

## **CHAPTER 3 GENERAL PROVISIONS**

### **SECTION 3.01 INTENT AND PURPOSE**

The general regulations contained in this Chapter shall apply to all zoning districts except as otherwise noted. The regulations apply to multiple zoning districts and are not repeated within the individual chapters.

### **SECTION 3.02 ESSENTIAL SERVICES**

- A. The erection, construction, alteration or maintenance of essential public services shall be permitted as authorized or regulated by law and other ordinances in any use District, except those as otherwise provided for in this Ordinance.
- B. New transmission lines, electrical substations, and electrical switching stations in any zoning district except the I-1 and I-2 Districts must receive Special Land Use approval from the Planning Commission.
- C. Commercial Wireless Telecommunication Services are not an essential service.

### **SECTION 3.03 BUILDING AND STRUCTURE HEIGHT EXCEPTIONS**

- A. Height requirements may be exceeded by no more than fifteen (15) feet for the following: chimneys, cooling towers, elevator bulkheads, fire towers, gas tanks, grain elevators, silos, stacks, stage towers and scenery lofts, water tanks, public monuments, church spires, radio and television antennas and towers, and penthouses or roof structures housing necessary mechanical appurtenances. Parapet walls may not exceed four (4) feet in height. Height of Amateur radio antennas and supporting structures shall be governed by Section 3.28 of this ordinance. The provisions of Section 3.28 do not apply to Citizen Band Radio Operators.
- B. Height exceptions are not permitted for towers or structures used in the support of Commercial Wireless Telecommunication Services. These towers and structures may be permitted by the Planning Commission as a Special Land Use governed by the provisions of this Ordinance.

### **SECTION 3.04 REQUIRED AREA OR SPACE**

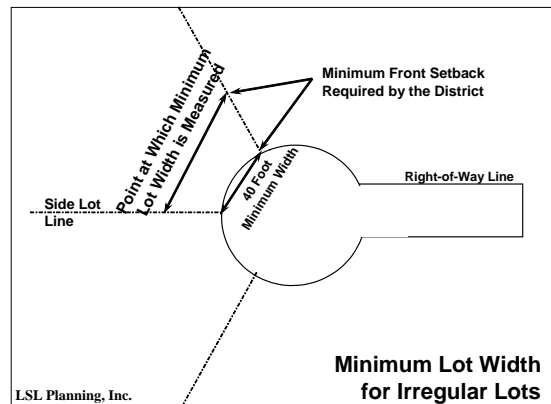
- A. No lot or lots in common ownership and no yard, court, parking area or other space shall be so divided, altered or reduced as to make the area or dimension less than the minimum required under this Ordinance. If already less than the minimum required under this Ordinance, the area or dimension shall not be further divided or reduced.
- B. Accessory buildings, including enclosed porches and garages, attached to a dwelling or to other main building shall be deemed a part of the main buildings for the purpose of determining yard space, areas and setbacks.

**SECTION 3.05 BASIS FOR DETERMINING YARD REQUIREMENTS**

- A. The front yard shall be measured from the right-of-way line to the nearest foundation or building wall of the building or structure.
- B. A corner lot shall have a front lot line and a street side lot line.
- C. Projections into Yards
  - 1. Architectural features, as defined, not including vertical projections, may extend or project into a required side yard not more than four (4) inches for each one (1) foot of width of the side yard and may extend or project into a required front yard not more than four (4) feet.
  - 2. Unenclosed porches, steps, patios or similar construction may not project into a required front or rear yard setback for a distance to exceed ten (10) feet. No projection is allowed into a required side yard.

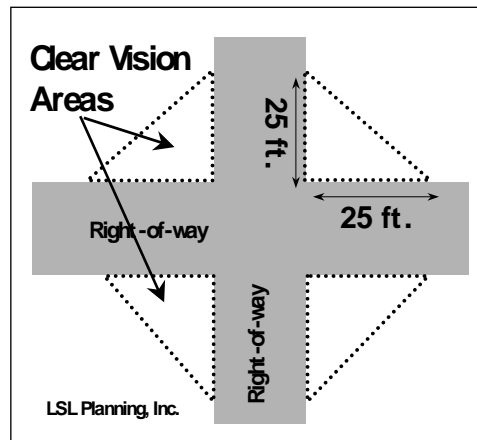
**D. Irregular Lots**

- 1. The minimum distance between side lot lines at the street right-of-way shall be forty (40) feet measured in a straight line.
- 2. The minimum required lot width shall be measured at a straight line drawn between the two side lot lines. This line will be drawn from the points along the side lot lines at which the required front setback distance for the district is met. If the minimum lot width is not met at the required setback distance, the minimum required setback line shall be moved further into the lot to the point at which the minimum lot width is met.



**SECTION 3.06 CLEAR VISION AREA**

- A. No plantings or structures shall be established or maintained on any corner lot or along any driveway that will likely result in obstructing the view of a vehicle driver approaching the intersection or entering or exiting the driveway.
- B. On corner lots, the clear vision area shall mean a triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the case of a rounded property corner from the intersection of the street property lines extended.
- C. This shall not prohibit the maintaining of shrubbery less than thirty (30) inches in height in this area.
- D. Tree branches shall be a minimum of ten (10) feet above the adjoining street level within the clearance corner.



**SECTION 3.07 STREET ACCESS**

Any lot of record created after the effective date of this ordinance shall have the minimum lot width as required by this ordinance upon a public street or lawful private street right-of-way or easement.

**SECTION 3.08 PRINCIPAL USE**

No lot may contain more than one (1) main building or principal use, with the following exceptions: groups of apartment buildings, retail business buildings, or other groups of buildings contained within a single integrated complex. An integrated complex may share parking, signs, access, and other similar features which together form a unified function and appearance that the Zoning Administrator deems to be a principal use collectively.

**SECTION 3.09 MECHANICAL APPURTENANCES**

Mechanical appurtenances such as blowers, ventilating fans, and air conditioning units shall be placed not closer than five (5) feet to adjoining properties or buildings and shall not be located in the front yard of any lot.

**SECTION 3.10 SIDEWALK REQUIREMENTS**

Any development in a Residential, Commercial, or Planned Unit Development must provide sidewalks conforming to City standards along all portions of its property which border arterial or collector streets. Properties bordering arterial streets in the Industrial zones must also provide sidewalks conforming to City standards. The City Commission, upon the recommendation of the Planning Commission, may adopt by resolution a list of any arterial or collector streets exempted from this sidewalk requirement.

**SECTION 3.11 SWIMMING POOLS AND OTHER SIMILAR STRUCTURES**

- A. A fence approved by the Zoning Administrator shall be erected on any lot on which there is located a commercially manufactured swimming pool, hot tub, or other similar structure (below ground or above ground) which contains twenty-four (24) inches or more of water in depth at any point. The approved fence shall be erected and maintained either surrounding the property or pool area in a manner sufficient to make the swimming pool inaccessible to small children.
- B. The fence, including the gates, must not be less than four (4) feet above ground level. All gates must be self-latching with latches placed four (4) feet above ground level or otherwise made inaccessible from the outside to small children.
  - 1. For above ground pools or other similar structures, if the walls enclosing or making up the structures are four (4) feet or greater in height, the wall shall be considered as meeting the requirements of this Section.
  - 2. If steps are included for access to above ground pools or other similar structures, the steps must be gated, as required by this Section, or otherwise removed or secured from the pool wall when the pool is not in use so as to be inaccessible to small children.

- C. Any part of the pool or other similar structures shall be set back a minimum of six (6) feet from any side or rear property line. Pools or other similar structures are not permitted in the front yard.

### SECTION 3.12 ANIMAL KEEPING

- A. The keeping of up to three (3) of the following domestic animals is allowed by right in all zone districts: dogs and cats.
- B. The keeping of other domestic animals, fowl or insects including but not limited to ducks, chickens, goats and bees in residential districts is allowed only with the approval of the Zoning Administrator. The request may be denied if the Zoning Administrator finds that the keeping of these animals would create a nuisance related to odor, noise, or any other nuisance.
- C. Subject to Zoning Administrator approval, in the R1-A Estate Residential or R1-B Single Family Residential zones, up to two (2) horses on a non-commercial basis are permitted when adequately housed and fenced on a parcel of land not less than two (2) acres in area. The Zoning Administrator may allow for one (1) additional horse to be kept per each additional acre over two (2) acres up to a maximum of four horses.

