>CLAIMS-MADE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Workers Compensation and Employers' Liability:**

- A: ANY PROPRIETOR, PARTNER, EXECUTIVE OFFICER/MEMBER EXCLUDED? N/A
- B: Mandatory in NH
- C: Filing required under DESCRIPTION OF OPERATIONS below

**Description of Operations / Locations / Vehicles (ACORD 101, Additional Remarks Schedule, may be attached if more space is required):**

All operations of the Named Insured, City of Berkeley and Hubbel Roth & Clark, Inc. are included as Additional Insureds as respects General Liability as their interests may appear as required by written contract.

**GL per ISO Form CQ0001 10/01:**

**Certificate Holder:**

City of Berkeley  
3238 Bacon  
Berkeley, MI 48072  
USA

**Cancellation:**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**Authorized Representative:**

[Signature]

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A RESOLUTION

of the Council of the City of Berkley, Michigan

approving the Marihuana Business License Application Evaluation Point System
to be utilized in evaluating
Marihuana Business License applications

WHEREAS, At the December 16, 2019 City Council meeting, Ordinances O-14-19 and O-15-19 were adopted, creating the regulatory framework to allow for the location and licensing of marihuana businesses in the City of Berkley; and

WHEREAS, said ordinances provide that the City of Berkley shall use a point-based system which shall be approved by the City Council to evaluate applications for marihuana licenses; and

WHEREAS, The use of a point system is intended to facilitate and provide for the efficient, objective and fair evaluation of license applications, to be conducted by City staff; and

NOW, THEREFORE, THE CITY OF BERKLEY RESOLVES:

The Berkley City Council hereby approves the attached Marihuana Business License Application Evaluation Point System to be used in the evaluation of Marihuana Business License applications.

Introduced and passed at a regular City Council meeting on Monday, January 6, 2020.

__________________________________________
Daniel J. Terbrack, Mayor

Attest:

___________________________
Victoria E. Mitchell, City Clerk
Memo

To: Mayor Terbrack and City Council
From: Matthew Baumgarten, City Manager
Date: January 6, 2020
Subject: Marihuana Business License Evaluation Merit Point System

Mr. Mayor and Members of City Council,

Following the approval of the marihuana regulatory framework ordinances at the December 16, 2019 Regular City Council Meeting, the administration has been hard at work finalizing at further developing the point system criteria that will be utilized to evaluate the Marihuana Business License applications. In this most recent iteration of the point system we utilized the feedback received from City Council during the initial discussion in December, and the significant changes are outlined within this memo. Overall the items included in the point system remain the same, however there are items that have received updated verbiage or changed in their total point value.

The first notable change was to the criteria which granted 24-points to developments that brought about an addition non-marihuana business, this item has been revised to reflect its original intent. The goal of this criteria is to encourage growth in our business community by providing multi-use developments; in its rewording we wanted to ensure that it did not insinuate that a marihuana business owner would need to operate more than one business simultaneously.

In the previous version of the system there were 23-points allocated for locating in areas that we essentially outside of the DDA district, at the direction of City Council we have moved this item down to 19-points so that it was not as large of a criterion but still provides encouragement for developing in those areas.

We have slightly increased the priority of what was previously, “Property will be owner occupied,” and have revised the verbiage to allow for organizations such as LLCs to both own the property and operate the marihuana business.

The criterion that incentivizes distance from residential property has been revised to incentivize both property that does not abut residential neighbors, but also the alternative of the proposed structure being 65-feet away from the nearest residential property. This distance was determined because the average lot in the R-1D district, which is the smallest lot area size, is on average 120-feet, thus making this distance at least half of a neighboring lot.

For the green infrastructure in stormwater management we incorporated the suggested infrastructure techniques and revalued the sub scores to give more incentive to those that embark on the larger, pricier improvements.
Our prior criterion that incentivized marihuana business experience has also been divided into sub scores where those who have Michigan experience will receive part of the score, those with experience from other jurisdictions such as states with legal marihuana, will receive the other part of the sub score. This also allows for applicants with managing stakeholders that have a year of experience in Michigan and a year of experience in other areas the opportunity to satisfy both sub scores; by incorporating these sub scores we are hoping to incentivize applicants that are knowledgeable and experienced in this new business market.

Other than those significant alterations we have added definitions for the key terms to prevent false interpretation and to clearly define what we are seeking in the applications. Finally, the term “all-or-nothing” has been removed and replaced with explanation that criterion met will equate to the entire assigned point values or sub scores.

We look forward to engaging in this conversation and solidifying the evaluation criteria that will lead our process in granting marihuana business licenses in the coming months.

Thank you,

Matthew Baumgarten
City Manager
Marihuana Business License Application Evaluation  
Merit Point System  

Key Terms Defined:  

Common Control:  
For purposes of these criteria, under common control means having the power to direct or cause the direction of management, operations, and policies of a person, organization, or entity, whether by stock ownership, voting rights, contract, or otherwise.

Stakeholder / Managing Stakeholder:  
For purposes of these criteria, stakeholder means a managerial employee and any person holding a direct or indirect ownership interest of more than 10% of the Applicant. Managing stakeholder refers to any stakeholder involved in managing the business or making management decisions.

Redevelopment:  
For purposes of these criteria, redevelopment means any proposed expansion, addition, or major facade change to an existing building, structure, or parking facility. Site redevelopment includes equal or greater stormwater control than the previous development.

<table>
<thead>
<tr>
<th>Requirements*</th>
<th>Pass/Fail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application submitted has all required materials</td>
<td>P/F</td>
</tr>
<tr>
<td>Subject Parcel falls outside of designated proximity to a school</td>
<td>P/F</td>
</tr>
<tr>
<td>Cannabis business complies with Existing Zoning</td>
<td>P/F</td>
</tr>
<tr>
<td>Off-street parking requirements for retail use has been met, per Section 138-219 of the Zoning Ordinance.</td>
<td>P/F</td>
</tr>
<tr>
<td>Odor control system preventing dispersion in neighborhood</td>
<td>P/F</td>
</tr>
<tr>
<td>All stakeholders are clear of recorded detrimental acts to public good</td>
<td>P/F</td>
</tr>
</tbody>
</table>

*These items must all be satisfied to be considered for the point evaluation.
<table>
<thead>
<tr>
<th>Merit Based Criteria</th>
<th>Point Value**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Proposes the Redevelopment of Vacant or Underused building or property. (Defined as a structure or property that has been at least 50% vacant for a period of 4 months or longer)</td>
<td>25</td>
</tr>
<tr>
<td>Proposed redevelopment is comprised of a multi-tenant building or buildings, on the same or contiguous parcels. Separate tenant spaces within a single building must have separate means of public ingress/egress from the exterior or from a common lobby area.</td>
<td>24</td>
</tr>
<tr>
<td>Managing Stakeholders can demonstrate a history of lawfully operating a business compliant with applicable federal, state, and local regulations.</td>
<td>23</td>
</tr>
<tr>
<td>Proposed development does not displace existing operational business in Berkley</td>
<td>22</td>
</tr>
<tr>
<td>The marihuana business and property are under common ownership or control</td>
<td>21</td>
</tr>
<tr>
<td>Proposed development demonstrates and provides physical improvements to the area around the property or other areas contiguous to the property: - Trees; noninvasive species (Sub score: 5) - Public art; e.g. murals, sculptures, installations as approved by appropriate body (Sub score: 5) - Green Space (Sub score: 5) - Public areas such as alleyways, parking areas, sidewalks, plazas, etc. (Sub score: 5)</td>
<td>20 (Total dependent on satisfaction of sub scoring)</td>
</tr>
<tr>
<td>Proposed Site is located in the following areas, as permitted by the Zoning Ordinance: Eleven Mile Road, Woodward Ave, Twelve Mile Road (Coolidge to Woodward)</td>
<td>19</td>
</tr>
<tr>
<td>Proposed redevelopment is projected to add 15 or more new jobs (includes cannabis and non-cannabis uses) The majority of the jobs must be full time.</td>
<td>18</td>
</tr>
<tr>
<td>Managing Stakeholder is a current property owner in Berkley, and has been for at least 4 months as of the application date</td>
<td>17</td>
</tr>
<tr>
<td>Managing Stakeholder is a majority owner or stakeholder of an existing Berkley Business</td>
<td>16</td>
</tr>
<tr>
<td>Proposed development parcel does not immediately abut residential property, or the closest point of the proposed structure is not less than 65 feet from the nearest residential property line.</td>
<td>15</td>
</tr>
<tr>
<td>Proposed development eliminates or brings into compliance an existing nonconforming use or structure</td>
<td>14</td>
</tr>
<tr>
<td>Sustainable building materials and energy efficient elements will be used during construction and/or renovation of the structure</td>
<td>13</td>
</tr>
<tr>
<td>Proposed development incorporates Green Infrastructure into Stormwater management plan: - Pervious Parking; e.g. pervious concrete or pavement, pavers, infiltration systems, etc. (Sub score: 4) - Green Roof (Sub score: 4) - Rain Garden, Bioswales, or Stormwater Planters (Sub score: 2) - Other scientifically backed stormwater infrastructure systems (Sub score: 2)</td>
<td>12 (Total dependent on satisfaction of sub scoring)</td>
</tr>
<tr>
<td>Application demonstrates benefits to the community other than an increase in taxable value</td>
<td>11</td>
</tr>
<tr>
<td>Managing Stakeholder demonstrates at least 1 year of experience operating a licensed marihuana business (caregiver, provisioning, grower, etc.): - Experience acquired in Michigan (Sub score: 5) - Experience acquired in other legal jurisdictions (Sub score: 5)</td>
<td>10 (Total dependent on satisfaction of sub scoring)</td>
</tr>
<tr>
<td>Proposed development adds streetscape elements to the publicly owned right-of-way, including but not limited to benches, bike racks, planters, etc.</td>
<td>9</td>
</tr>
<tr>
<td>Application has disclosed 100% of owners and stakeholders, including those with less than 10% stake.</td>
<td>8</td>
</tr>
<tr>
<td>The proposed uses do not require any zoning map amendments or variances at the time of application.</td>
<td>7</td>
</tr>
</tbody>
</table>

**For each criterion met by the applicant, the applicant shall receive the entire assigned point value or associated sub scores.
January 6, 2020 City Council Meeting

Moved by Councilmember ___________________________ and seconded by Councilmember ___________________________ to approve the Special Land Use request (SU-02-19) at 2485 Coolidge Highway for outdoor dining at the proposed restaurant to be located at the northwest corner of Coolidge Highway and Sunnyknoll Avenue.

Ayes:

Nays:

Motion:
MEMORANDUM

To: Berkley City Council
From: Erin Schlutow, Community Development Director
Subject: SU-02-19; 2485 Coolidge Hwy – Outdoor dining for proposed restaurant
Date: December 30, 2019

Dear City Council:

The applicant, Tomina Group, LLC, is proposing to construct a 11,690 sq. ft. multi-tenant building at 2485 Coolidge Hwy that will include a swim club, two retail establishments and a restaurant. The existing Farina’s Banquet Hall will be demolished and the site will be redesigned with the proposed structure, as well as parking, stormwater management, and landscaping.

The subject site is located in the Coolidge District and each proposed use within the structure is permitted in the district by right. The applicant is also proposing outdoor seating connected to the restaurant along Sunnyknoll Ave, which requires special land use approval.

<table>
<thead>
<tr>
<th>Proposed Use</th>
<th>Area of Use (sq. ft.)</th>
<th>Coolidge District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Swim club</td>
<td>6,370</td>
<td>Permitted by right</td>
</tr>
<tr>
<td>Retail</td>
<td>1,400</td>
<td>Permitted by right</td>
</tr>
<tr>
<td>Retail</td>
<td>1,400</td>
<td>Permitted by right</td>
</tr>
<tr>
<td>Restaurant - enclosed</td>
<td>2,520</td>
<td>Permitted by right</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>11,690</strong></td>
<td></td>
</tr>
<tr>
<td>Outdoor Seating</td>
<td>706</td>
<td>Special Land Use</td>
</tr>
</tbody>
</table>

Review Procedures

The proposed outdoor dining for a restaurant requires special land use approval in the Coolidge District and must be reviewed in accordance with the applicable procedures for Special Land Uses in Division 6 of Article VI in the Berkley Zoning Ordinance.

The Planning Commission held the required public hearing at the December 17, 2019 regularly scheduled meeting. The public was invited to speak and voice any concerns pertaining to the special land use request for outdoor dining on the subject site. One member of the public noted that he was appreciative of the investment into the public space for outdoor dining, but was concerned about the ingress/egress to the site from Sunnyknoll Ave. The resident was concerned about potential increased traffic through the
residential neighborhood. Another resident noted concerns of overflow parking onto the residential side street.

The public concerns regarding parking and increased traffic along Sunnyknoll Ave was discussed in depth during the site plan review. The parking requirements for all proposed uses, including outdoor dining, have been met on the submitted site plan. The applicant and property owner noted that they are focused on family-friendly establishments and would lease the uses to complementary uses that would not compete for parking. Additionally, city staff recommended and Planning Commission agreed that a directional sign should be installed at the ingress/egress at Sunnyknoll Ave that would direct traffic to Coolidge Hwy and prevent increased traffic in the residential neighborhood.