### SECTION 3.13 REPAIR AND/OR SALE OF MOTOR VEHICLES

- A. Mechanical work on trucks or race cars, stock or otherwise, owned by the occupant of a dwelling or on any vehicles not owned by an occupant of the premises is prohibited in residential zones. Mechanical work on owner-operated vehicles may be performed by the occupant-owner but must be performed entirely within an enclosed building. Parts or vehicles not in a legally operative condition shall be stored inside.
- B. A property owner may be permitted to display and sell motor vehicles in Residential Districts or on residential uses, provided that the sales not exceed two (2) vehicles in any calendar year and the display is restricted to paved drive areas.

### SECTION 3.14 STORAGE OUTDOORS IN RESIDENTIAL DISTRICTS

- A. The outdoor storage or parking of recreational vehicles including but not limited to special purpose automobiles, boats, floats, rafts, camping or travel trailers, motorized homes or detachable travel equipment adaptable to light duty trucks is prohibited anywhere on any street right-of-way or public utility easement or rights-of-way. These provisions also apply to utility trailers or trailers used for *storage, transport, display* or demonstration purposes.
- B. Parking of **utility trailers** and recreational equipment in a residential district, including but not limited to boats, boat trailers, camping trailers, motorized dwellings, tent trailers, houseboats and house vans is permitted, subject to the limitations set forth by City Code chapter 86.

## SECTION 3.15 ACCESSORY BUILDINGS

Except as otherwise permitted in this Ordinance, accessory buildings shall be subject to the following regulations.

### A. General Requirements

1. Accessory buildings are permitted only in connection with, incidental to and on the same lot with a principal use or main building permitted in the particular zoning district.
2. No accessory building shall be occupied or utilized unless the main building to which it is an accessory is occupied or utilized.
3. All accessory buildings shall comply with the use limitations applicable in the zoning district in which it is located.
4. No detached accessory building shall be used in any part for residential purposes.
5. If an accessory building is attached to a main building by any wall or roof construction, it shall be subject to and must conform to all regulations of this Ordinance applicable to main buildings.
6. All accessory buildings and uses combined shall cover no more than thirty percent (30%) of the rear yard.

B. Height Restrictions: No detached accessory building in a Residential District shall exceed one story or 14 feet in height. Accessory buildings in Nonresidential Districts shall not exceed the height requirements of the district in which they are located.

### C. Location Regulations

#### 1. Yard Locations

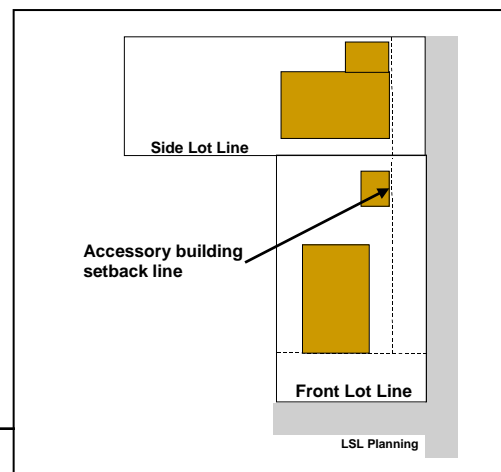
- a. Deleted per Ordinance No. 7-03.
- b. In the R-1 Residential Districts, an accessory building shall be located in the rear yard of the lot except when attached to the main building.
- c. In the case of single family attached dwellings or multiple family developments, parking garages or covered bays may be permitted in any yard, but not within any required yard.

#### 2. Setbacks

- a. No detached accessory building shall be located closer than five (5) feet to any main building or closer to any street right-of-way line than permitted for a main building.
- b. The drip edge of any detached accessory building 576 square feet or less in area shall be located no closer than three (3) feet to any side or rear lot line. Detached accessory buildings in excess of 576 square feet in area shall be located no closer than five (5) feet to a side lot line and thirty (30) feet to a rear lot line.
- c. When an accessory building is located on a corner lot it shall meet the front yard setback of both streets.

### D. Number and Size Limitations

1. In no case shall the number of attached or detached garages or accessory buildings, in combination exceed two (2).



2. Private garages are subject to the following limitations.
  - a. Garages for the storage of vehicles and equipment in the R-1A-D and R-2 Districts shall not exceed seven hundred sixty eight (768) square feet gross floor area. An exception to this restriction is for dwelling units exceeding three thousand (3,000) square feet in finished living area to construct an attached garage of up to one thousand two hundred (1,200) square feet. Only one garage is allowed on lots less than three quarters of an acre in area.
  - b. A garage accessory to a multiple family dwelling unit shall be designed for not more than two (2) vehicles per dwelling unit.
3. An accessory building, incidental to a permitted use, is allowed if it does not exceed two hundred fifty (250) square feet in gross floor area, except that if another accessory building or detached garage is located on the same lot or parcel, the storage structure may not exceed one hundred twenty (120) square feet in gross floor area. Carports are to be considered as an accessory building subject to these provisions.
4. On residential unplatted lots of one (1) acre or more, one (1) detached accessory building is permitted, provided that it does not exceed nine-hundred and sixty (960) square feet in gross floor area.
5. A stable for horses, which shall not be subject to the size limitations of this Section may be permitted on a lot of two (2) acres or more where a horse is kept in accordance with the provisions of the R1-A, B Districts in accordance with the requirements of Section 5.02 or Section 3.12.
6. The following accessory buildings or structures are permitted, and shall not be subject to a number limitation except as expressly noted below:
  - a. A child's playhouse or treehouse, not to exceed one hundred (100) square feet in gross floor area.
  - b. Doghouses, pens and other similar structures for the housing of household pets, but not including kennels as defined in Chapter 2.
  - c. Fallout shelters
  - d. Swimming pool and/or bathhouse, private.
  - e. Decks, Porches, gazebos and similar structures.
  - f. Recreation, storage and service structures in a manufactured home park, as regulated by Chapter 7.

### **SECTION 3.16 ACCESSORY USES**

Except as otherwise permitted in this Ordinance, accessory uses shall be subject to the following regulations.

- A. Permitted Accessory Uses: Accessory uses and structures shall include, but are not limited to, the following uses and structures provided that the use or structure shall be in accordance with the definition of Accessory Use contained in Chapter 2.
  1. In Nonresidential Districts a dwelling unit is permitted for a proprietor or storekeeper and their families, located in the same building as their place of occupation, and for a watchman or caretaker. The size for the proprietor or storekeeper dwelling unit shall be at least 375 square feet in area.
  2. Signs as permitted by this Ordinance unless otherwise designated as a principal use.
  3. Statuary, arbors, trellises, barbeque stoves, flagpoles, walls and hedges.

4. Compost piles of less than one hundred (100) cubic feet, located on rear yard, set back at least five (5) feet from any lot line.
  5. Parking and loading spaces, off-street, as regulated in Chapter 17.
  6. Private tennis, basketball or volleyball courts, and similar outdoor private recreation uses.
  7. Private swimming pools and/or bathhouses.
  8. Private streets.
  9. Short Term Open Air Business
  10. Other accessory uses as may be provided for by this Ordinance.
- B. Accessory Uses Not Permitted: The following shall not be considered accessory uses but shall be regulated as otherwise required by this Ordinance or other applicable City Ordinances.
1. Junk yards, scrap heaps or refuse piles, not including compost piles of less than one hundred (100) cubic feet.
  2. The selling of motor vehicles other than the property owner's in Residential Districts or on properties of residential uses.
  3. The continued (more than two (2) consecutive days) outside repair of motor vehicles.
  4. Manufactured homes shall not be considered as accessory to a permitted use.
- C. Requirements for Accessory Uses
1. All accessory uses and structures combined shall cover no more than thirty percent (30%) of the required rear yard, except that swimming pools shall not count toward this restriction.
  2. Except for approved parking in commercial and industrial zones, accessory uses are permitted only in connection with, incidental to and on the same lot with a principal use or main building which is permitted in the particular zoning district.
  3. An accessory use shall not be occupied or utilized unless the main building to which it is an accessory is occupied or utilized.
  4. An accessory use must be in the same zoning district as the principal use on a lot or parcel.
  5. Private streets, as regulated in this Ordinance, may cross zoning districts and lots or parcels to access a principal use. Private streets serving nonresidential uses shall not cross Residential Districts unless authorized by the Planning Commission.
  6. When an accessory use is located on a corner lot, the side lot line of which is substantially a continuation of the front lot line of the lot to its rear, the accessory use shall not project beyond the front yard set-back line required on the lot in the rear of the corner lot.
  7. Unless otherwise permitted by this Ordinance, an accessory use in a Residential District shall be located in the rear yard of the lot except when attached to the main building.
  8. Short Term Open Air Businesses may be allowed by the Zoning Administrator by way of a zoning permit for a period of not more than 30 consecutive days after submitting a simple site plan sketch determined by the Zoning Administrator to be in conformance with the Zoning Ordinance. Written permission is required from the owner of the lot, parcel or tract intended for the site of operations and not more than two approvals may be allowed to a business or property within a twelve month period. A performance guarantee shall be filed with the City Clerk to ensure that clean-up of site is accomplished following the expiration of the sales permit. If the clean-up is not completed in that time, the performance guarantee is forfeited.

**SECTION 3.17 SATELLITE DISH ANTENNAS****A. Applicability**

1. These regulations are formulated to ensure that adequate protection measures are provided in the Ordinance for ensuring that sight distance is not impaired, that the dish antennas are located and constructed in a manner that will not afford the potential for injury, and to ensure that the intent and purposes of this Ordinance are met.
2. Satellite dish antennas and other similar structures may be permitted as accessory structures.
3. Any person who proposes to construct a satellite dish antenna subject to these requirements must first obtain a permit from the Community Development Department. The person seeking the permit, if not the owner of the lot or parcel of land, must provide evidence to the Community Development Department that the owner of the lot or parcel of land consents to its construction and assumes all liability for its construction, operation and use.
4. In Residential Districts, satellite dish antennas or other similar devices one (1) meter or less in diameter, or in Nonresidential Districts satellite dish antennas or other similar devices two (2) meters or less in diameter may be attached to a roof structure and shall not be subject to the regulations of this Section.
5. The Zoning Administrator may vary any provision of this Section if its enforcement inhibits or prevents the proper operation of the satellite dish antenna. In these instances, the Zoning Administrator may require additional screening or impose other reasonable conditions intended to reduce the visual effects from adjacent properties

B. Roof-mounted satellite dish antennas or other similar roof-mounted devices over two (2) meters in diameter are permitted in Commercial and Industrial Districts only, provided that the antenna complies with the height standards for the district in which they are located.

C. Ground-mounted satellite dish antennas or other similar devices (exceeding one (1) meter in diameter in residential districts, or in Nonresidential Districts between two (2) and three (3) meters in diameter) are permitted in all zoning districts subject to the following conditions:

1. Maximum height shall be fifteen (15) feet.
2. Satellite dish antennas or other similar devices shall comply with setback requirements for the district in which they are located and shall not be permitted in front or side yards.
3. All electrical and antenna wiring shall be placed underground.
4. The site of the antenna shall be screened from view through the planting of evergreens of sufficient concentration to reasonably conceal the antenna. Alternative screening is acceptable if approved by the Zoning Administrator.
5. Any ground-mounted antenna shall be so located and designed to withstand a wind force of ninety (90) miles per hour. The satellite dish antenna or other similar device shall be securely mounted and anchored to a pole and secured in accordance with the requirements of the manufacturer and the Building Code.
6. The surface of the dish shall be painted or treated as not to reflect glare from sunlight and shall not be used as a sign or message board. All installations shall employ (to the extent possible) materials and colors that blend with the surroundings.



**SECTION 3.18 HOME OCCUPATIONS**

Home occupations are permitted as residential accessory uses in any Residential District, subject to the following requirements.

- A. Home occupations shall be approved by the Zoning Administrator, who may issue an approval upon receipt of a letter from the applicant stating an intent to comply with the requirements of this Section and the specific measures by which compliance will be maintained.
- B. No person other than members of the immediate family residing on the premises shall be engaged in the home occupation.
- C. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty percent (20%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
- D. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of the home occupation other than one (1) sign not exceeding two (2) square feet in area, non-illuminated, and mounted flat against the wall of the main building.
- E. The home occupation shall be operated in its entirety within the main building.
- F. There shall be no sale of products or services except as are produced on the premises by the home occupation.
- G. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in the Residential District in which it is located, and any need for parking generated by the conduct of the home occupation shall be met off the street on the property's driveway.
- H. No equipment or process shall be used in the home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises, if the occupation is conducted in a single family dwelling, or outside the dwelling unit if conducted in other than a single family residence. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or cause fluctuation in line voltage off the premises.

**SECTION 3.19 FENCES AND WALLS****A. General Requirements**

- 1. It shall be unlawful to construct any fence in any public right-of-way, floodway easement, or drainage easement. (Refer also to City Ordinance No.9-84, as amended, the Stormwater Management Ordinance.)

2. No fence shall be erected on any corner lot or parcel or adjacent to any driveways, which will, in the opinion of the Zoning Administrator, obstruct the view of a vehicle driver approaching the intersection or driveway. Fencing is not permitted within the clear vision area, as provided in Section 3.06.
3. It shall be unlawful to install, construct or maintain electric fences in any zoning district.
4. All fences and walls exceeding thirty (30) inches in height shall require a zoning permit and shall be reviewed and approved by the Zoning Administrator prior to construction.

**B. Fences in All Zoning Districts**

1. Solid-type fences in the required front yard shall not exceed a height of three (3) feet. A decorative open type fence not more than twenty percent (20%) solid may be permitted within the front setback area provided it does not exceed a height of four (4) feet. No chain link or wire fencing shall be located within any residential front yard.
2. Fences in the street side yard of a corner lot may be erected to the side lot line but may not exceed a height of three (3) feet if solid, or four (4) feet if a **decorative** open-type fence. Fences above this height must be set back at least seventeen (17) feet from the side lot line. No chain link or wire fence shall be located in the required street side yard.
3. Fencing in any other portion of a lot shall not exceed six (6) feet if in or immediately adjacent to a residential zone district or use.
4. The finished side of the fence must be oriented to the closest property line. Fences constructed with alternating boards on opposite sides of the fence are determined to be finished on both sides.

**C. Fences in Non-Residential Districts.**

1. Barbed wire strands may be used to enclose public services and installations, storage areas or other similar areas in non-residential zoning districts. The strands shall be restricted to the uppermost portion of the fence, which shall be setback at least ten (10) feet from the public right-of-way or perimeter property line abutting a Residential District and shall not extend lower than a height of six (6) feet from the nearest ground level.
2. No fence in a non-residential zoning district shall exceed an eight (8) foot height.

**SECTION 3.20 RESIDENTIAL CHILD AND ADULT CARE FACILITIES**

As defined in Chapter 2 Definitions, the following uses are allowed only as provided for in the following Table of Facilities and Zoning Districts. Refer to Chapter 15 Approval Standards for Special Land Uses for applicable conditions.

**P:** Land and/or buildings may be used for the purposes listed by right.

**SLU:** Land and/or buildings may be permitted by obtaining Special Land Use approval when all applicable standards as cited in Chapter 15 and elsewhere are met:

**SLU as accessory:** Land and/or buildings may only be allowed as an accessory to an approved use, such as a church, school, recreation facility, office or other similar use upon review and approval of a Special Land Use approval, in accordance with general and specific

standards.