The Planning Commission unanimously recommended approval of the special land use to City Council. The City Council has the authority to grant final approval on the special land use.

The Planning Commission also reviewed and approved the site plan for the multi-tenant building conditional upon special land use approval from the City Council and minor site improvements that will be reviewed and approved administratively.

**Special Land Use Review**

The five (5) standards for granting special land use approval are set forth in Section 138-653 of the Zoning Ordinance. We have reviewed the proposal for the outdoor dining area with respect to these standards and offer the following findings:

1. **The proposed use will promote the use of land in a socially and economically desirable manner.**

   The proposed outdoor restaurant will fit with the character of the Coolidge District and the character of the downtown. The outdoor restaurant will encourage visitors to the area, as well as spur economic development and pedestrian presence in an area that does not have a lot of foot traffic. The proposed restaurant will be located just north of the approved multi-family apartments and will likely draw pedestrian visitors to the property.

   Additionally, the adjacent Berkley Frosty Freeze, located across Sunnyknoll Ave., has an outdoor area for patrons to enjoy ice cream and relax with friends and family. Therefore, the proposed outdoor dining area will fit with the existing neighborhood.

2. **The proposed use is necessary for the public convenience at that location.**

   The proposed outdoor dining area will serve the public and will encourage and enhance the walkable, pedestrian friendly Coolidge corridor.

3. **The proposed use is compatible with adjacent land uses.**
The proposed outdoor dining area is compatible with adjacent properties, as the Republica restaurant to the south has outdoor dining area that is very popular during warmer months.

4. **The proposed use is designed so that the public health, safety and welfare shall be protected.**

The proposed outdoor dining will not have a negative impact on the public health, safety and welfare of the community. The outdoor dining experience encourages visitors to be part of the overall community, as they sit and enjoy the views of the commercial corridor and neighborhood character.

5. **The proposed use will not cause injury to other property in the neighborhood.**

The proposed outdoor dining will be constructed on the south side of the building. The proposed use will not cause injury to other properties in the neighborhood. The proposed outdoor dining area will be fenced with decorative fencing surround the outdoor patio. The design of the fencing will be reviewed during site plan to ensure it fits within the existing neighborhood.

**Summary and Recommendation**

Based on the characteristics of the community and the interest for outdoor dining, we believe that the proposed outdoor dining patio area would be a welcome addition to the community. We believe the development of the restaurant and outdoor patio are appropriate in scope for the area and meets the standards for special land use approval.

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

Sincerely,

Erin Schlutow
Community Development Director
092719

PROPOSED AQUA TOTS 6,350 SF

PROPOSED RESTAURANT 2,450 SF

PROPOSED RETAIL 1,400 SF

PROPOSED RETAIL 1,400 SF

PROPOSED RETAIL 1,400 SF
A RESOLUTION
OF THE COUNCIL OF THE CITY OF BERKLEY, MICHIGAN
SETTING THE CORRECTED RATES FOR NON-RESIDENTIAL SURCHARGE
EFFECTIVE JULY 1, 2019

WHEREAS, City Council has determined that, in order to provide safe, adequate water to the users of the system, and to assure safe transportation and treatment of sewage discharged into the system by all users of the system, the system must receive sufficient total annual revenue to ensure the proper operation and maintenance of the system, the development and perpetuation of the system, and the preservation of the financial integrity of the system. The city council has also determined that the system shall be self-sustaining, supported solely by the revenues of the system and not dependent upon the property tax payers of the city. To meet those ends, City Council shall fix the rates and charges to be imposed on all users of each component of the system in accordance with the principles and standards set forth in the Berkley City Code;

NOW, THEREFORE, THE CITY OF BERKLEY RESOLVES:

2.20: As required by the Great Lakes Water Authority/Oakland County Water Resources Commissioner, a non-residential flow surcharge which shall be added as a flat rate charge to each regular quarterly invoice for water and sewer charges issued by the City to customers that are liable for the charge shall be charged according to the following schedule: Although the rate being charged to customers beginning with the billing effective July 1, 2019 is the proper pass-through cost rate, the resolution approved by City Council with the 2019-2020 budget did not reflect the proper rates as they were an estimate, since the actual rates were unavailable at that time. These are the correct rates and are the rates being properly charged to those commercial customers who are required to pay these rates:

<table>
<thead>
<tr>
<th>Meter Size In Inches</th>
<th>Flat Rate Non-Residential Flow Surcharge Per Regular Water Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.75</td>
<td>$15.21</td>
</tr>
<tr>
<td>1.00</td>
<td>$25.35</td>
</tr>
<tr>
<td>1.50</td>
<td>$55.77</td>
</tr>
<tr>
<td>2.00</td>
<td>$81.12</td>
</tr>
<tr>
<td>3.00</td>
<td>$147.03</td>
</tr>
<tr>
<td>4.00</td>
<td>$202.80</td>
</tr>
</tbody>
</table>
MEMORANDUM

To:    Matt Baumgarten  
From:  Mark Pollock  
Date:  12/19/2019  
RE:    Resolution for Corrected Non-Residential Surcharge

I have attached the Council Item Submission Request and the corrected resolution for the January 6, 2020 City Council Meeting. With Janis’ help, Laurie has calculated the credit due from the overcharges to the commercial customers impacted by the prior year rates being incorrect. As we mentioned during the audit review, we are also placing the calculated credit on each impacted commercial customer’s bill for the January 2020 billing. This will correct the error in last year’s rates discovered during the audit. We will also mail a letter to the impacted customers explaining the reason for the credit.

We will make sure in the future that the rate resolution approved by Council clearly states that, if the rate is estimated, once the actual rate is received we will place that rate on a future Council resolution prior to June 30th of each year.
AN ORDINANCE

of the City Council of the City of Berkley, Michigan

to Add New Article III, Snow Emergencies, to Chapter 38, Civil Emergencies,
of the City of Berkley Code of Ordinances to
Establish Snow Emergency Procedures and Parking Prohibition.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: New Article III shall be added to Chapter 38 of the Berkley City Code, as follows:

ARTICLE III. – SNOW EMERGENCIES

Sec. 38-1. Short title.

This article shall be known and may be cited as the “Snow Emergency Ordinance.”

Sec. 38-2. Definitions.

The following definitions apply in this article:

Municipal Parking Lot: Any City-owned or City-controlled public parking lot.

Public Safety Director: The Berkley Public Safety Department Director or the Director’s designee.

Street: The entire width between the boundary lines of every way, street, road, highway, or drive that is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Sec. 38-3. Parking prohibited during snow emergencies.

It shall be unlawful for a person to park or leave any vehicle on a street or municipal parking lot in the City of Berkley after a snow emergency has been declared.

Sec 38-4. Public announcement of snow emergency.

The City shall publicly announce a declaration of a snow emergency on social media, the City’s website, and by means of broadcasts and/or telecasts from stations with a normal operating range covering the City, including cable television.

Sec. 38-5. Termination of parking prohibition.

After a snow emergency has been declared, the parking prohibition under this article shall remain in effect until terminated by public announcement by the City, except that the prohibition does not apply to any street or municipal parking lot that has been substantially cleared of snow and ice from curb to curb for the length of the entire block or parking lot.
Sec. 38-6.  Stalled or disabled vehicles.

Whenever a vehicle becomes stalled or disabled for any reason on any portion of a street or municipal parking lot to which the parking prohibition applies, the operation of the vehicle must undertake immediate actions to have the vehicle towed or removed from the street or the municipal parking lot. During a declared snow emergency, no person shall abandon or leave a vehicle in a street or municipal parking lot (regardless of whether the person indicates, by raising the hood, activating flashers, or otherwise, that the vehicle is inoperative), except for the purpose of securing assistance during the reasonable time necessary to go to a nearby telephone, automobile service station, or other place of assistance and return without delay.

Sec. 38-7.  Violations and penalties.

Any person who violates this article is responsible for a civil infraction, punishable by a fine not to exceed $100.

Sec. 38-8.  Evidentiary presumption relating to parking or leaving vehicle

In a proceeding for violation of this article relating to the parking or leaving of a vehicle, proof that the particular vehicle was parked or left in the street or municipal parking lot in violation of this article, together with proof that the person cited in the complaint was, at the time of such parking, the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that the registered owner of the vehicle was the person responsible for parking or leaving the vehicle in violation of this article.

Sec. 38-9.  Impoundment of vehicle.

A vehicle parked or left on any street or municipal parking lot in violation of this article constitutes a public hazard and an obstruction of traffic and may be towed and impounded immediately. No person may recover an impounded vehicle without first paying the cost of removal and storage, notwithstanding, and apart from, any fine which may also be imposed for violation of this article.

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 First Reading at a Regular City Council Meeting on January 6, 2019.

________________________________
Daniel J. Terbrack
Mayor

Attest:

________________________________
Victoria Mitchell
City Clerk
Mr. Mayor and Members of City Council,

The City Attorney has authored an ordinance in order to codify many policies that have been in practice for years and to provide for additional enforceability in regards to snow emergencies. This ordinance was developed in conjunction with my office, the Public Safety Department, and the Public Works Department.

The ordinance was initiated by the City Attorney's office.

Thank you,

Matthew Baumgarten
Berkley City Manager
AN ORDINANCE

of the City Council of the City of Berkley, Michigan

to Add New Article V, Small Cell Wireless Facilities, to Chapter 118, Telecommunications,
of the City of Berkley Code of Ordinances to Provide for the Regulation of Small Cell
Wireless Infrastructure and the Activities of Wireless Infrastructure Providers and
Wireless Services Providers Regarding the Placement and Siting of Wireless Facilities,
Support Structures, and Utility Pole Attachments.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: New Article V shall be added to Chapter 118 of the Berkley City Code, as
follows:

ARTICLE V. – SMALL CELL WIRELESS FACILITIES DEPLOYMENT

Sec. 118-01. – Title and purpose.

The purpose of this Article is to regulate small cell wireless infrastructure and the
activities of wireless infrastructure providers and wireless service providers in regard to the
placement and siting of “Small Cell” facilities.

Sec. 118-02. – Definitions.

(a) “Act” means the Small Wireless Facilities Deployment Act, 2018 PA 365, MCL
460.1301 et seq, as may be amended from time to time.

(b) “Antenna” means communications equipment that transmits or receives
electromagnetic radio frequency signals used in the provision of wireless services.

(c) “Applicant” means a wireless provider or wireless infrastructure provider that submits
an application described in this article.

(d) “City pole” means a utility pole owned or operated by the City and located in the public
right-of-way.

(e) “Colocate” means to install, mount, maintain, modify, operate, or replace wireless
facilities on or adjacent to a wireless support structure or utility pole. “Collocation” has
a corresponding meaning.

(f) “Fee” means a City one-time per small cell site charge for application processing.

(g) “Rate” means the City’s annual charge per site.

(h) “Make-ready work” means work necessary to enable a City pole or utility pole to
support collocation, which may include modification or replacement of utility poles or
modification of lines.
(i) “Micro wireless facility” means a small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

(j) “Public right-of-way” or “ROW” means the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:

(1) A private right-of-way;  
(2) A limited access highway; or  
(3) Land owned or controlled by a railroad as defined in section 109 of the Railroad Code of 1993, MCL 462.109.

(k) “Small cell wireless facility” means a wireless facility that meets both of the following requirements:

(1) Each antenna is not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet; and  
(2) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(l) “Utility pole” means a pole or similar structure that is or may be used to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

(m) “Wireless facility” means equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility. Wireless facility does not include coaxial or fiber-optic cable between utility poles or wireless support structures.

(n) “Wireless provider” is a regulated provider of telecommunications services and a “wireless infrastructure provider” is an installer of wireless equipment at small cell sites and, both terms are interchangeable terms for purposes of this article.

(o) “Wireless services” means any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.
“Wireless support structure” means a freestanding structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole.

“Wireline backhaul facility” means a facility used to transport services by wire or fiber-optic cable from a wireless facility to a network.

Sec. 118-03. – Scope of authority.

(a) Except as provided in this article or the Act, the City shall not prohibit, regulate, or charge for the collocation of small cell wireless facilities.

(b) The approval of a small cell wireless facility under this article authorizes only the collocation of a small cell wireless facility and does not authorize either of the following:

1. The provision of any services; or

2. The installation, placement, modification, maintenance, or operation of a wireline in the ROW.

Sec. 118-04. – Small cell ROW access; permitted use; height; underground; downtown; residential districts.

(a) This section applies only to activities of a wireless provider within the public right-of-way for the deployment of small cell wireless facilities and associated new or modified utility poles.

(b) The City shall not enter into an exclusive arrangement with any person for use of the ROW for the construction, operation, or maintenance of utility poles or the collocation of small cell wireless facilities.

(c) The City shall not charge a wireless provider an annual rate more than:

1. $20.00 annually, unless subdivision (2) applies.

2. $125.00 annually, if a new utility pole or wireless support structure was erected at a new site by or on behalf of the wireless provider on or after the effective date of this article. This subdivision does not apply to the replacement of an existing utility pole.