Type of Facility per District	R1-A, B, C, D	R-2, 3, 4, 5	C-2, 3, 4	OS	I-1, I-2
Adult foster care family home	P	P	--	--	--
Adult foster care small group home	SLU	SLU	--	--	--
Adult day care facility	--	SLU	SLU	--	--
Foster family home	P	P	--	--	--
Foster family group home	SLU	P	--	--	--
Family child day care home	P	P	--	--	--
Group child day care home	P	P	--	--	--
Child Care Center	SLU	SLU	P	--	SLU as accessory and freestanding
Child Caring Institution	--	SLU	--	--	--
Adult Caring Institution	--	SLU	--	--	--

A. Requirements Pertaining to Group Child Day Care Homes

1. There shall be sufficient on-site outdoor play area to meet state regulations. All required outdoor play areas shall be fenced with a minimum of four (4) foot tall fence, provided that no such fence shall be located in the front yard.
2. Ingress and egress shall be provided as far as possible from two (2) intersecting streets and shall be at least one hundred (100) feet from two through streets.
3. A group child day care shall not be located within a twelve hundred (1,200) foot radius of any other group child day care.
4. For the purpose of this Section, the measurement of a radius shall be measured in a straight line from the actual location of the use to the nearest property line of the other group day care home.
5. An on-site drive shall be provided for drop offs/loading. This drive shall be arranged to allow maneuvers without creating a hazard to traffic flow on the public street.

**SECTION 3.21 WIRELESS COMMUNICATION ANTENNAS**

Antennas for wireless communication are allowed in all zoning districts consistent with the Kentwood Master Plan. Antennas for wireless communication transmissions do not have to be directly related to the main use of the site provided the antenna is attached to an existing tower or structure and the Zoning Administrator determines it does not adversely impact the structure to which it is attached or the surrounding area. The Zoning Administrator shall rely upon the site plan review standards in Section 14.05 of the Zoning Ordinance in making this determination. The antenna itself shall not exceed fifteen (15) feet in height and shall otherwise be restricted by the permitted height provisions of the zoning district. Any antenna placement in a Residential District shall not be erected at a height that requires lighting. Any antenna placement adjacent to a Residential District or use that requires lighting shall be a continuous red beacon at night.

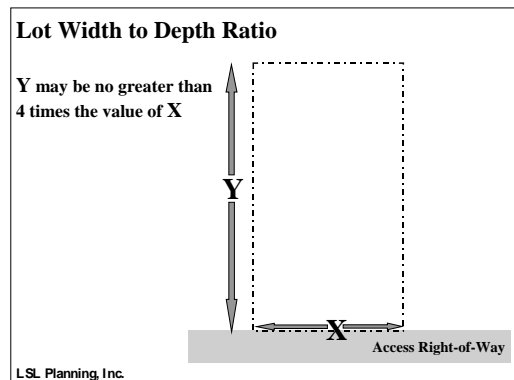
**SECTION 3.22 REGULATIONS APPLICABLE TO ALL SINGLE FAMILY DWELLINGS OUTSIDE MANUFACTURED HOUSING COMMUNITIES**

- A. The relationship of the width and depth of any dwelling unit shall not exceed a ratio of 4:1.

- B. The longest side of the structure must face generally parallel to the front street unless seventy-five percent (75%) of the existing dwelling units within three hundred (300) feet of the lot boundaries on which the dwelling unit is to be placed face the shorter side toward the street. Homes within this distance whose length is equal to their width shall be counted toward the above percentage.
- C. The roof of the dwelling unit shall have a minimum pitch of three (3) inches height to one (1) foot of run.
- D. The dwelling unit shall be permanently anchored to a wood, masonry, concrete, or other approved foundation. Access to the basement or crawl space shall be from inside the dwelling unit.
- E. Chimneys for fire places, furnaces, wood burning stoves and similar devices may be on the outside of the unit, providing the vent pipe is enclosed with materials compatible with exterior finish.
- F. The dwelling unit shall meet all the requirements and specifications of the currently adopted Building Code, Housing Code, Electric Code, Plumbing Code, Energy Code, and the One and Two Family Code..
- G. If the dwelling unit was transported to the building site, all wheels, axles, and towing devices shall be removed from the dwelling unit once placed on the lot.

**SECTION 3.23 LOT WIDTH TO DEPTH RATIO**

- A. Except as may be permitted in B, below, no lot created after the adoption date of this Ordinance shall have a depth exceeding four (4) times its width, as measured at the front lot line.
- B. Where steep topography, unusual soil conditions, or drainage problems exist, the Planning Commission, upon application for a land division in accordance with the City Land Division Ordinance, may permit a greater width to depth ratio. The permit may be issued when a division meeting the requirements of Section 3.23.A would result in an unnecessary waste of land or otherwise create an unusual or odd-shaped lot.



**SECTION 3.24 NON-CONFORMING USES, BUILDINGS, AND LOTS**

- A. Intent
  - 1. It is recognized that there exists within zoning districts certain buildings and structures, uses, and lots which were lawful before this Ordinance was adopted, and which would be prohibited, regulated, or restricted under the terms of this Ordinance. It is the intent of this Ordinance to permit nonconforming lots, buildings and structures, and uses to continue until they are removed, but not to encourage their survival.

2. Nonconforming lots, buildings, structures, and uses are declared by this Ordinance to be incompatible with permitted uses in the districts in which they are located. It is the intent of this Ordinance that these nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other buildings, structures or uses prohibited elsewhere in the district.

#### B. General Requirements

1. No structure or part thereof shall be constructed, erected, moved, placed, maintained, reconstructed, used, extended, enlarged or altered, except in conformity with the regulations herein specified for the zoning district in which it is located.
2. No use shall be established on any lot, land or premises except in conformity with the use regulations of the zoning district in which it is located.
3. No building shall be established on any lot, land or premises except in conformity with the regulations of the zoning district in which it is located.
4. Nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently conducted.
5. The City may acquire, through purchase or condemnation, private nonconforming lots, buildings and structures. The City Commission may take these actions in the manner provided for by law.

#### C. Nonconforming Uses

1. The lawful use of any land or premises exactly as it existed at the time of enactment of the Zoning Ordinance, or amendment thereto, may be continued although the use does not conform to the current provisions of the Zoning Ordinance.
2. If a nonconforming use is abandoned for any reason for a period of not less than six (6) months, any subsequent use shall conform to the requirements of this Ordinance.
3. A nonconforming use shall be considered abandoned if one (1) or more of the following conditions exists, and shall be deemed to constitute intent on the part of the property owner to abandon the nonconforming use:
  - a. Utilities, such as water, gas and electricity to the property, have been disconnected;
  - b. The property, buildings, and grounds, have fallen into disrepair;
  - c. Signs or other indications of the existence of the nonconforming use have been removed;
  - d. Removal of equipment or fixtures that are necessary for the operation of the nonconforming use; or
  - e. Other actions, which in the opinion of the Zoning Administrator constitute an intention on the part of the property owner or lessee to abandon the nonconforming use.
4. Uses nonconforming solely because of height, area, parking or loading provisions only may be expanded provided that the Zoning Administrator determines that all three (3) of the following occur. For the purposes of this subsection expansion shall include extension or enlargement of the use.
  - a. All Zoning District Requirements are satisfied with respect to the expansion;
  - b. The expansion shall not substantially extend the life of any nonconforming use by reason of parking and loading provisions; and

- c. The nonconforming use is made conforming or less nonconforming by the addition of parking and/or loading space. Thereafter any subsequent expansion of the nonconforming use or change in use will not be allowed if it requires even greater parking and/or loading space.