(d) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except for new small cell dedicated utility poles installed and operational in the ROW before the effective date of this article or related agreements, which shall remain in effect for the duration of this article or the agreement.
(e) Except as set forth in Section 118-05 or the Zoning Ordinance, and as limited in this section, small cell siting is a permitted use and not subject to zoning regulation if it complies with all other sections of this article and if:

(1) A utility pole in the ROW installed or modified on or after the effective date of this article shall not exceed 40 feet above ground level, unless a taller height is agreed to by the City; and

(2) A small cell wireless facility in the ROW installed or modified after the effective date of this article shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is colocated.

(f) A proposed utility pole or other support structure that exceeds the height limits under subsection (e), is subject to zoning review.

Sec. 118-05. – Aesthetics limitations and requirements.

(a) Undergrounding: A wireless provider shall comply with reasonable and nondiscriminatory requirements, including concealment measures, that do not prohibit communications service providers from installing structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities, if:

(1) The City has required all cable and utility facilities to place all their facilities underground;

(2) The City does not prohibit replacement of the City’s poles by a wireless provider in the designated area; and

(3) A wireless provider may apply for a waiver of the undergrounding requirements.

(b) Downtown and Residential Districts: A wireless provider shall comply with written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral designs or concealment measures in a downtown district or residential zoning district. Such requirement shall not have the effect of prohibiting any wireless provider’s technology. Any such design or concealment measures are not included in size restrictions in the definition of small wireless facility.

(c) Aesthetics Requirements: Wireless Providers shall install, modify, collocate or otherwise provide all wireless facilities, equipment, poles, support structures and all other related wireless objects in a manner, size and appearance that is consistent and in conformity with the existing requirements and existing practices in fact, pertaining to such districts as defined by the applicable ordinances, rules and codes of the City and the applicable rules and laws of this State, in such fashion as to create the least negative impact on the district as possible. Such accommodations may include use of similar height, materials, color, design, number and appearance of other similar structures utilized by other occupiers of the rights of way and public spaces.
(1) Collocation including replacement of existing poles or support structures is strongly encouraged over the installation of additional new poles or support structures in the ROW.

(2) Placement of all equipment inside the pole or support structure is favored over placement outside the pole, including ground mountings.

(3) The smallest equipment, antennas and poles and support structures feasible is preferred.

(4) Camouflaging, stealth or concealment elements are preferred.

(5) Installations generally are favored in the following Districts in the following order of preference:

   a. 1st Preference: Industrial
   b. 2nd Preference: Commercial
   c. 3rd Preference: Residential
   d. 4th Preference: Underground commercial and then residential
   e. 5th Preference: Environmentally sensitive areas including nature and wetland preservation sites

(6) Disagreements as between the provider and the City on specific aesthetics issues shall be addressed by the City Council upon timely written request of the provider. City staff and Council may consider incentives favoring installations in preferred districts.

(d) Wireless providers shall repair all damage to the ROW caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and shall return the ROW to its prior condition. Following 60 days written notice, the City may make those repairs and charge the wireless provider the cost of the repairs.
Sec. 118-06. – Provider and City responsibilities; application information; shot clocks; tolling; deemed approved; basis for denial; resubmittal; batch applications; application fees; micro wireless facility exemption; alternate siting; decommissioning sites.

(a) Except as otherwise provided in subsection (c) below, the provider/applicant shall seek a City ROW access permit to colocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be colocated as required of all ROW users. The processing of an application for such a permit is subject to all of the following:

(1) In-kind contributions to the City are not permitted in lieu of rates and fees described above unless all parties voluntarily agree in furtherance of the interests of both.

(2) The provider shall provide all the information and documentation required by the City to enable the City to make an informed decision with regard to its criteria for authorizing ROW access including the following:

   a. A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility,

   b. Proof of notification to every other affected authority and all necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.

   c. An attestation that the small cell wireless facilities will be operational for use by a wireless services provider within 1 year after the permit issuance date. Failure to abide by this term shall result in termination of any permit issued in reliance on such attestation.

(3) Within 25 days after receiving an initial application, the City shall notify the applicant in writing whether the application is complete. If incomplete, the notice will delineate all missing documents or information. The notice tolls the running of the time for approving or denying an application under subdivision (6).

(4) If the applicant makes a supplemental submission in response to the City’s notice of incompleteness, the City will so notify the applicant in writing within 10 days, delineating the previously requested and missing documents or information. The time period for approval or denial is tolled in the case of second or subsequent notices.

(5) The City shall approve or deny the application and notify the applicant in writing within the following period of time after the application is received:
a. Collocation Shot Clock: For an application for the collocation of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:

b. Add 15 days if an application from another wireless provider was received within 1 week of the application in question.

c. Add 15 days if a timely extension is requested.

d. New or Replacement 40’ Pole and Limited Equipment: For an application for a new or replacement utility pole that meets the height requirements of subsection 118-04(e) and associated small cell facility, 90 days, subject to the following adjustments:

e. Add 15 days if an application from another wireless provider was received within 1 week of the application in question.

f. Add 15 days if a timely extension is requested.

g. Deemed Approved: A completed application is considered to be approved if not timely acted upon by the City and, if the City receives a notice not less than 7 days before, the applicant may proceed with the work pursuant to this automatic approval.

(6) Basis for Denial: The City may deny a completed application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements in subsection 118-04(e) if the proposed activity would do any of the following:

a. Materially interfere with the safe operation of traffic control equipment.

b. Materially interfere with sight lines or clear zones for transportation or pedestrians.

c. Materially interfere with compliance with the Americans with Disabilities Act of 1990, or similar federal, state, or local standards regarding pedestrian access or movement.

d. Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of the City or other authority.

e. With respect to drainage infrastructure under the jurisdiction of the City or other authority, either of the following:

f. Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
g. Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code of 1956, MCL 280.1 to 280.630, and access to the drainage infrastructure.

h. Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.

i. Fail to comply with all other applicable codes.

j. Fail to comply with section 118-05.

k. Fail to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a downtown or residential district or other designated area, as specified in an ordinance or otherwise nondiscriminatory and applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the City.

(b) Reasons for Denial; Resubmission and 30 Day Shot Clock: If the completed application is denied, the notice under subdivision 118-06(a)(5) shall explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial is based. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after the denial without paying an additional application fee. The City shall approve or deny the revised application within 30 days. The City shall limit its review of the revised application to the deficiencies cited in the denial.

(c) Batch Applications: An applicant may file an application and receive a single permit for the collocation of up to 20 substantially similar small cell wireless installations. The City may approve or deny 1 or more small cell wireless facilities included in such consolidated application.

(d) Approval of an application authorizes the wireless provider to undertake the installation, collocation and maintenance of such facilities.

(e) The Authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of small cell wireless facilities or the installation, modification, or replacement of utility poles on which small cell wireless facilities will be collocated.

(f) The City and an applicant may extend a time period under this subsection by mutual agreement.
(1) Application Fee for a permit under subsection (2) shall not exceed the lesser of the following:

a. $200.00 for each small cell wireless facility alone; or

b. $300.00 for each small cell wireless facility and a new utility pole to which it will be attached.

(2) The City may revoke a permit, upon 30 days notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole fail to meet the requirements of this article.

(3) Micro Wireless Facility Exempt: The City shall not require a permit or any other approval or require fees or rates for ordinance compliant replacement, maintenance or operation of a small cell wireless facility or ordinance compliant installation, replacement, maintenance or operation of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.

(4) Alternate Siting: Upon receipt of an application to place a new utility pole, the City may propose and the applicant shall use an alternate location within the ROW or on property or structures owned or controlled by the City within 75 feet of the applicants proposed location if reasonably achievable.

(5) Decommissioning Sites: A wireless provider shall notify the City in writing before discontinuing use of a small cell wireless facility, utility pole, or wireless support structure. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure. The wireless provider shall return the property to its pre-installation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the authority may complete the removal and assess the costs of removal against the wireless provider. A permit under this section for a small cell wireless facility expires upon removal of the small cell wireless facility.

(6) A provider shall obtain a permit for any work that will affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.

Sec. 118-07. – Authority owned poles: rates; terms.

(a) The City shall not enter into an exclusive arrangement with any person for the right to attach to City poles. A person who purchases, controls, or otherwise acquires a City pole is subject to the requirements of this section.

(b) Rate: The rate for the collocation of small cell wireless facilities on authority poles shall be nondiscriminatory regardless of the services provided by the colocating person. The rate shall not exceed $30.00 per year per City pole plus any rate charged for the use of the ROW under section 118-04.
(c) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except with respect to wireless facilities on authority poles installed and operational before the effective date of this article or any related agreement, which shall remain in effect for the duration of this article or the agreement.

(d) Within 90 days after receiving the first request to colocate a small cell wireless facility on a City pole, the City shall make available, through ordinance or otherwise, the rates, fees, and terms for the collocation of small cell wireless facilities on City poles. The rates, fees, and terms shall comply with all of the following:

1. The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this article and the Act;
2. The City shall provide a good-faith estimate for any make-ready work within 60 days after receipt of a complete application. Make-ready work shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant;
3. The person owning or controlling the City pole shall not require more make-ready work than required to comply with law or industry standards; and
4. Fees for make-ready work shall not do any of the following:
   a. Include costs related to preexisting or prior damage or noncompliance unless the damage or noncompliance was caused by the applicant;
   b. Include any unreasonable consultant fees or expenses; or
   c. Exceed actual costs imposed on a nondiscriminatory basis.

(e) This section does not require the City to install or maintain any specific City pole or to continue to install or maintain City poles in any location if the City makes a nondiscriminatory decision to eliminate aboveground poles of a particular type generally, such as electric utility poles, in a designated area of its geographic jurisdiction. For City poles with colocated small cell wireless facilities in place when the City makes a decision to eliminate aboveground poles of a particular type, the City shall do one of the following:

1. Continue to maintain the City pole;
2. Install and maintain a reasonable alternative pole or wireless support structure for the collocation of the small cell wireless facility;
3. Offer to sell the pole to the wireless provider at a reasonable cost;
4. Allow the wireless provider to install its own utility pole so it can maintain service from that location; or
(5) Proceed as provided by an agreement between the City and the wireless provider.

Sec. 118-08. – No requirement to provide service.

This article does not require wireless facility deployment or regulate wireless services.

Sec. 118-09. – Appeals.

The applicant may appeal any City determinations related to this article to the City Council or the Oakland County Circuit Court.

Sec. 118-10. – Defense, indemnity and insurance.

All applicant wireless providers shall:

(1) Defend, indemnify, and hold harmless the City and its elected and appointed officials, officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant and all entities acting on its behalf including but not limited to its contractors, its subcontractors, and the officers, employees, or agents of any of these, except as to liabilities or losses due to or caused by the sole negligence of the City or its officers, agents, or employees; and

(2) Obtain insurance naming the City and those acting on its behalf including but not limited to its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees. A wireless provider may meet all or a portion of the City’s insurance coverage and limit requirements by self-insurance, conditioned upon providing to the City evidence demonstrating to the City’s satisfaction the wireless provider’s financial ability to meet the City’s insurance coverage and limit requirements throughout the life of the provider’s use of the ROW. To the extent it self-insures, a wireless provider is not required to name additional insureds under this section.

Sec. 118-11. – Bonding.

(a) As a condition of a permit described in this article, the wireless provider shall provide a $1,000 bond per site, for the purpose of providing for the removal of abandoned or improperly maintained small cell wireless facilities, including those that the City determines should be removed to protect public health, safety, or welfare, to repair the ROW as provided under subsection 118-05(d) and, to recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the City of the noncompliance.
(b) The City shall not require a cash bond, unless the wireless provider has failed to obtain or maintain a bond required under this section or the surety has defaulted or failed to perform on a bond given to the City on behalf of a wireless provider.

Sec. 118-12. – Labelling.

A small cell wireless facility for which a permit is issued shall be labeled with the name of the wireless provider, emergency contact telephone number, and information that identifies the small cell wireless facility and its location.

Sec. 118-13. – Electric costs.

A wireless provider is responsible for arranging and paying for the electricity used to operate a small cell wireless facility.

Sec. 118-14. – Investor-owned utilities.

(a) This article does not add to, replace, or supersede any law regarding poles or conduits, similar structures, or equipment of any type owned or controlled by an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, an independent transmission company, or a cooperative electric utility.

(b) This article does not impose or otherwise affect any rights, controls, or contractual obligations of an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, an independent transmission company or a cooperative electric utility with respect to its poles or conduits, similar structures, or equipment of any type.

(c) Except for purposes of a wireless provider obtaining a permit to occupy a right-of-way, this ordinance does not affect an investor-owned utility whose rates are regulated by the MPSC. Notwithstanding any other provision of this article, pursuant to and consistent with section 6g of 1980 PA 470, MCL 460.6g, the MPSC has sole jurisdiction over attachment of wireless facilities on the poles, conduits, and similar structures or equipment of any type or kind owned or controlled by an investor-owned utility whose rates are regulated by the MPSC.

Sec. 118-15. – Authority reservation of rights.

The City also notes inconsistencies with the Michigan Constitution of 1963 including but not limited to Article VII Sections 22, 26, 29, 30, 31 and 34. Adoption of this article shall not be construed as a waiver of the City’s right to engage in or otherwise support a legal challenge to either the State Acts or FCC rules referenced above. In the event of any interpretations, including Judicial, Legislative or Administrative, contrary to the Michigan Public Acts and/or FCC rules referenced above, the City reserves the right to amend and or repeal this article and to cancel all related agreements, policies and procedures undertaken in furtherance hereof.