#### D. Nonconforming Structures

1. Any structure existing and lawful at the time of enactment of the Zoning Ordinance, or amendments thereto, may be continued although the structure does not conform with the current provisions of the Zoning Ordinance.
2. Repairs and maintenance work may be made as are required to keep a non-conforming building or structure in a sound condition.
3. In the event fire, wind or an act of God or the public enemy shall damage any non-conforming building(s) or structure(s), it may be rebuilt or restored provided the cost thereof shall not exceed the state equalized value of the building or structure after the rebuilding or restoration. The Building Inspector shall determine the cost of reconstruction.
4. In the event any non-conforming building(s) or structure(s) shall be damaged by fire, wind or an act of God or the public enemy and the cost of rebuilding or restoration exceeds the state equalized value of the building(s) or structure(s) after rebuilding or restoration, the buildings or structures shall be built in conformance with the requirements of the zoning district in which they are located, unless the Zoning Board of Appeals permits the rebuilding or restoration of the building or structure. The approval of the Zoning Board of Appeals shall be granted only upon finding that at least one (1) of the following is true:
  - a. That the rebuilding or restoration will not substantially extend the probable duration of the non-conforming building or structure; or
  - b. There are circumstances that the land previously occupied by the non-conforming use does not permit the reasonable construction of the nonconforming building or structure.
5. Structures nonconforming solely because of height, area, parking or loading provisions only may be expanded provided that the Zoning Administrator determines that all three (3) of the following occur. Expansion shall include extension, enlargement, alteration or modernization.
  - a. All Development Requirements are satisfied with respect to the expansion;
  - b. The expansion shall not substantially extend the life of any nonconforming structure by reason of parking and loading provisions; and
  - c. The nonconforming structure is made conforming or less nonconforming by the addition of parking and/or loading space. Thereafter any subsequent expansion of the nonconforming structure or change in use will not be allowed if it requires even greater parking and/or loading space.

#### E. Nonconforming Lots

1. If a lot in use already has less than the minimum required area or dimension required for the zoning district in which it is located, the area or dimension may be maintained but shall not be further divided or reduced.
2. Existing Platted Lots

- a. Where a nonconforming platted lot has an area of not less than ninety (90) percent of its Zoning District requirements and where the lot can provide the side and front yard requirements of its zone, the permitted uses of the District shall be allowed.
  - b. A nonconforming platted lot, in single ownership, of less than ninety (90) percent of its Zoning District requirements may be utilized for permitted uses, and the required side yards may be reduced by the same percentage the area of the lot bears to its Zone District requirements, provided that no side yard provision may be reduced to less than five (5) feet and that off-street parking requirements are also met.
3. Adjacent Lots in Common Ownership
- a. No lot or lots in common ownership shall be so divided, altered or reduced as to make the area or dimension less than the minimum specified for the zoning district in which it is located.
  - b. Where three (3) or more adjacent lots are in single ownership and where these lots individually contain less than ninety (90) percent of the Zoning District requirements, the lots shall be utilized only in complete conformance with the Zoning District's minimum requirements.
  - c. In the event two (2) adjacent lots are in single ownership, the Zoning Board of Appeals may permit their use as separate lots having less than the required lot area if it shall determine that all of the following are met:
    - (1) There is no practical possibility of obtaining additional land.
    - (2) The lots can be so used without adversely affecting the character of the neighborhood.
    - (3) No side yard provision is reduced to less than five (5) feet.
    - (4) Off-street parking requirements are met.
  - d. A nonconforming lot may only be expanded if it is brought into closer conformity with the regulations specified for the zoning district in which it is located.

### **SECTION 3.25 SITE CONDOMINIUMS**

- A. A site condominium unit shall be a unit created by the division of land on the basis of condominium ownership that is not subject to the platting provisions of the Land Division Act, Public Act 288 of 1967, as amended.
- B. A site condominium unit shall be treated as a separate lot or parcel and may have buildings constructed on it and uses conducted within it as allowed in its zoning district provided the unit meets the Development Requirements for the zoning district in which it is located.
- C. Site Plan Approval
  - Preliminary Site Plan
    1. A preliminary site plan shall be reviewed and approved by the Planning Commission and City Commission in accordance with Chapters 13 and 14.
    2. Approval of a preliminary site plan shall for a period of two (2) years confer upon the proprietor approval of lot sizes, lot orientations, and street layouts.
    3. Three (3) separate one (1) year extensions may be granted by the City Commission if applied for in writing prior to the date of expiration of approval of the preliminary site plan.

4. After a period of two (2) years from approval, unless extensions as provided for in this Chapter have been granted, the preliminary site plan approval shall become null and void if substantial construction has not commenced and proceeded in a meaningful manner.

#### Final Site Plan

5. A final site plan for the site condominium project must be approved by the City Commission prior to the issuance of any building permit for any structures on the proposed site, unless they already exist.
6. At its regular meeting or at a meeting called within 20 days of the date of submission, the City Commission shall examine the final plan for general compliance with this Ordinance. The proprietor or his designated representative may request an extension of the 20 day time limit, which the City Commission may grant at its discretion.
7. To receive final approval for the site condominium project, the owner shall submit ten (10) copies of the plan to the city Engineer who shall place the final plan on the agenda of the City Commission, said plan to contain the information required by this Ordinance. Copies of the final plan shall be distributed to the appropriate City departments for their review and comment to the City Commission.

#### Building Permit

8. Prior to the issuance of a building permit for any building in the proposed site condominium project, the following items must be fulfilled, unless waived by the appropriate city department. The City Commission may consider the issuance of building permits prior to the approval of the Final Site Plan in exceptional or unusual circumstances beyond the ability of the applicant to control.
    - a. Proposed Master Deed.
    - b. Articles of incorporation for the condominium association.
    - c. Improvement plan approval.
    - d. Block grading, floodway, soil erosion approval.
    - e. Basement elevation and building restriction approval.
    - f. Construction of hydrant water, adequate fire access, stormwater detention, floodways, and soil erosion controls.
- D. Monuments shall be set at all boundary corners and deflection points and at all street right-of-way intersection corner and deflection points. Lot irons shall be set at all condominium site corners and deflection points of condominium site lines.
- E. The City Engineer may grant a delay in the setting of required monuments or irons for a reasonable time, but not to exceed one (1) year from the date of approval by the City Commission, on condition that the developer deposit with the City Clerk cash, a certified check, or an irrevocable bank letter of credit running to the City, whichever the developer selects, in an amount as determined from time to time by resolution of the City Commission.
1. The deposit shall be returned to the developer upon receipt of a certificate by a surveyor registered in the State of Michigan that the monuments and irons have been set as required, within the time specified.
  2. If the developer defaults, the City Commission shall promptly engage a registered surveyor to set the monuments and irons in the ground as shown on the condominium site plan, at the developer's expense.



- F. All rights of-way and utility easements shall be described separately from individual condominium sites and shall be accurately delineated by bearings and distances on the condominium subdivision plan and the final site plan.
1. The rights-of-way and utility easements shall be separately designed for their individual purpose, such as access, roadway, location, installation, maintenance and replacing of public utilities.
  2. The developer shall dedicate to the City all easements for utilities. Water, sewer and electrical easements may be placed within streets, subject to the approval of the City Engineer and the standards of the City.
  3. All streets proposed for any site condominium shall be developed within the minimum design, construction, inspection, approval, and maintenance requirements of this Ordinance, and the Subdivision Control Ordinance (Ordinance No. 21-84, as amended).

### SECTION 3.26 REGULATED USES

A. **Uses Subject to Controls:** Uses subject to the controls of this section are as follows:

1. Adult-oriented businesses.
2. Massage establishments.

B. **Definitions:** As used in this Section, the following terms shall have the indicated meanings:

1. ADULT-ORIENTED BUSINESS means a business or commercial establishment engaging in one or more of the following enterprises (these enterprises are defined in the Adult-Oriented Businesses Regulatory Ordinance): (1) adult cabaret; (2) adult merchandise store; (3) adult motel; (4) adult theater; (5) escort agency; (6) nude model studio; and (7) sexual encounter center.
2. MASSAGE ESTABLISHMENT means any building, room, place or establishment where body massage is regularly practiced on the human body, to club members or to the general public for a charge. The term "massage establishment" shall not include:
  - a. hospitals, nursing homes, medical clinics;
  - b. the office of a state-licensed physician, surgeon, osteopath or chiropractor
  - c. the establishment of a barber, manicurist, beautician or cosmetologist who is duly licensed under the laws of this state, or another state within the United States, or the federal government, and who practices within the established limits of his or her license, and who administers a massage in the normal course of his or her duties in which massages are administered only to the scalp, face, neck, hands, feet, or shoulder; or
  - d. the establishment of a myomassaologist who is a current member of the American Massage Therapy Association or other national massage therapy organization with comparable prerequisites for certification.
3. MASSAGE means any method of applying pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the body, for remedial or hygienic or other purposes, with the hands, with or without the aid of any mechanical, magnetic or electrical apparatus or appliances, with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations.
4. SPECIFIED ANATOMICAL AREA and SPECIFIED SEXUAL ACTIVITIES shall have the

same meaning for the purposes of this Chapter as those terms have in the Adult-Oriented Businesses Regulatory Ordinance.