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 First Reading at a Regular City Council Meeting on January 6, 2020.

________________________________
Daniel J. Terbrack
Mayor

Attest: ____________________________
Victoria Mitchell
City Clerk
Mr. Matthew Baumgarten  
City Manager  
City of Berkley  
3338 Coolidge Hwy.  
Berkley, MI 48072

Re: **Small Cell Wireless Facilities**

Dear City Manager Baumgarten:

Earlier this year, both a FCC Order and the Michigan Small Wireless Communications Facilities Deployment Act, 2018 PA 365, went into effect to facilitate the deployment of small cell/DAS wireless infrastructure in the public rights-of-way. This Act both governs and severely limits local municipal control over, and processing of, installation of this technology and infrastructure within the public rights-of-way.

Small wireless communications facilities, commonly shortened to “small cells,” are wireless service antennas, no larger than 6 cubic feet in volume, and associated equipment which are cumulatively no larger than 25 cubic feet in volume. “Small cells” does not necessarily refer to the physical height of the antenna – indeed, they can range from relatively small and inconspicuous to quite tall and prominent. Rather, it refers to their small coverage range of 30 feet to hundreds of feet (distinguished from macro cell towers which are higher-powered and have much larger range). Typically, the small cell antennas will attach to existing utility poles or other structures located in the public rights-of-way, although some will require new poles due to the density needed for this technology. The business model or premise is that by creating a dense network of small cells, the wireless service providers will have better signal coverage, penetration, and capacity, lessening the need for the more traditional macro cell towers. It is also represented that installation of small cell technology is essential for deployment of more advanced, “5G” technology, as well as for development and implementation of autonomous vehicles and “smart cities.”

The State Act and the FCC Order establish a regulatory framework municipalities must follow in processing small cell facilities applications received from wireless service providers. On a very limited basis, the Act and FCC allow for some local design criteria, and they establish deadlines and fees for municipal review and processing of applications.
Incorporating the procedures, limitations, and requirements of the State Act and FCC Order, and borrowing heavily from a model ordinance developed by PROTEC and published by the Michigan Municipal League, we have drafted for your consideration a proposed City ordinance to adopt new Article V, Small Cell Wireless Facilities Deployment, to Chapter 118 of the City Code. This ordinance, I believe, goes as far as the State and Federal laws allow local control to go. Consequently, the deadlines, process, fees, bonds, and physical and dimensional regulations are the maximums the law allows.

Let me know if you have any questions. For your additional information, I've included a copy of 2018 PA 365.

Very truly yours,

John D. Staran

JDS/ijd
cc: Mr. Derrick Schueller, DPW
    Ms. Erin Schlutow, Community Development
SMALL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT ACT  
Act 365 of 2018

AN ACT to provide for the regulation by state or local government authorities and municipally owned electric utilities of the activities of wireless infrastructure providers and wireless services providers and of wireless facilities, wireless support structures, and utility poles; to regulate rates and fees concerning wireless facilities, wireless support structures, communications service provider pole attachments, and utility poles charged by state or local government authorities and municipally owned electric utilities; to provide for collocation of wireless facilities and of communications service provider pole attachments; to provide for use of public rights-of-way; to regulate certain permitting processes and zoning reviews; to prohibit certain commercially discriminatory actions by state or local government authorities and municipally owned electric utilities; to prohibit state and local government authorities from entering into exclusive arrangements with any person for the right to attach to certain utility poles; to authorize indemnification and insurance requirements; to authorize certain bonding requirements; and to provide for charges for electricity to operate small cell wireless facilities.


The People of the State of Michigan enact:

460.1301 Short title; purpose of act.
Sec. 1. (1) This act shall be known and may be cited as the "small wireless communications facilities deployment act".
(2) The purpose of the act is to do all of the following:
   (a) Increase investment in wireless networks that will benefit the citizens of this state by providing better access to emergency services, advanced technology, and information.
   (b) Increase investment in wireless networks that will enhance the competitiveness of this state in the global economy.
   (c) Encourage the deployment of advanced wireless services by streamlining the process for the permitting, construction, modification, maintenance, and operation of wireless facilities in the public rights-of-way.
   (d) Allow wireless services providers and wireless infrastructure providers access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to enhance their networks and provide next generation services.
   (e) Ensure the reasonable and fair control and management of public rights-of-way by governmental authorities within this state.
   (f) Address the timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities as matters of statewide concern and interest.
   (g) Provide for the management of public rights-of-way in a safe and reliable manner that does all of the following:
      (i) Supports new technology.
      (ii) Avoids interference with right-of-way use by existing public utilities and cable communications providers.
      (iii) Allows for a level playing field for competitive communications service providers.
      (iv) Protects public health, safety, and welfare.
      (h) Increase the connectivity for autonomous and connected vehicles through the deployment of small cell wireless facilities with full access and compatibility for connected and autonomous vehicles as determined and approved by the state transportation department, county road commissions, and authorities.
   (i) Prioritize, as provided in this act, the use of existing utility poles and wireless support structures for collocation over the installation of new utility poles or wireless support structures.


460.1303 Definitions; A, B.
Sec. 3. As used in this act:
(a) "Affiliated transmission company" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.
(b) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
(c) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531,
or adopted by the United States Occupational Safety and Health Administration or by a state or national code organization, including, but not limited to, the "National Electrical Safety Code" published by the Institute of Electrical and Electronics Engineers.

(d) "Applicant" means a wireless provider that submits an application described in this act.

(e) "Attaching entity" means a public or private party or entity, other than the municipally owned electric utility, that, pursuant to an agreement with the municipally owned electric utility, places a wire or cable attachment on a nonauthority pole or related infrastructure within the communication space. Attaching entity includes, but is not limited to, both of the following:

(i) A telecommunication provider as that term is defined in section 102 of the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3102.

(ii) A video service provider as that term is defined in the uniform video services local franchise act, 2006 PA 480, MCL 484.3301.

(f) "Authority", unless the context implies otherwise, means this state, or a county, township, city, village, district, or subdivision thereof if authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application described in this act. Authority does not include any of the following:

(i) A municipally owned electric utility.

(ii) An investor-owned utility whose rates are regulated by the MPSC.

(iii) A state court having jurisdiction over an authority.

(g) "Authority pole" means a utility pole owned or operated by an authority and located in the ROW.


460.1305 Definitions; C to I.

Sec. 5. As used in this act:

(a) "Colocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Collocation" has a corresponding meaning. Colocate does not include make-ready work or the installation of a new utility pole or new wireless support structure.

(b) "Communications facility" means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.

(c) "Communication space" means that term as defined in the "National Electric Safety Code" published by the Institute of Electrical and Electronics Engineers.

(d) "Communications service" means service provided over a communications facility, including cable service as defined in 47 USC 522, information service as defined in 47 USC 153, telecommunications service as defined in 47 USC 153, or wireless service.

(e) "Communications service provider" means any entity that provides communications services.

(f) "FCC" means the Federal Communications Commission.

(g) "Fee" means a nonrecurring charge for services.

(h) "Historic district" means a historic district established under section 3 of the local historic districts act, 1970 PA 169, MCL 399.203, or a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, appendix C.

(i) "Independent transmission company" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.


460.1307 Definitions; L to S.

Sec. 7. As used in this act:

(a) "Law" means federal, state, or local law, including common law, a statute, a rule, a regulation, an order, or an ordinance.

(b) "Make-ready work" means work necessary to enable an authority pole or utility pole to support collocation, which may include modification or replacement of utility poles or modification of lines.

(c) "Micro wireless facility" means a small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

(d) "MPSC" means the Michigan Public Service Commission created in section 1 of 1939 PA 3, MCL 460.1.
(e) "Municipally owned electric utility" means a system owned by a municipality or combination of municipalities to furnish power or light and includes a cooperative electric utility that, on or after the effective date of this act, acquired all or substantially all of the assets of a municipal electric utility, when applying this act to the former territory of the municipal electric utility.

(f) "Nonauthority pole" means a utility pole used for electric delivery service and controlled by the governing body of a municipally owned electric utility.

(g) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(h) "Public right-of-way" or "ROW" means the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:

   (i) A private right-of-way.
   (ii) A limited access highway.
   (iii) Land owned or controlled by a railroad as defined in section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.

   (iv) Railroad infrastructure.

   (i) "Rate" means a recurring charge.
   (j) "Small cell wireless facility" means a wireless facility that meets both of the following requirements:

   (i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
   (ii) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.


460.1309 Definitions; U to W.

Sec 9. As used in this act:

(a) "Utility pole" means a pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that meets the height requirements in section 13(5) and is designed to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

(b) "Wireless facility" means equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility. Wireless facility does not include any of the following:

   (i) The structure or improvements on, under, or within which the equipment is colocated.
   (ii) A wireline backhaul facility.
   (iii) Coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.

(c) "Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications services in this state but not including a wireless services provider, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures and who, when filing an application with an authority under this act, provides written authorization to perform the work on behalf of a wireless services provider.

(d) "Wireless provider" means a wireless infrastructure provider or a wireless services provider. Wireless provider does not include an investor-owned utility whose rates are regulated by the MPSC.

(e) "Wireless services" means any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

(f) "Wireless services provider" means a person that provides wireless services.

(g) "Wireless support structure" means a freestanding structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole.

(h) "Wireline backhaul facility" means a facility used to transport services by wire or fiber-optic cable from a wireless facility to a network.

460.1311 Collocation of small cell wireless facilities; prohibited authority.
Sec. 11. (1) Except as provided in this act, an authority shall not prohibit, regulate, or charge for the
collocation of small cell wireless facilities.
(2) The approval of a small cell wireless facility under this act authorizes only the collocation of a small
cell wireless facility and does not authorize either of the following:
(a) The provision of any particular services.
(b) The installation, placement, modification, maintenance, or operation of a wireline backhaul facility in
the ROW.

460.1313 Activities of wireless provider in public right of way; exclusive arrangement
prohibited; rates; ordinance compliance; installation and concealment requirements;
waiver of undergrounding requirements; repair damage to right of way.
Sec. 13. (1) This section applies only to activities of a wireless provider within the public right-of-way for
the deployment of small cell wireless facilities and associated new or modified utility poles.
(2) An authority shall not enter into an exclusive arrangement with any person for use of the ROW for the
construction, operation, or maintenance of utility poles or the collocation of small cell wireless facilities.
(3) An authority shall not charge a wireless provider a rate for each utility pole or wireless support
structure in the ROW in the authority's geographic jurisdiction on which the wireless provider has colocated a
small cell wireless facility that exceeds the following:
(a) $20.00 annually, unless subdivision (b) applies.
(b) $125.00 annually, if the utility pole or wireless support structure was erected by or on behalf of the
wireless provider on or after the effective date of this act. This subdivision does not apply to the replacement
of a utility pole that was not designed to support small cell wireless facilities.
Every 5 years after the effective date of this act, the maximum rates then authorized under subdivisions (a)
and (b) are increased by 10% and rounded to the nearest dollar.
(4) If, on the effective date of this act, an authority has a rate or fee in an ordinance or in an agreement with
a wireless provider for the use of the ROW to colocate a small cell wireless facility or to construct, install,
mount, maintain, modify, operate, or replace a utility pole, and the rate or fee does not comply with
subsection (3), the authority shall, not later than 90 days after the effective date of this act, revise the rate or
fee to comply with subsection (3). Both of the following apply:
(a) For installations of utility poles designed to support small cell wireless facilities or collocations of small
cell wireless facilities installed and operational in the ROW before the effective date of this act, the fees, rates,
and terms of an agreement or ordinance for use of the ROW remain in effect subject to the termination
provisions contained in the agreement or ordinance.
(b) For installations of utility poles designed to support small cell wireless facilities or collocations of small
cell wireless facilities installed and operational in the ROW after the effective date of this act, the fees,
rates, and terms of an agreement or ordinance for use of the ROW shall comply with subsection (3).
(5) A wireless provider may, as a permitted use not subject to zoning review or approval, except that an
application for a permitted use is still subject to approval by the authority under section 15, colocate small cell
wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and
under the ROW. Such structures and facilities shall be constructed and maintained so as not to obstruct or
hinder the usual travel or public safety on the ROW or obstruct the legal use of the authority's ROW or uses
of the ROW by other utilities and communications service providers. Both of the following apply:
(a) A utility pole in the ROW installed or modified on or after the effective date of this act shall not exceed
40 feet above ground level, unless a taller height is agreed to by the authority.
(b) A small cell wireless facility in the ROW installed or modified after the effective date of this act shall
not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless
facility is colocated.
(6) Subject to this section, section 17, and applicable zoning regulations, a wireless provider may colocate
a small cell wireless facility or install, construct, maintain, modify, operate, or replace a utility pole that
exceeds the height limits under subsection (5), or a wireless support structure, in, along, across, upon, and
under the ROW.
(7) A wireless provider shall comply with reasonable and nondiscriminatory requirements otherwise
provided that prohibit communications service providers from installing structures on or above ground in the
ROW in an area designated solely for underground or buried cable and utility facilities if all of the following
apply:
(a) The authority has required all cable and utility facilities, other than authority poles, along with any attachments, or poles used for street lights, traffic signals, or other attachments necessary for public safety, to be placed underground by a date that is not less than 90 days before the submission of the application.

(b) The authority does not prohibit the replacement of authority poles by a wireless provider in the designated area.

(c) The authority allows wireless providers to apply for a waiver of the undergrounding requirements for the placement of a new utility pole to support small cell wireless facilities, and the waiver applications are addressed in a nondiscriminatory manner.

(8) Subject to section 15(2), and except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4)(ii), an authority may adopt written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district, downtown district, or residential zoning district. Any such requirement shall not have the effect of prohibiting any wireless provider's technology. Any such design or concealment measures are not considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility in section 7.

(9) An authority's administration and regulation of activities of wireless providers in the ROW shall be reasonable, nondiscriminatory, and competitively neutral and shall comply with applicable law.

(10) An authority may require a wireless provider to repair all damage to the ROW directly caused by the activities of the wireless provider while occupying, constructing, installing, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and to return the ROW to its functional equivalent before the damage. If the wireless provider fails to make the repairs required by the authority within 60 days after written notice, the authority may make those repairs and charge the wireless provider the reasonable, documented cost of the repairs.


### 460.1315 Permitted activities of wireless provider in right of way; application; determination; notice; denial; consolidated application; extension; fees; revocation; moratorium prohibited; notice of discontinuance of use.

Sec. 15. (1) This section applies to activities of a wireless provider within the public right-of-way.

(2) Except as otherwise provided in subsection (5), an authority may require a permit to colocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be colocated if the permit is of general applicability. The processing of an application for such a permit is subject to all of the following:

(a) The authority shall not directly or indirectly require an applicant to perform services unrelated to the collocation for which a permit is sought, such as reserving fiber, conduit, or pole space for the authority or making other in-kind contributions to the authority.

(b) An authority may require an applicant to provide information and documentation to enable the authority to make a decision with regard to the criteria in subdivision (i). An authority may also require a certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.

(c) If the proposed activity will occur within a shared ROW or an ROW that overlaps another ROW, a wireless provider shall provide, to each affected authority to which an application for the activity is not submitted, notification of the wireless provider's intent to locate a small cell wireless facility within the ROW. An authority may require proof of other necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.

(d) Within 25 days after receiving an application, an authority shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically delineate all missing documents or information. The notice tolls the running of the time for approving or denying an application under subdivision (h).

(e) The running of time period tolled under subdivision (d) resumes when the applicant makes a supplemental submission in response to the authority's notice of incompleteness. If a supplemental submission is inadequate, the authority shall notify the applicant in writing not later than 10 days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in subdivision (d). Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(f) The authority may require an applicant to include an attestation that the small cell wireless facilities will
be operational for use by a wireless services provider within 1 year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power or communications transport facilities to the site.

(g) The application shall be processed on a nondiscriminatory basis.

(h) The authority shall approve or deny the application and notify the applicant in writing within the following period of time after the application is received:

(i) For an application for the collocation of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:

(A) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.

(B) Add 15 days if, before the otherwise applicable 60-day or 75-day time period under this subparagraph elapses, the authority notifies the applicant in writing that an extension is needed and the reasons for the extension.

(ii) For an application for a new or replacement utility pole that meets the height requirements of section 13(5)(a) and associated small cell facility, 90 days, subject to the following adjustments:

(A) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.

(B) Add 15 days if, before the otherwise applicable 90-day or 105-day time period under this subparagraph elapses, the authority notifies the applicant in writing that an extension is needed and the reasons for the extension.

If the authority fails to comply with this subdivision, the completed application is considered to be approved subject to the condition that the applicant provide the authority not less than 7 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

(i) An authority may deny a completed application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements in section 13(5)(a) only if the proposed activity would do any of the following:

(i) Materially interfere with the safe operation of traffic control equipment.

(ii) Materially interfere with sight lines or clear zones for transportation or pedestrians.

(iii) Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.

(iv) Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of an authority.

(v) With respect to drainage infrastructure under the jurisdiction of an authority, either of the following:

(A) Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.

(B) Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.

(vi) Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.

(vii) Fail to comply with applicable codes.

(viii) Fail to comply with section 13(7) or (8).

(ix) Fail to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a historic district or other designated area, as specified in an ordinance or otherwise and nondiscriminatory applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the authority.

(j) If the completed application is denied, the notice under subdivision (h) shall explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial is based. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after the denial, without paying an additional application fee. The authority shall approve or deny the revised application within 30 days. The authority shall limit its review of the revised application to the deficiencies cited in the denial.

(k) An applicant may at the applicant's discretion file a consolidated application and receive a single permit for the collocation of up to 20 small cell wireless facilities within the jurisdiction of a single authority or, in the case of the state transportation department, a single designated control section as identified on the department's website. The small cell wireless facilities within a consolidated application must consist of substantially similar equipment and be placed on similar types of utility poles or wireless support structures. An authority may approve a permit for 1 or more small cell wireless facilities included in a consolidated
application and deny a permit for the remaining small cell facilities. An authority shall not deny a permit for a small cell wireless facility included in a consolidated application on the basis that a permit is being denied for 1 or more other small cell facilities included in that application.

(l) Within 1 year after a permit is granted, a wireless provider shall complete collocation of a small cell wireless facility that is to be operational for use by a wireless services provider, unless the authority and the applicant agree to extend this period or the delay is caused by the lack of commercial power or communications facilities at the site. If the wireless provider fails to complete the collocation within the applicable time, the permit is void, and the wireless provider may reapply for a permit. A permittee may voluntarily request that a permit be terminated.

(m) Approval of an application authorizes the wireless provider to do both of the following:

(i) Undertake the installation or collocation.

(ii) Subject to relocation requirements that apply to similarly situated users of the ROW and the applicant's right to terminate at any time, maintain the small cell wireless facilities and any associated utility poles or wireless support structures covered by the permit for so long as the site is in use and in compliance with the initial permit under this act.

(n) An authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of small cell wireless facilities or the installation, modification, or replacement of utility poles on which small cell wireless facilities will be colocated.

(o) The authority and an applicant may extend a time period under this subsection by mutual agreement.

(3) An application fee for a permit under subsection (2) shall not exceed the lesser of the following:

(a) $200.00 for each small cell wireless facility alone.

(b) $300.00 for each small cell wireless facility and a new utility pole to which it will be attached.

Every 5 years after the effective date of this act, the maximum fees then authorized under this subsection are increased by 10% and rounded to the nearest dollar.

(4) An authority may revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole fail to meet the requirements of subsection (2)(i).

(5) An authority shall not require a permit or any other approval or require fees or rates for any of the following:

(a) The replacement of a small cell wireless facility with a small cell wireless facility that is not larger or heavier, in compliance with applicable codes.

(b) Routine maintenance of a small cell wireless facility, utility pole, or wireless support structure.

(c) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.

(6) An authority that receives an application to place a new utility pole may propose an alternate location within the ROW or on property or structures owned or controlled by an authority within 75 feet of the proposed location to either place the new utility pole or colocate on an existing structure. The applicant shall use the alternate location if, as determined by the applicant, the applicant has the right to do so on reasonable terms and conditions and the alternate location does not impose unreasonable technical limits or significant additional costs.

(7) Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify an authority in writing. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure. The authority may impose reasonable and nondiscriminatory requirements and specifications for the wireless provider to return the property to its preinstallation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the authority may complete the removal and assess the costs of removal against the wireless provider. A permit under this section for a small cell wireless facility expires upon removal of the small cell wireless facility.

(8) This section does not prohibit an authority from requiring a permit for work that will unreasonably affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.


460.1317 Zoning review and approval; application; approval or denial requirements; fees; moratorium prohibited; revocation.

Sec. 17. (1) The activities set forth in section 15(5) are exempt from zoning review. Subsections (2) to (4) apply to zoning reviews for the following activities that are subject to zoning review and approval, that are not a permitted use under section 13(5), and that take place within or outside the public right-of-way:

(a) The modification of existing or installation of new small cell wireless facilities.
(b) The modification of existing or installation of new wireless support structures used for such small cell wireless facilities.

(2) The processing of an application for a zoning approval is subject to all of the following requirements:

(a) Within 30 days after receiving an application under this section, an authority shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically delineate all missing documents or information. The notice tolls the running of the 30-day period.

(b) The running of the time period tolled under subdivision (a) resumes when the applicant makes a supplemental submission in response to the authority's notice of incompleteness. If a supplemental submission is inadequate, the authority shall notify the applicant not later than 10 days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in subdivision (a). Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(c) The application shall be processed on a nondiscriminatory basis.

(d) The authority shall approve or deny the application and notify the applicant in writing within 90 days after an application for a modification of a wireless support structure or installation of a small cell wireless facility is received or 150 days after an application for a new wireless support structure is received. The time period for approval may be extended by mutual agreement between the applicant and authority. If the authority fails to comply with this subdivision, the application is considered to be approved subject to the condition that the applicant provide the authority not less than 15 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

(e) An authority shall not deny an application unless all of the following apply:

(i) The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.

(ii) There is a reasonable basis for the denial.

(iii) The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

(3) An authority's review of an application for a zoning approval is subject to all of the following requirements:

(a) An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of wireless facilities or wireless support structures. An authority may consider the height of such structures in its zoning review, but shall not discriminate between the applicant and other communications service providers.

(b) An authority shall not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:

(i) The need for a wireless support structure or small cell wireless facilities.

(ii) The applicant's service, customer demand for the service, or the quality of service.

(c) Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, shall be reasonable.

(d) Any spacing, setback, or fall zone requirement shall be substantially similar to a spacing, setback, or fall zone requirement imposed on other types of commercial structures of a similar height.

(4) An application fee for a zoning approval shall not exceed the following:

(a) $1,000.00 for a new wireless support structure or modification of an existing wireless support structure.

(b) $500.00 for a new small cell wireless facility or modification of an existing small cell wireless facility.

(5) Within 1 year after a zoning approval is granted, a wireless provider shall commence construction of the approved structure or facilities that are to be operational for use by a wireless services provider, unless the authority and the applicant agree to extend this period or the delay is caused by a lack of commercial power or communications facilities at the site. If the wireless provider fails to commence the construction of the approved structure or facilities within the time required pursuant to section 15(2)(f), the zoning approval is void, and the wireless provider may reapply for a zoning approval. However, the wireless provider may voluntarily request that the zoning approval be terminated.

(6) An authority shall not institute a moratorium on either of the following:

(a) Filing, receiving, or processing applications for zoning approval.

(b) Issuing approvals for installations that are not a permitted use.

(7) An authority may revoke a zoning approval, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated wireless support structure fail to meet the
requirements of the approval, applicable codes, or applicable zoning requirements.


**460.1319 Authority poles; exclusive arrangement prohibited; limitation on rates, fees, and terms; elimination of aboveground poles.**

Sec. 19. (1) An authority shall not enter into an exclusive arrangement with any person for the right to attach to authority poles. A person who purchases, controls, or otherwise acquires an authority pole is subject to the requirements of this section.

(2) The rate for the collocation of small cell wireless facilities on authority poles shall be nondiscriminatory regardless of the services provided by the colocating person. The rate shall not exceed $30.00 per year per authority pole. Every 5 years after the effective date of this act, the maximum rate then authorized under this subsection is increased by 10% and rounded to the nearest dollar. This rate for the collocation of small cell wireless facilities on authority poles is in addition to any rate charged for the use of the ROW under section 13.

(3) If, on the effective date of this act, an authority has a rate, fee, or other term in an ordinance or in an agreement with a wireless provider that does not comply with this section, the authority shall, not later than 90 days after the effective date of this act, revise the rate, fee, or term to comply with this section. Both of the following apply:

(a) An ordinance or an agreement between an authority and a wireless provider that is in effect on the effective date of this act and that relates to the collocation on authority poles of small cell wireless facilities installed and operational before the effective date of this act remains in effect as it relates to those collocations, subject to termination provisions in the ordinance or agreement.

(b) The rates, fees, and terms established under this section apply to the collocation on authority poles of small cell wireless facilities that are installed and operational after the rates, fees, and terms take effect.

(4) Within 90 days after receiving the first request to colocate a small cell wireless facility on an authority pole, the authority shall make available, through ordinance or otherwise, the rates, fees, and terms for the collocation of small cell wireless facilities on the authority poles. The rates, fees, and terms shall comply with all of the following:

(a) The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this act.

(b) The authority shall provide a good-faith estimate for any make-ready work within 60 days after receipt of a complete application. Make-ready work shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant.

(c) The person owning or controlling the authority pole shall not require more make-ready work than required to comply with law or industry standards.

(d) Fees for make-ready work shall not do any of the following:

(i) Include costs related to preexisting or prior damage or noncompliance unless the damage or noncompliance was caused by the applicant.

(ii) Include any unreasonable consultant fees or expenses.

(iii) Exceed actual costs imposed on a nondiscriminatory basis.

(5) This section does not require an authority to install or maintain any specific authority pole or to continue to install or maintain authority poles in any location if the authority makes a nondiscriminatory decision to eliminate aboveground poles of a particular type generally, such as electric utility poles, in a designated area of its geographic jurisdiction. For authority poles with colocated small cell wireless facilities in place when an authority makes a decision to eliminate aboveground poles of a particular type, the authority shall do 1 of the following:

(a) Continue to maintain the authority pole.