**C. Requirements:** Permitted regulated uses shall meet each of the following requirements:

1. A regulated use may be located only within a zone district where the use is normally permitted.
2. Except as provided in Section 3.26C.3 below, a regulated use shall not be located within a one-thousand (1,000) foot radius of any Residential District or use, or upon which is located a school, public park, library, child care facility, or place of religious worship.
3. In accordance with the procedures in this subsection, the Planning Commission may permit a regulated use within a one-thousand (1,000) foot radius, but not within a five hundred (500) foot radius, of a Residential District or use, or upon which is located a school, public park, library, child care facility, or place of religious worship. An applicant seeking approval pursuant to this subsection shall file a completed application on an application form prepared and made available by the City. The Planning Commission shall make a final determination on the application within sixty (60) days after the applicant submits the final application. The Planning Commission shall approve the application if the Planning Commission determines that each of the following criteria is met:
  - a. That the establishment of a regulated use in the proposed location will not adversely affect the public interest;
  - b. That the establishment of a regulated use in the proposed location will not be injurious to nearby uses, particularly lots zoned or occupied for residential purposes or the school, public park, library, child care facility, or place of religious worship;
  - c. That the establishment of a regulated use in the area will not be inconsistent with the spirit and intent of this Ordinance; and
  - d. That the establishment of a regulated use in the proposed location would comply with all applicable regulations of this Ordinance and other applicable statutes, ordinances, rules and regulations.
4. Within ten (10) days after the Planning Commission makes its decision, any person aggrieved by the decision of the Planning Commission under this Section may appeal the decision to the City Commission which shall decide the appeal within thirty days after the Planning Commission makes its decision. The decision of the City Commission (or of the Planning Commission, if a timely appeal to the City Commission is not taken) shall be a final, non-appealable decision.
5. A regulated use shall not be located within a one thousand (1,000) foot radius of any other regulated use.
6. For the purpose of this Section, the measurement of a radius shall be measured in a straight line from the actual location of the use to the nearest property line of the Residential District or use, public park, school, child care facility, or place of religious worship, or other regulated use.
7. A regulated use shall not be located in the same structure or on the same parcel as another regulated use.
8. All on site parking areas shall comply with the requirements of this Ordinance and additionally shall be illuminated on any days the business is open from sunset until at least sixty (60) minutes after closing.

**SECTION 3.27 RESTORATION OF UNSAFE BUILDINGS**

Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any building or structure, or part thereof, declared unsafe by the Building Inspector, or required to comply with his lawful order.

**SECTION 3.28 AMATEUR RADIO SERVICES****A. Intent and Purpose**

This section is intended 1) to provide reasonable accommodation for Amateur Radio Antenna and Amateur Radio Antenna Support Structures in the City of Kentwood and 2) to constitute minimum practicable regulation to accomplish the City's legitimate purposes consistent with state and federal laws including Federal Communication Commission regulations pertaining to Amateur Radio Services, as noted in PRB-1 (1985), as amended and reconsidered. Legitimate purposes include but are not limited to preserving residential areas as livable neighborhoods and preserving public health, safety and welfare.

**B. Definitions: As used in this section, the following terms shall have the indicated meanings:**

**AMATEUR RADIO SERVICE:** A federally licensed radio-communication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest particularly with respect to providing emergency communications. (As per Code of Federal Regulations, Title 47, Part 97)

**AMATEUR RADIO ANTENNA:** Any combination of materials or equipment used exclusively for the purpose of sending and/or receiving electromagnetic waves for Amateur Radio Services.

**AMATEUR RADIO ANTENNA SUPPORT STRUCTURE (OR ANTENNA SUPPORT STRUCTURE):** Any structure, such as a mast, pole, tower or any combination thereof, whether ground or roof mounted, freestanding or guyed, used exclusively for supporting Amateur Radio Antenna(e).

**GROUND-MOUNTED AMATEUR RADIO ANTENNA AND/OR AMATEUR RADIO ANTENNA SUPPORT STRUCTURES:** Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures that are not fixed to any building or accessory structure.

**ROOF-MOUNTED AMATEUR RADIO ANTENNA AND/OR AMATEUR RADIO ANTENNA SUPPORT STRUCTURES:** Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures that are fixed to any building or accessory structure.

**OVERALL HEIGHT:** The total height of the Amateur Radio Antenna and/or Antenna Support Structure as measured from mean grade to the highest point of the Antenna, the Antenna Support Structure or the combination thereof. For Roof-mounted Antenna and/or Antenna Support Structures, the mean grade is measured from the established grade adjoining the exterior walls of the structure upon which the antenna or support structure is affixed. For Ground-mounted Amateur Radio Antennas and/or Antenna Support Structures, the mean grade is measured at the established grade adjoining such antenna and/or support structure.

**C. General Requirements**

1. Amateur Radio Antenna and/or Amateur Radio Antenna Support Structure may be permitted in all zoning districts as long as they are in compliance with the provisions of this section. In addition unobtrusive wire antenna(e) not supported by a structure(s) that is (are) otherwise not in compliance with the provisions of this section are permitted in all zoning districts and are exempt from these provisions to the extent that they do not interfere with public utilities or can be otherwise deemed unsafe in any respects.
2. In residential districts, Amateur Radio Antennae and/or Amateur Radio Antenna Support Structures shall not be used for collocation of commercial antennae. In non-residential districts, co-location of commercial antenna must comply with Zoning Ordinance requirements applicable to Wireless Communication Towers. An otherwise lawful Amateur Radio Antenna may be installed on commercial antenna structures by agreement with the owner of such commercial antenna structures.
3. All Amateur Radio Antennae and Amateur Radio Antenna Support Structures shall be in compliance at all times with the FCC regulations pertaining to Amateur Radio Services.
4. All Amateur Radio Antennae and Amateur Radio Antenna Support Structures shall be in compliance with the requirements of the Gerald R. Ford International Airport and Federal Aviation Administration.
5. In Residential Zoning Districts, Amateur Radio Antenna and Amateur Radio Antenna Support Structures do not require any permit from the City's Community Development Department as long as the overall height, defined herein, does not exceed the maximum building height permitted in the respective zoning district by more than 15 feet. In Non-residential Districts, Amateur Radio Antenna and Antenna Support Structures do not require any permit from the City's Community Development Department as long as the overall height does not exceed the maximum building height permitted in the respective zoning district.
6. In Residential Zoning Districts, Amateur Radio Antenna and Amateur Radio Antenna Support Structures with an overall height exceeding the allowable maximum building height permitted in the zoning district where the property is located by more than 15 feet, shall require an Amateur Radio Antenna / Antenna Support Structure Permit from the City's Community Development Department. In Residential Districts, no Amateur Radio Antenna and/or Antenna Support Structures shall be erected to a height that requires the installation of lighting per Federation Aviation Administration rules and/or regulations.
7. In Non-residential Districts, Amateur Radio Antennae and Amateur Radio Antenna Support Structures an overall height exceeding the allowable maximum building height permitted in the respective zoning district, shall require an Amateur Radio Antenna / Antenna Support Structure Permit from the City's Community Development Department.
8. No more than two (2) Amateur Radio Antennae and/or Amateur Radio Antenna Support Structure requiring a permit under this Section shall be permitted on a single lot.
9. All Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures with an overall height exceeding seventy (70) feet (but not exceeding one hundred (100) feet in height) shall require the approval of the Zoning Administrator.