(b) Install and maintain a reasonable alternative pole or wireless support structure for the collocation of the small cell wireless facility.

(c) Offer to sell the pole to the wireless provider at a reasonable cost.

(d) Allow the wireless provider to install its own utility pole so it can maintain service from that location.

(e) Proceed as provided by an agreement between the authority and the wireless provider.


**460.1321 Municipally owned electric utility; collocation on nonauthority poles; standards; application process; moratorium prohibited; rates; make-ready work.**

Sec. 21. (1) The governing body of a municipally owned electric utility shall not enter into an exclusive arrangement with any person for the right to attach to nonauthority poles.
(2) The governing body of a municipally owned electric utility shall allow the collocation of small cell wireless facilities on nonauthority poles on a nondiscriminatory basis.

(3) The collocation of small cell wireless facilities on nonauthority poles by a wireless provider shall comply with the applicable, nondiscriminatory safety and reliability standards adopted by the governing body of a municipally owned electric utility and with the "National Electric Safety Code" published by the Institute of Electrical and Electronics Engineers. The governing body of a municipally owned electric utility may require a wireless provider to execute an agreement for nonauthority pole attachments if such an agreement is required of all other nonauthority pole attachments.

(4) The governing body of a municipally owned electric utility shall adopt a process for requests by wireless providers to colocate small cell wireless facilities on nonauthority poles that is nondiscriminatory and competitively neutral. If such a process has not been adopted within 90 days after the effective date of this act, the application process in section 15 applies to such requests. The governing body of a municipally owned electric utility shall not impose a moratorium on the processing of nonauthority pole collocation requests, or require a wireless provider to perform any service not directly related to the collocation. The governing body of a municipally owned electric utility may charge a fee not to exceed $100.00 per nonauthority pole for processing the request. The governing body of a municipally owned electric utility may charge an additional fee not to exceed $100.00 per nonauthority pole for processing the request, if a modification or maintenance of the collocation requires an engineering analysis. Every 5 years after the effective date of this act, the maximum fees then authorized under this subsection are increased by 10% and rounded to the nearest dollar.

(5) The rate for a wireless provider to colocate on a nonauthority pole in the ROW shall not exceed $50.00 annually per nonauthority pole. Every 5 years after the effective date of this act, the maximum rate then authorized under this subsection are increased by 10% and rounded to the nearest dollar.

(6) A wireless provider shall comply with the process for make-ready work that the governing body of a municipally owned electric utility has adopted for other parties under the same or similar circumstances that attach facilities to nonauthority poles. If such a process has not been adopted, the wireless provider and the governing body of a municipally owned electric utility shall comply with the process for make-ready work under 47 USC 224 and implementing orders and regulations. A good-faith estimate established by the governing body of a municipally owned electric utility for any make-ready work for nonauthority poles shall include pole replacement if necessary. All make-ready costs shall be based on actual costs, with detailed documentation provided.

(7) If a wireless provider is required to relocate small cell wireless facilities colocated on a nonauthority pole, it shall do so in accordance with the nondiscriminatory terms adopted by the governing body of a municipally owned electric utility.


460.1323 Attaching entity; standards; compliance; rate; civil action.

Sec. 23. (1) An attaching entity, and all contractors or parties under its control, shall comply with reliability, safety, and engineering standards adopted by the governing body of a municipally owned electric utility, including, but not limited to, the following:

(a) Applicable engineering and safety standards governing installation, maintenance, and operation of facilities and the performance of work in or around the municipally owned electric utility nonauthority poles and facilities.

(b) The "National Electric Safety Code" published by the Institute of Electrical and Electronics Engineers.

(c) Regulations of the United States Occupational Safety and Health Administration.

(d) Other reasonable safety and engineering requirements to which municipally owned electric utility facilities are subject by law.

(2) The governing body of a municipally owned electric utility may require an attaching entity to execute an agreement for wire or cable attachments to nonauthority poles or related infrastructure.

(3) The governing body of a municipally owned electric utility shall not charge an attaching entity a rate for wire or cable pole attachments within the communication space on a nonauthority pole greater than the maximum allowable rate pursuant to 47 USC 224(d) and (e) as established in Federal Communications Commission Order on Reconsideration 15-151.

(4) Subject to section 27, an attaching entity may commence a civil action for injunctive relief or for a violation of this section. The attaching entity shall not file an action under this subsection unless the attaching entity has first provided the municipally owned electric utility with a written notice of the intent to sue. Within 30 days after the municipally owned electric utility receives written notice of intent to sue, the municipally owned electric utility and the attaching entity shall meet and make a good-faith attempt to determine if there is a credible basis for the action. If the parties agree that there is a credible basis for the action.
action, the governing body of the municipally owned electric utility shall take all reasonable and prudent steps necessary to comply with the applicable requirements of this section within 90 days after the meeting.


460.1325 Jurisdiction; authority; certain interior structures, campuses, stadiums, and athletic facilities.

Sec. 25. An authority does not have jurisdiction or authority over the design, engineering, construction, installation, or operation of a small cell wireless facility located in an interior structure or upon a campus of an institution of higher education including any stadiums or athletic facilities associated with the institution of higher education, a professional stadium, or a professional athletic facility, other than to enforce applicable codes. This act does not authorize this state or any other authority to require wireless facility deployment or to regulate wireless services.


460.1327 Circuit courts; jurisdiction; right to appeal.

Sec. 27. The circuit court has jurisdiction to determine all disputes arising under this act. Venue lies in the judicial circuit where the authority or municipally owned electric utility is located. In addition to its right to appeal to the circuit court, an applicant may elect, at its sole discretion, to appeal a determination under the act to an authority, if the authority has an appeal process to render a decision expeditiously.


460.1329 Indemnification; insurance requirements.

Sec. 29. As part of the permit process under section 15, a zoning approval process under section 17, or a request process under section 21, an authority or the governing body of a municipally owned electric utility may require a wireless provider to do the following with respect to a small cell wireless facility, a wireless support structure, or a utility pole:

(a) Defend, indemnify, and hold harmless the authority or the governing body of a municipally owned electric utility and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, its contractors, its subcontractors, and the officers, employees, or agents of any of these. A wireless provider has no obligation to defend, indemnify, or hold harmless an authority or the governing body of a municipally owned electric utility, or the officers, agents, or employees of the authority or governing body against any liabilities or losses due to or caused by the sole negligence of the authority or the governing body of a municipally owned electric utility or its officers, agents, or employees.

(b) Obtain insurance naming the authority or the governing body of a municipally owned electric utility and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees. A wireless provider may meet all or a portion of the authority's insurance coverage and limit requirements by self-insurance. To the extent it self-insures, a wireless provider is not required to name additional insureds under this section. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the authority evidence demonstrating, to the authority's satisfaction, the wireless provider's financial ability to meet the authority's insurance coverage and limit requirements.


460.1331 Fee and rate limitations.

Sec. 31. An authority may establish a fee or rate less than the maximum specified in section 13(3), 15(3), 17(4), or 19(2), subject to other requirements of this act.


460.1333 Bonding requirements; limitations.

Sec. 33. (1) As a condition of a permit described in this act, an authority may adopt bonding requirements for small cell wireless facilities if both of the following requirements are met:

(a) The authority imposes similar requirements in connection with permits issued for similarly situated users of the ROW.

(b) The purpose of the bonds is 1 or more of the following:

(i) To provide for the removal of abandoned or improperly maintained small cell wireless facilities, including those that an authority determines should be removed to protect public health, safety, or welfare.

(ii) To repair the ROW as provided under section 13(10).
(iii) To recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the authority of the noncompliance.

(2) An authority shall not require either of the following under subsection (1):

(a) A cash bond, unless any of the following apply:

(i) The wireless provider has failed to obtain or maintain a bond required under this section.

(ii) The surety has defaulted or failed to perform on a bond given to the authority on behalf of the wireless provider.

(b) A bond in an amount exceeding $1,000.00 per small cell wireless facility.


460.1335 Labeling requirement of small cell wireless facility.

Sec. 35. A small cell wireless facility for which a permit is issued shall be labeled with the name of the wireless provider, emergency contact telephone number, and information that identifies the small cell wireless facility and its location.


460.1337 Payment of electricity to operate small cell wireless facility.

Sec. 37. A wireless provider is responsible for arranging and paying for the electricity used to operate a small cell wireless facility.


460.1339 Scope of act; application to and effect on certain electric utilities.

Sec. 39. (1) This act does not add to, replace, or supersede any law regarding poles or conduits, similar structures, or equipment of any type owned or controlled by an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, an independent transmission company, or, except as provided in section 7(e), a cooperative electric utility.

(2) This act does not impose or otherwise affect any rights, controls, or contractual obligations of an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, an independent transmission company or, except as provided in section 7(e), a cooperative electric utility with respect to its poles or conduits, similar structures, or equipment of any type.

(3) Except for purposes of a wireless provider obtaining a permit to occupy a right-of-way, this act does not affect an investor-owned utility whose rates are regulated by the MPSC. Notwithstanding any other provision of this act, pursuant to and consistent with section 6g of 1980 PA 470, MCL 460.6g, the MPSC has sole jurisdiction over attachment of wireless facilities on the poles, conduits, and similar structures or equipment of any type or kind owned or controlled by an investor-owned utility whose rates are regulated by the MPSC.

AN ORDINANCE
of the City Council of the City of Berkley, Michigan

to adopt Section 2-41 of Article II of Chapter 2, Officers and Employees,
of the City of Berkley Code of Ordinances
to Establish Standards of Conduct for City Officials, Officers and Employees.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Section 2-41 of Article II of Chapter 2 of the City of Berkley Code of Ordinances
is hereby adopted, as follows:

Sec. 2-41. – Standards of Conduct.

(a) This section establishes minimum standards of conduct for all city officials, officers, and
employees, elected or appointed, paid or unpaid.

(b) Definitions

(1) City official, officer or employee means a person elected, appointed, employed or
otherwise serving in any capacity with the city in any position established by the
City Charter or by city ordinance which involves the exercise of a public power,
trust or duty. The term includes all officials, officers, and employees of the city,
whether or not they receive compensation, and also includes consultants and
persons who serve on advisory boards and councils. The term does not include
election inspectors and student representatives appointed to city boards or
councils.

(2) Official duties or official action means a decision, recommendation, approval,
disapproval or other action or failure to act, which involves the use of
discretionary authority.

(c) Standards

(1) Responsibilities of public office. City officials, officers, and employees are bound
to uphold the federal and state Constitutions to comply with and carry out
impartially federal and state laws and the Charter and Code of Ordinances of the
City.

a. City officials, officers, and employees must not exceed their authority or
breach the law or ask others to do so.

b. City officials, officers, and employees shall express themselves with
civility– in both spoken and written communications – in a manner
becoming of a City of Berkley official or representative and maintain a
constructive tone that may not reasonably be construed as demeaning,
harassing, accusatory, untruthful, or disrespectful.
c. City officials, officers, and employees shall maintain the highest standards of ethics and discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their conduct in both their official and private affairs should be above reproach.

d. All City officials, officers, and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact and by avoiding conduct which may tend to undermine respect for city officials, officers, and employees and for the City as an institution.

e. City officials, officers, and employees shall support and maintain a positive and constructive work place environment for city employees and for citizens and businesses dealing with the city. City officials shall recognize their special role in dealings with city employees to in no way create the perception of inappropriate direction to staff.

f. The professional and personal conduct of City officials, officers, and employees must be above reproach and avoid even the appearance of impropriety. City officials, officers, and employees shall strive to refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of city council, boards and/or councils, the staff or public.

g. City officials shall prepare themselves for public issues, listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

(d) **Enforcement**

1. When there is a question or a complaint as to the applicability of any provision of this section to a particular situation, that question or complaint shall be directed to the Board of Ethics. It shall then be the function of the Board of Ethics to investigate, conduct hearings and/or issue an advisory opinion, as applicable.

   (a) Advisory opinions. All advisory opinions so issued shall also be published in permanent form and communicated to the City Council and the public, subject to the requirements of the Open Meetings Act.

   (b) After the Board of Ethics advisory opinions and/or hearing findings have been published:

      1. The City Council shall be responsible for censuring or reprimanding its own members for violation of this section.
2. The City Council or designee shall be responsible for censuring, reprimanding or removing for a violation of this section any person appointed by the Council to any city board or commission.

3. The City Manager shall be responsible for imposing any discipline for a violation of this section on any employee of the city, including employees appointed by the City Manager pursuant to the City Charter.

(e) Retaliation prohibited

(1) City Officials, Employees, or any persons and/or groups associated with any City officials or employees, shall not discipline, discharge, threaten, harass, or otherwise discriminate against any person who has reported, is believed to have reported, intends to report, or is believed to intend to report, either verbally or in writing, a violation or suspected violation of this section.

(2) The City shall not discipline, discharge, threaten, or otherwise discriminate against an employee in regard to the terms and conditions of employment because the employee, or a person acting on behalf of the employee, has reported, is believed to have reported, intends to report, or is believed to intend to report a violation or suspected violation of this section, unless the employee knows or reasonably should know the report is false.