10. No Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall have an overall height exceeding one hundred ninety-five (195) feet. All Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures with an overall height exceeding one-hundred (100) feet shall require a variance. The applicant for such a variance shall submit to the City's Community Development Department a certification by a licensed professional engineer confirming the structural stability and soundness of the Antenna and/or Antenna Support Structure prior to final approval.
11. No Roof-mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall be fixed to the side of a structure that faces a street. Roof-mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures may be allowed on the roof as long as such antennas are not entirely on the front half of the roof facing a street.
12. Ground-mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall not be allowed in the front yard or a side yard facing a street.
13. No part of Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall encroach within one (1) foot of any property line. Guy wires may be permitted in the side yards provided no part of the anchors and/or the foundations shall encroach within one (1) foot of any lot line.
14. Ground-mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support shall be set back at least ten (10) feet of any property line at its base (measured up to four (4) feet from the mean grade). Guy wires may be permitted in the side yards provided no part of the anchors and/or the foundations shall encroach within one (1) foot of any lot line.
15. Climbable Ground-mounted Amateur Radio Antenna and Antenna Support Structures shall be completely enclosed by a fence at least five (5) feet and no more than seven (7) feet in height or shall have appropriate anti-climb devices attached up to a height of five (5) feet or more.
16. Antenna and/or Antenna Support Structures requiring a permit under this section shall require filing with the City's Community Development Department, a copy of the manufacturer's specifications for construction, assembly and erection and a certification from the owner and/or licensee that such specifications have been followed in erecting the subject structure. In the event of unavailability of manufacturer's specifications, certification by a licensed professional engineer must be filed with the City confirming the structural stability and soundness of the antenna and/or support structure. If neither the manufacturer's specifications nor the certification can be made available, the antenna and/or support structure shall be set back a distance of at least 50% of its total height from the property line.
17. All Ground-mounted Amateur Radio Antenna and Antenna Support Structures shall be structurally sound enough and so designed and installed as to withstand a wind speed of at least ninety (90) miles per hour.
18. No Amateur Radio Antenna and/or Antenna Support Structures shall be erected on cemetery sites.

**D. Permits, Construction, Maintenance and Removal**

1. Amateur Radio Antenna and Amateur Radio Antenna Support Structures shall be erected within one (1) year of issuance of the permit. In the event of failure on the part of the applicant to complete the installation within one (1) year, a renewal of the permit shall be required.
2. Permits shall be required to be renewed if alterations affecting the overall height and structural capacity of the permitted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures are to be made.
3. The owner and/or licensee shall maintain a log that documents any and all alterations, maintenance measures, structural condition and routine inspection reports of the Amateur Radio Antennae or Amateur Radio Antenna Support Structures. The maintenance log shall also include the manufacturer's specifications where available and details of construction and erection.
4. All Amateur Radio Antenna and Amateur Radio Antenna Support Structures are subject to inspection by the City staff. The owner and/or licensee shall provide the City staff upon request with a copy of the permit where applicable and the maintenance log.
5. In case the Amateur Radio Antenna and Amateur Radio Antenna Support Structures no longer meet FCC required safety standards or the requirements of this Section 3.28, the owner and/or licensee shall immediately notify the same to the City's Community Development Department along with the measures being taken to restore the same. The owner and/or licensee shall be responsible for the removal/replacement of the Amateur Radio Antenna and Amateur Radio Antenna Support Structures as reasonably necessary to meet the requirements of this Section
6. The owner and/or licensee shall notify the City staff at least 30 days in advance of cessation of ownership or leasehold rights on the subject property and remove the Amateur Radio Antennae and Amateur Radio Antenna Support Structures within 60 days of termination of such rights. If the Amateur Radio Antennae and Amateur Radio Antenna Support Structures are transferred to the ownership of a different individual, such individual shall need to renew the permit with the City's Community Development Department.

**E. Zoning Administrator's Approval Standards for Amateur Radio Antennas and Support Structures: As per Section 3.28.C.9, the Zoning Administrator shall approve all Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures where the overall height exceeds seventy (70) feet but does not exceed one hundred (100) feet. The Zoning Administrator shall base his/her decision on the following standards:**

1. Structural stability and soundness: The applicant shall demonstrate structural stability and soundness of the proposed Amateur Radio Antennae and/or Amateur Radio Antenna Support Structures at his own expense. This can be achieved through either of the following:
  - a. Providing a copy of the manufacturer's specification on assembly, construction and erection, and a certification that such specification has been followed.
  - b. A certification by a licensed professional engineer confirming the structural stability

and soundness of the proposed Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures

2. Location: The proposed Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall be so located and installed as to be safe and to create minimum impact to the surrounding properties. In addition, the Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall be set back from all lot lines a distance greater than or equal to fifty-percent (50%) of its overall height.
3. The Zoning Administrator may attach reasonable conditions of approval pursuant to the intent and purpose set forth in Section 3.28A, including measures that would help reduce the impact of such Amateur Radio Antennae and/or Amateur Radio Antenna Support Structures on the surrounding properties including but not limited to appropriate landscaping.

## **SECTION 3.29 CONDITIONAL ZONING**

### **A. Intent and Purpose**

1. The City finds that there are certain instances where it may be in the best interests of the City and property owners seeking rezonings to allow property owners to voluntarily impose use and development restrictions as part of a rezoning application. It is the intent of this Section to provide a process by which an applicant seeking a rezoning may submit a Conditional Rezoning Agreement, with proposed use and development restrictions, as part of the application for a requested rezoning. This Section shall be read in a manner consistent with the provisions of the City and Village Zoning Act, as amended.
2. Whenever this Section refers to the owner of land or a landowner, it shall mean all of the owners of the land involved capable of restricting the use and development of the property.

### **B. Application and Offer of Conditions.**

1. An owner of land may voluntarily offer in writing, and the City may approve at the City's discretion, use and development restrictions regarding the land as a condition of rezoning (including a planned unit development involving a rezoning). Such stipulation or agreement shall be referred to in this ordinance as a "Conditional Rezoning Agreement."
2. The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests without any offer of conditions, except as modified by the requirements of this Section.
3. The City shall not require a landowner to execute a Conditional Rezoning Agreement as a requirement for rezoning. The lack of an offer by a landowner to enter into a Conditional Rezoning Agreement shall not otherwise affect a landowner's rights.
4. The restrictions and conditions contained in a Conditional Rezoning Agreement shall be in addition to any other requirements associated with a zoning approval granted by the City.
5. The owner's offer of conditions may not claim to authorize uses or developments not permitted in the requested new zoning district.

6. Any use proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for such use is granted in accordance with the provision of this Ordinance.
7. Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for such use or development is granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
8. Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is granted in accordance with the provisions of this Ordinance.
9. The offer of conditions may be amended during the rezoning review process provided that any amended conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the City Commission provided that, if such withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing with appropriate notice and a new recommendation.
10. Nothing herein shall be interpreted to limit the ability of the City to enter into a planned unit development, development agreement, or other agreement with a property owner. Such agreements are different than a Conditional Rezoning Agreement. The terms and provisions of a Conditional Rezoning Agreement may be combined in the same document with a development agreement or similar agreement between the parties.
11. All costs associated with the negotiation and drafting of a Conditional Rezoning Agreement shall be reimbursed to the City by the landowner (including, but not limited to, the reasonable attorney fees of the City and similar fees and costs).

### **C. Approval**

1. If the City Commission finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Conditional Rezoning Agreement acceptable to the owner and conforming in form to the provisions of this
2. The Conditional Rezoning Agreement shall:
  - a. Contain a legal description of the land to which it pertains.
  - b. Contain a statement acknowledging that the Conditional Rezoning Agreement runs with the land and is binding upon successors.
  - c. Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the Conditional Rezoning Agreement. If any such documents are incorporated by reference, the reference shall specify where the documents may be examined.
  - d. Contain a statement acknowledging that the Conditional Rezoning Agreement may be recorded by the City with the Register of Deeds.
  - e. Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Conditional Rezoning Agreement.



3. The City shall not add to or alter the conditions contained in an executed Conditional Rezoning Agreement during the time period covered by such Conditional Rezoning Agreement, unless any such change is expressly agreed to in writing by the landowner. Such prohibition shall not apply to any restrictions or conditions contained in the zoning regulations which are otherwise applicable to the rezoning or proposed use or activity.
4. Without limitation, a Conditional Rezoning Agreement may establish a time period during which the conditions and restrictions contained in the Conditional Rezoning Agreement shall be met. Unless an extension is granted by the City or the City elects to take other legal action as specified in subsection 5, if the conditions are not met, the land shall automatically revert to its former zoning classification without the need for further action by the City. The time period imposed in the Conditional Rezoning Agreement may be extended upon the application of the landowner and with the written approval of both the landowner and the City.
5. If a condition is not satisfied within the time period specified in the Conditional Rezoning Agreement, rather than have the land automatically revert to its former zoning classification, the City, at its sole option and discretion, can take appropriate legal action to enforce the condition (whether by a lawsuit or other enforcement action) in lieu of a zoning revision. With regards to a restriction (rather than a condition), there shall be no reverting to the former zoning classification if such restriction is breached or violated, and the City may pursue appropriate legal action for violation of the restriction (including a civil lawsuit or other enforcement). A violation of a Conditional Rezoning Agreement (whether by the landowner or successors) shall also be deemed a violation of the City Zoning Ordinance. All the foregoing remedies and enforcement mechanisms available to the City (including any additional ones authorized by law) shall be deemed cumulative and, by pursuing one remedy for a breach or violation of a Conditional Rezoning Agreement, the City shall not be deemed to have waived the other remedies or enforcement mechanisms.
6. The Zoning Board of Appeals shall be without authority to grant variances or otherwise change or vary any aspect of a Conditional Rezoning Agreement. A Conditional Rezoning Agreement can only be changed with the written consent of the landowner and the City as specified in subsection 3.
7. The City Zoning Administrator is authorized to render final interpretations with respect to provisions in Conditional Rezoning Agreements. If either the landowner or the City disagrees with the interpretation of a provision by the City Zoning Administrator, either party may appeal that determination in writing to the Zoning Board of Appeals within (30) days of the date when the City Zoning Administrator renders his/her determination.
8. The City Commission may adopt policies to implement the provisions of this Section, including developing a checklist for City officials to follow when reviewing and executing a Conditional Rezoning Agreement.
9. A Conditional Rezoning Agreement can impose restrictions and requirements which are more restrictive than the provisions of the City's Zoning Ordinance, but a Conditional Rezoning Agreement cannot lessen or waive applicable restrictions or requirements contained in the Zoning Ordinance or other City ordinance. A

- Conditional Rezoning Agreement shall not permit any use, activity, or other action that would not otherwise be permissible under the new zoning district classification.
10. Provisions which may be contained in a Conditional Rezoning Agreement include, but are not limited to, the following:
    - a. Language regarding whether or not all or part of the land reverts to the prior zoning classification should a condition be violated or not satisfied within the time period specified in the Conditional Rezoning Agreement .
    - b. A process to utilize should an apparent violation of a restriction occur or a condition is not satisfied within the time period specified.
    - c. Specifying how and when an existing building or use are deemed lawful nonconforming uses should a condition be violated or not satisfied within the time period specified in the Conditional Rezoning Agreement and the land involved reverts back to its former zoning classification.
    - d. Provisions identifying the result of a breach or violation of a restriction.
    - e. Defining a material nonsatisfaction of a condition.
    - f. The extent and nature of offsite improvements that may be included or implemented pursuant to a Conditional Rezoning Agreement.
    - g. An indemnification provision in favor of the City.
    - h. Language governing the dedication, granting or transfer of any property or easements to the City or other governmental units.
    - i. Language providing for posting adequate security pursuant to a bond, letter of credit or cash deposit.
    - j. Specifying what occurs if an applicable provision of the City's Zoning Ordinance changes before a condition in a Conditional Rezoning Agreement has been met or satisfied.
    - k. Language identifying what portions of the Conditional Rezoning Agreement shall survive (including restrictions, security agreements, indemnification clauses) should a condition not be satisfied within the time period specified.
  11. If a Conditional Rezoning Agreement has been executed by both the landowner and the City, as a condition to the same, the landowner shall be deemed to have waived all objections regarding compliance of the Conditional Rezoning Agreement with Michigan law and enforceability of the agreement.
  12. A Conditional Rezoning Agreement shall be null and void if the rezoning to which the Conditional Rezoning Agreement applies is not approved by the City or does not become effective.

### **Section 3.30 Wind Energy as follows:**

- A. Intent and Purpose
  1. It is the intent and purpose of this regulation to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.
- B. Definitions: As used in this section, the following terms shall have the indicated meanings:

Anemometer: A device to measure wind speed.

Small Wind Energy System: A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

Tower Height: The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Wind Energy System Height: The total height of the entire wind energy system including the top of the blade in its vertical position

C. General Requirements

1. Small wind energy systems are permitted as an accessory use in all zoning districts.

2. Height

- a. In residential and open space districts, towers of up to 30 feet would be permitted uses. Towers greater than 30 feet in height up to a maximum of 60 feet would be a special land use (see Section 13.04).
- b. In commercial and office districts, towers of up to 45 feet in height would be permitted uses. Towers greater than 45 feet in height up to a maximum of 60 feet would be a special land use (see Section 13.04).
- c. In industrial districts, towers up to 60 feet in height would be permitted uses. Towers greater than 60 feet in height up to a maximum of 120 feet would be a special land use (see Section 13.04).
- d. In all zoning districts, rooftop mounted systems extending not more than fifteen (15) feet above the existing roofline are permitted uses. Any rooftop system extending more than fifteen (15) feet above and existing roofline would be a special land use (see Section 13.04).

3. Setback

The tower setback shall be the height of the system, including the top of the blade in its vertical position; no other part of the system, guy wires for example, can extend closer than ten (10) feet to a lot line.

4. Location

In residential districts small wind energy systems mounted on towers are restricted to the rear yard. In commercial and industrial districts small wind energy systems mounted on towers are permitted in rear or side yards. Towers located in the front yard of commercial or industrial district may be permitted as a special land use.

5. Anemometer Towers

The same restrictions for height, location and setback that apply to wind energy systems also apply to anemometer towers (MET) which are used to conduct a wind site assessment for possible installation of a small wind energy system.

6. Noise

Small wind energy systems shall not exceed 60dBA, as measured at the closest neighboring inhabited dwelling. This level may be exceeded during short-term events such as utility outages and/or severe wind storms.

#### 7. Construction codes

Utility systems including towers shall comply with all applicable state construction and electrical codes and local building permit requirements, Federal Aviation Administration requirements, the Michigan Airport Zoning Act (Public Act 23 of 1950, MCL 259.432 et seq.), the Michigan Tall Structures Act (Public Act 259 of 1959, MCL 259.481 et seq.), the Gerald R. Ford International Airport Zoning Ordinance height and lighting requirements, applicable utility, Michigan Public Service Commission, and Federal Energy Regulatory Commission interconnection standards. The minimum FAA lighting standards shall not be exceeded. All tower lighting required by the FAA shall be shielded to the extent possible to reduce glare and visibility from the ground.

#### 8. Safety

All small wind energy systems shall have an automatic braking, governing, or feathering system to prevent uncontrolled rotation or over speeding. All wind towers shall have lightning protection. If a tower is supported by guy wires, the wires shall be clearly visible to a height of at least six (6) feet above the guy wire ground anchors. The minimum vertical blade tip clearance from grade shall be twenty (20) feet for a wind energy system employing a horizontal axis rotor.

#### 9. Number

Properties in residential district are limited one (1) small wind energy system. Properties in commercial, office and industrial districts are limited to two (2) small wind energy systems per building.

### **SECTION 3.31 PROHIBITION ON MEDICAL MARIHUANA DISPENSARIES**

No medical marihuana dispensary shall be commenced, conducted, operated, or utilized in any zoning district or on or from any property within the City. Any person, firm, corporation, trust, partnership or other legal entity who shall commence, conduct, operate, or utilize a medical marihuana dispensary within the City shall be guilty of a criminal misdemeanor and shall upon conviction, be subject up to 93 days in jail, paying a fine up to a \$500.00, or both such fine and jail, as well as any other fines costs or penalties imposed by law.