(3) The City shall not discipline, discharge, threaten, harass, or otherwise discriminate against an employee in regard to the terms and conditions of employment because the employee is requested by the City to participate in an investigation or hearing regarding an alleged violation of this section.

(f) Statement of acknowledgement.

(1) Within 20 days following the election, employment or appointment of a city official, officer, or employee, all city officials, officers, and employees of the city shall file with the city clerk a signed statement of acknowledgement.

(2) Within 30 days following the adoption or amendment of this section, all city officials, officers, and employees of the city shall file with the City Clerk a signed statement of acknowledgement, as follows:

As a city official, officer, or employee, I have read and fully understand the Standards of Conduct for the City of Berkley.

<table>
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<tr>
<th>Signature/Date</th>
<th>Name/Office</th>
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(g) This section should not be construed to interfere with or abrogate in any way the provisions the federal or state Constitutions, any federal or state statute, the City Charter,
the City Ordinances, or any rights and/or remedies guaranteed under the current Berkley Merit system or collective bargaining agreement, nor the zealous or spirited expression, advocacy, opposition, or debate over positions, ideas, and opinions.

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 First Reading at a Regular City Council Meeting on January 6, 2020.

________________________________
Daniel J. Terbrack
Mayor

Attest:

____________________________
Victoria Mitchell
City Clerk
Memo

To: Mayor Terbrack and City Council
From: Matthew Baumgarten, City Manager
Date: January 6, 2020
Subject: Proposed Addition of Sec. 2-41 Standards of Conduct

Mr. Mayor and Members of City Council,

In addition to the revision of the ethics ordinance, Sec. 2-41 is also being proposed in order to specifically outline standards of conduct for elected and appointed officials, as well as, City employees. The City Attorney has authored and revised the text of this proposed ordinance based upon feedback from members of the City Council.

The text has been carefully written so as to not create the impression that elected and appointed officials cannot express themselves or their opinions; rather the intent of the ordinance is to create a minimum standard for how such discourse occurs. As we know, Berkley residents hold City officials and employees to a higher standard and this proposed ordinance seeks to acknowledge and codify that standard.

Revisions to the ethics ordinance and codification of standards of conduct were initially proposed by Councilmember Steve Baker.

Thank you,

Matthew Baumgarten
Berkley City Manager
AN ORDINANCE
of the City Council of the City of Berkley, Michigan
to Repeal and Replace Section 2-40 of Article II of Chapter 2, Officers and Employees,
of the City of Berkley Code of Ordinances
to Adopt a New Code of Ethics for City Officers, Officials and Employees.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Section 2-40 of Article II of Chapter 2 of the Berkley Code of Ordinances shall be repealed in its entirely and replaced with the following new Section 2-40.

Sec. 2-40. – Ethics.

(a) Purpose.

The purpose of this section establishes a code of ethics for the officers, officials, and employees of the City. The section also provides references to certain state statutes that regulate the conduct of officers, officials, and employees of local government. This section establishes a Board of Ethics to hear complaints against officers, officials, and employees of the City and, when there is a reasonable basis to believe that the respondent has violated this section’s code of ethics to refer those complaints for prosecution, sanctions, and/or a disciplinary hearing by the appointing authority. This section provides for penalties for violations.

(b) Definitions.

(1) Domestic partner means one of two adults who have a common residence, who are not legally married or related by blood, and who are in a relationship of mutual support, caring, and commitment.

(2) Confidential information means information that is obtained by an officer, official, or employee in the course of acting as a City officer, official, or employee, that is not available to the public or exempt from disclosure under the Michigan Freedom of Information Act, MCL 15.231 et seq., or pursuant to other law, regulation, policy or procedure recognized by law, and that the officer, official, or employee is not authorized to disclose.

(3) Employee means a person employed by the City, whether on a full-time or part-time basis.

(4) Gift means any gratuity, discount, donation, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer, official, or employee.

(5) Government contract means a contract in which the City acquires goods or
services, or both, from another person or entity, but the term does not include a contract pursuant to which a person serves as an employee or appointed officer of the City.

(6) *Governmental decision* means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, or measure on which a vote by the members of a council, board, commission, or authority is required and by which the City formulates or effectuates public policy.

(7) *Immediate family* means a person and a person’s spouse or domestic partner, and the person’s children and step-children, by blood or adoption, who reside with that person.

(8) *Officer or Official* means a person who holds office, by election or appointment, within the City regardless of whether the officer or official is compensated for service in his or her official capacity.

(9) *Official action* means a decision, recommendation, approval, disapproval or other action or failure to act which involves the use of discretionary authority.

(10) *Prohibited source* means any person or entity who:

a. is seeking official action (i) by an officer or official or (ii) by an employee, or by the officer, official, or another employee directing that employee;

b. does business or seeks to do business (i) with the officer or official or (ii) with an employee, or with the officer, official, or another employee directing that employee;

c. conducts activities regulated (i) by the officer or official or (ii) by an employee, or by the officer, official, or another employee directing that employee; or

d. has interests that may be substantially affected by the performance or non-performance of the official duties of the officer, official, or employee.

(c) **Standards of conduct**

(1) *Gift Ban.* Except as permitted by this section, no officer, official, or employee of the City shall intentionally solicit or accept any gift from any prohibited source or which is otherwise prohibited by law or ordinance.

(2) *Exceptions.* Subdivision (c)(1), above, does not apply to the following:

a. Opportunities, benefits, and services that are available on the same basis
or conditions as for the general public.

b. Anything for which the officer, official, or employee pays fair market value.

c. Any contribution that is lawfully made under the Campaign Finance Act and laws of the State of Michigan.

d. A gift from an immediate family member or a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of an individual’s spouse or domestic partner and the individual’s fiancé or fiancée.

e. Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was given because of the recipient’s official position or government employment and not because of personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient, the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient, the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees.

f. Food or beverages not exceeding $50.00 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered. For the purposes of this Section, “catered” means food or refreshments that are purchased ready to consume which are delivered by any means.

g. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an officer, official, or employee), if the benefits have not been offered or enhanced because of the official
position or employment of the officer, official, or employee, and are customarily provided to others in similar circumstances.

h. Intra-governmental and inter-governmental gifts. For the purpose of this section, “intra-governmental gift” means any gift given to an officer, official, or employee from another officer, official, or employee of the City, and “inter-governmental gift” means any gift given to an officer, official, or employee by an officer, official, or employee of another governmental entity.

i. Bequests, inheritances, and other transfers at death.

j. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than $______.

Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

(3) **Disposition of gifts.** An officer, official, or employee does not violate this section if he or she promptly undertakes reasonable action to return a gift from a prohibited source.

(4) **Confidential Information.** An officer, official, or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment or official position in advance of the time prescribed for its authorized release to the public.

(5) **Personal Opinion.** An officer, official, or employee shall not misrepresent his or her personal opinion as that of the City.

(6) **Public Resources.** An officer, official, or employee shall use personnel resources, property, and funds under the officer’s, official’s, or employee’s official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain, use, or benefit.

(7) **Personal Profit.** An officer, official, or employee shall not engage in a business transaction in which the officer, official, or employee may profit from his or her official position or authority or benefit financially from confidential information which the officer, official, or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with the instructor’s course of employment or engagement with the City.
(8) **Incompatibility and Conflicts of Interest.** Except as otherwise provided in Const 1963, statute, or in subdivision (c)(10) below, an officer, official, or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer, official, or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties. The simultaneous holding of more than one public position under certain circumstances is contrary to the requirements of the Incompatible Public Offices Act, MCL 15.181 et seq. However, the simultaneous holding of certain public positions is specifically authorized by the Michigan Constitution of 1963 or state statute.

(9) **Personal and financial interests.** Except as provided in subdivision (c)(10) below, an officer, official, or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the officer, official, or employee has a financial or personal interest.

(10) **State Conflict of Interest Act, Validity of Contracts, and Voting on, Making, or Participating in Governmental Decisions.**

a. This section shall not in any manner vary or change the requirements of 1968 PA 317, being sections 15.321 to 15.330 of the Michigan Compiled Laws, which governs the solicitation by and participation in government contracts by officers and employees of the City and preempts all local regulation of such conduct.

b. This section is intended as a code of ethics for the City’s officers, officials, and employees. A contract in respect to which an officer, official, or employee acts in violation of this section, shall not be considered to be void or voidable unless the contract is a violation of a statute which specifically provides for that remedy.

c. Subject to paragraph d, below, subdivisions (c)(8) and (c)(9), above, shall not apply and an officer or official shall be permitted to vote on, make, or participate in making a governmental decision if all of the following occur:

   (i) The requisite quorum necessary for official action on the governmental decision by the City Council to which the officer has been elected or appointed is not available because the participation of the officer or official in the official action would otherwise violate subdivisions (c)(8) and (c)(9).

   (ii) The officer or official is not paid for working more than 25 hours
per week for the City.

(iii) The officer or official promptly discloses any personal, contractual, financial, business, or employment interest he or she may have in the governmental decision and the disclosure is made part of the public record of the official action on the governmental decision.

d. If a governmental decision involves the awarding of a contract, subdivisions (c)(8) and (c)(9), above, shall not apply and an officer or official shall be permitted to vote on, make, or participate in making the governmental decision if all of the following occur:

(i) All of the conditions of subdivision (c)(10)c, above, are met.

(ii) The officer or official will directly benefit from the contract in an amount less than $250.00 or less than 5% of the public cost of the contract, whichever is less.

(iii) The officer or official files a sworn affidavit containing the information described in paragraph (ii), above, with the City Council making the governmental decision.

(iv) The affidavit required by paragraph (iii), above, is made a part of the public record of the official action on the governmental decision.

(11) Political Activities of Public Employee or Public Officer.

a. Employees of local units of government running for office, political campaigning by employees, and limitations on officers and employees seeking support from other employees for those campaigning for public office and for or against ballot proposals are regulated by the Political Activities by Public Employees Act, MCL 15.401 et seq. Complaints may be filed with the Michigan Department of Energy, Labor and Economic Growth. MCL 15.406. Violation of that Act by employees and appointed officers are subject to appropriate disciplinary action, up to and including termination by the appointing authority. Violations are also subject to the sanctions listed in subsection (g), below.

b. Michigan Campaign Finance Act, MCL 169.201 et seq. Complaints regarding compliance with this Act may be filed with the Michigan Department of State.

(12) Anti-nepotism. Unless the City Council shall by a two thirds (2/3) vote, which shall be recorded as part of its official proceedings, determine that the best
interests of the City shall be served and the individual considered by such a vote has met the qualifications for appointive office or employment, the following relatives of any elected or appointed officer or official are disqualified from holding any appointed office or employment during the term for which said elected or appointed officer or official was elected or appointed: spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister, or the spouse or domestic partner of any of them. This subsection shall in no way disqualify such relatives or their spouses or domestic partners who are bona fide appointed officers, officials, or employees of the City at the time of the election or appointment of said officer or official to elective City office.

(13) Representation Before Governmental Body. An officer, official, or employee of the City shall not represent or advocate for any other person in any matter that the person has pending before the City when the officer, official, or employee appoints or otherwise supervises the board, commission, officer or employee responsible for handling the matter.

(14) Transactional Disclosure. Whenever an officer, official, or employee is required to recuse himself or herself in order to comply with the Standards of Conduct in subsection (c), he or she:

a. shall immediately refrain from further participation in the matter;

b. shall promptly inform his or her superior, if any; and

c. shall promptly file with the Board of Ethics and City Clerk a signed Statement of Disclosure disclosing the reason for recusal. The clerk shall send copies of the Statement of Disclosure to all of the members of the City Council and the Statement shall be attached to or referenced in the council meeting minutes.

(15) Annual Disclosure Statement.

a. The following elected and appointed officers, officials, and employees shall file an annual disclosure statement: all elected and appointed officers, officials, and employees; the directors and deputy directors of administrative departments, members of the board of ethics, zoning board of appeals, planning commission, building code board of appeals, downtown development authority, parks and recreation advisory board, and tree board, and those who regularly exercise significant discretion over the solicitation, negotiation, approval, awarding, amendment, performance, or renewal of City contracts.

b. The annual disclosure statement shall disclose the following financial interest of the officer, official, or employee or his or her immediate family
in any company, business, or entity that has contracted with the City or which has sought licensure or approvals from the City in the two calendar years prior to the filing of the statement:

(i) Any interest as a partner, member, employee or contractor in or for a co-partnership or other unincorporated association;

(ii) Any interest as a beneficiary or trustee in a trust;

(iii) Any interest as a director, officer, employee or contractor in or for a corporation; and

(iv) Legal or beneficial ownership of 1% or more of the total outstanding stock of a corporation.

The annual disclosure statement shall include a summary listing each business transaction with the City involving a financial interest described in this section of the City officer, official, or employee and/or the immediate family of the officer, official, or employee during the two prior calendar years.

If there is no reportable financial interest or transaction applicable to the officer, official, or employee and/or the immediate family of the officer or employee, the annual disclosure statement shall contain a certification to that effect.

(d) Board of Ethics

(1) There is hereby created a board to be known as the Board of Ethics of the City. The Board shall be comprised of three members appointed by the City Council. Members shall be City residents who are not officers, officials, or employees of the City during their board membership. Board members shall serve without compensation. No person shall be appointed as a member of the Board who is the domestic partner of, or is related, either by blood or by marriage up to the degree of first cousin, to any elected officer or official of the City.

(2) At the first meeting of the Board, the initial appointees shall draw lots to determine their initial terms of 3, 2, and 1 year(s), respectively. Thereafter, all board members shall be appointed to 3-year terms by the City Council. Board members may be reappointed to serve subsequent terms.

At the first meeting of the Board and thereafter at the discretion of the Board, the board members shall choose a chairperson from their number. Meetings shall be held at the call of the chairperson or any 2 board members. A quorum shall consist of two Board members, and official action by the Board shall require the affirmative vote of two Board members.
The business of the Board, including its hearings, deliberations and decisions, shall be conducted at meetings held in compliance with the Open Meetings Act, MCL 15.261 et seq.

The Clerk or member of the Clerk’s staff shall attend the Board meetings and act as secretary for the Board.

(3) The City Council may remove a Board member for misfeasance, nonfeasance, or malfeasance in office after service on the Board member of written notice of the charges against the Board member and after providing an opportunity to be heard in person or by counsel upon not less than 10 days notice. Mid-term vacancies shall be filled for the balance of the term in the same manner as original appointments are made.

(4) The Board of Ethics shall have the following powers and duties:

a. To promulgate procedures and rules governing the performance of its duties and the exercise of its powers.

b. Upon receipt of a signed, notarized, written complaint against an officer, official, or employee, to investigate, conduct hearings and deliberations, issue referrals for disciplinary hearings and refer violations of subsection (c), above, or state or federal criminal statutes to the attention of the City Attorney (or such other attorney designated by City Council) with a request for the filing of the appropriate criminal prosecution or civil infraction enforcement. The Board shall, however, act only upon the receipt of a written complaint alleging a violation of this section and not upon its own initiative.

c. To elicit information from the public pertaining to its investigations and to seek additional information and documents from officers, officials, and employees of the City.

d. To request the attendance of witnesses and the production of books and records pertinent to an investigation. It is the obligation of all officers, officials, and employees of the City to cooperate with the Board during the course of its investigations. Failure or refusal to cooperate with requests by the Board shall constitute grounds for reprimand, discipline or discharge of appointed officers, officials, and employees of the City.

e. The powers and duties of the Board are limited to matters only within the purview of this section.
(5) Complaints

a. Complaints alleging a violation of this section shall be filed with the City Clerk.

b. Within 3 business days after the receipt by the Clerk of a complaint, the Clerk shall send a notice to the respondent that a complaint has been filed against him or her together with a copy of the complaint. Within 3 business days after receipt by the Clerk of a complaint, the Clerk shall send a notice of confirmation of receipt of the complaint to the complainant. The notices sent to the respondent and the complainant shall also advise them of the date, time, and place of the Board meeting to determine the sufficiency of the complaint and to establish whether there is a reasonable basis to believe that the respondent has violated subsection (c) of this section. The Clerk shall also concurrently send copies of the foregoing complaint and notices to the members of the Board.

c. The Board shall meet to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of subsection (c) of this section, to determine whether there is a reasonable basis to believe that the respondent has violated subsection (c) of this section based on the evidence presented by the complainant and any additional evidence provided to the Board at the meeting pursuant to its investigatory powers. The complainant and respondent may be represented by counsel at the meeting. Within a reasonable period of time after the completion of the meeting which may be conducted in one or more sessions at the discretion of the Board, the Board shall issue notice to the complainant and the respondent of the Board’s ruling on the sufficiency of the complaint and, if necessary, as to whether they find that there is a reasonable basis to believe that the respondent has violated subsection (c) of this section.

d. If the complaint is deemed sufficient to allege a violation of subsection (c) of this section and the Board finds there is a reasonable basis to believe that the respondent has violated subsection (c) of this section, then the Clerk shall notify in writing the City Attorney (or other attorney designated by the City Council) and shall transmit to the attorney the complaint and all additional documents in the custody of the Board concerning the alleged violation, with the Board’s request for the filing of appropriate criminal or civil proceedings. The Clerk shall also provide these documents to the respondent’s appointing authority or supervisor within the City with the Board’s request for the commencement of appropriate disciplinary action consistent with any applicable collective
bargaining agreement, merit system, civil service commission rules or employment regulations of the City.

e. Sections 2b - 2e of the State Ethics Act, MCL 15.341 et seq. set forth protections for officers and employees who act as whistleblowers regarding the conduct of the City’s officers and employees. Additional whistleblower protections are set forth in the Whistleblowers’ Protection Act, 1980 PA 469, MCL 15.361 et seq.

f. Any person who files a complaint alleging a violation of this section knowing that material information provided therein is not true or that information provided therein was made in reckless disregard for the truth is responsible for a municipal civil infraction and may be subject to a civil fine of up to $500 as well as the reasonable costs incurred by the City in investigating the complaint.

g. A complaint must be filed with the Clerk within 60 calendar days of the date the alleged violation is discovered, or reasonably should have been discovered.

(e) **Sanctions**

(1) Sanctions shall not be construed to diminish, modify, or impair the rights of an officer, official, or employee under the City Charter, any collective bargaining agreement or the merit system, nor the City’s obligation to comply with the Charter, collective bargaining agreements, and merit system.

(2) State statutes cited in this section contain criminal penalties and civil remedies that apply, as provided in those statutes, to the conduct regulated by those statutes.

(3) A violation of this section may be punished as a municipal civil infraction by a fine of up to $500.00.

(4) In addition to any other penalty, whether criminal or civil, an employee or officer or official who intentionally violates this section may be subject to disciplinary action including censure, reprimand, removal, dismissal or discharge.

**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 First Reading at a Regular City Council Meeting on Monday, January 6, 2020.

____________________________
Daniel J. Terbrack
Mayor

Attest:

____________________________
Victoria Mitchell
City Clerk
Mr. Mayor and Members of City Council,

To follow up on previous efforts to update the ethics ordinance, the City Attorney has adapted the Michigan Attorney General’s model ethics ordinance. The proposed ordinance establishes a board to accept and process complaints. This draft of Sec. 2-40 addresses traditional definitions of ethical behavior as defined by the Michigan Attorney General which does not include civility or standards of conduct. As such, these are addressed in an additional proposed ordinance, Sec. 2-41.

Revisions to the ethics ordinance and codification of standards of conduct were initially proposed by Councilmember Steve Baker.

Thank you,

Matthew Baumgarten
Berkley City Manager
AN ORDINANCE
of the City Council of the City of Berkley, Michigan

to add Division 1, Attendance and Training, to Article V of Chapter 2, Administration, of
the City of Berkley Code of Ordinances, and to Amend City Code Sections 2-273, 66-21, 86-36, and 90-20 to Adopt Minimum Attendance and Training Requirements and to modify
removal from office procedures for Appointed Boards and Commissions.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Division 1 of Article V of Chapter 2 of the City of Berkley Code of Ordinances is
hereby added and adopted, as follows:

Division 1. Attendance and Training

Sec. 2-176. Definitions. As used in this division, the following terms shall be defined as
follows:

(a) Board: A board, commission, committee, authority, or other similar public body for the
City of Berkley that is established and empowered by state constitution, statute, charter,
ordinance, resolution, or rule to exercise governmental or proprietary authority or
perform a governmental or proprietary function.

(b) Appointed Member: A member of a board whose appointment must be made or approved
by the City Council.

Sec. 2-177. Removal from office.

The City Council shall have the power to remove from office any appointed member of a
board whose membership is not otherwise established or required by charter, statute or
ordinance.

(a) Appointed members of the board of review, building code board of appeals, downtown
development authority, planning commission, zoning board of appeals, or any other
Board whose purpose and function is not purely advisory, may after notice and hearing,
be removed from office by a majority vote of the City Council for cause including
misfeasance, malfeasance, or nonfeasance of office.

(b) Appointed members of boards other than those in subsection (a), above, may be removed
from office by a majority vote of the City Council without cause assigned.

Sec. 2-178. Minimum attendance required.

(a) Before the end of each fiscal year of the city, each board shall report to the city manager
the attendance record of each member during that fiscal year.

(b) A vacancy shall occur whenever an appointed member of any board shall miss four (4)
consecutive regular meetings or twenty-five percent (25%) of that board's regular
meetings held during a fiscal year of the city, unless such absences have been excused by
the members of the board and the reasons therefore entered into the official record and
minutes of the board.

Sec. 2 – 179. Training required for Planning Commission and Zoning Board of Appeals.

(a) All appointed members of the planning commission and the zoning board of appeals must:

(1) Complete a training course within six (6) months of their initial appointment to
the board whose purpose is to provide the fundamentals on roles, responsibilities
and best practices for planning and zoning in Michigan, unless such member(s)
previously served on the same board within the last five (5) years; and

(2) Complete a minimum amount of continuing education each fiscal year beginning
with the first fiscal year after their appointment, whose purpose is to provide
training in advanced topics or updates on changes in planning or zoning law and
best practices.

(b) Any appointed member who fails to complete all of the requirements of this section shall
be considered to have vacated their seat.

(c) Before the end of each fiscal year, the Planning Commission and Zoning Board of
Appeals shall report to the city manager the training record of each member during that
fiscal year.

(d) The City Manager in consultation with the Community Development Director shall
determine the available training courses and minimum amount of training needed to
fulfill the requirements of subsection (a), above.

(e) The requirements of this section are waivable if the City Council does not appropriate
sufficient funds to cover members’ expense of education and training materials, classes,
and related travel and lodging expenses.

(f) In the first fiscal year after the effective date of this Division, in which the City Council
appropriates sufficient funds, all appointed members of the Planning Commission and
Zoning Board of Appeals must complete the mandatory training by the end of that fiscal
year, or be determined by the city manager to have completed equivalent training. Any
appointed member who fails to do so shall be considered to have vacated their seat.

Sec. 2 – 180. Effective date

The requirements of this division shall go into effect beginning with the fiscal year
starting July 1, 2020.

SECTION 2: Section 2-273 of Division 5 of Article V of Chapter 2 of the City of Berkley Code of
Ordinances is hereby amended, as follows:
Sec. 2 – 273. Removal from Office.

Members of the environmental advisory committee shall be subject to removal from office by a majority vote of the council without cause assigned in accordance with City Code Section 2-177, and their position shall be subject to being deemed vacant due to excessive unexcused absences under City Code Section 2-178.

SECTION 3: Section 66-21 of Article II of Chapter 66 of the City of Berkley Code of Ordinances is hereby amended, as follows:

Sec. 66 – 21. Removals from Office.

Members of the library board shall be subject to removal from office by the council without cause assigned in accordance with City Code Section 2-177, and their position shall be subject to being deemed vacant due to excessive unexcused absences under City Code Section 2-178.

SECTION 4: Section 86-36 of Article III of Chapter 86 of the City of Berkley Code of Ordinances is hereby amended, as follows:

Sec. 86 – 36. Removal from Office.

Members of the parks and recreation advisory board shall be subject to removal from office by a majority vote of the council without cause assigned in accordance with City Code Section 2-177, and their position shall be subject to being deemed vacant due to excessive unexcused absences under City Code Section 2-178. A vacancy shall occur whenever any member of the parks and recreation advisory board shall miss or fail to be present at four consecutive regular meetings or 25 percent of such meetings in any fiscal year, unless such absences shall be excused.

SECTION 5: Section 90-20 of Article II of Chapter 90 of the City of Berkley Code of Ordinances is hereby amended, as follows:

Sec. 90 – 20. Removal of members.

Members of the planning commission may, after public hearing, be removed by the council for nonfeasance, misfeasance, or malfeasance in office. Refer to Code of Ethics ordinance in accordance with City Code Section 2-177, and their position shall be subject to being deemed vacant due to excessive unexcused absences under City Code Section 2-178 or failure to complete required training under City Code Section 2-179. Refer to Code of Ethics ordinance.

SECTION 6: 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 7: Effective Date
This Ordinance shall become effective 30 days following the date of adoption.

**SECTION 8: 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 First Reading at a Regular City Council Meeting on Monday, January 6, 2020.

____________________________
Daniel J. Terbrack
Mayor

Attest:

____________________________
Victoria Mitchell
City Clerk
Memo

To: Mayor Terbrack and City Council
From: Matthew Baumgarten, City Manager
Date: January 6, 2020
Subject: Proposed Training and Attendance Ordinance

Mr. Mayor and Members of City Council,

The following proposed ordinance outlines training and attendance requirements for various boards and commissions. The proposed revisions were originally authored by Council member Hennen with reviews and updates from City Attorney John Staran.

Thank you,

Matthew Baumgarten
Berkley City Manager
January 6, 2020 City Council Meeting

Moved by Councilmember ______________________ and seconded by Councilmember ______________________ to approve a Restated and Amended Collaboration Agreement providing for the reconfiguration of and development of off-street parking at 1010-1046 Eaton.

Ayes: 

Nays: 

Motion:
PRE-CAST CONCRETE WALL
Proposed Parking Spaces = 26
January 6, 2020 City Council Meeting

Moved by Councilmember ___________________________ and seconded by Councilmember ___________________________ to approve a proposed Consent Judgement to settle and resolve pending litigation, namely, 27799 Woodward LLC v City of Berkley, Oakland County Circuit Court Case No. 2017-159355-CZ.

Ayes:

Nays:

Motion: