

## APPENDIX A—ZONING<sup>1</sup>

**Adopted: November 6, 2017PC Draft – May 13, 2025**

### ARTICLE 1. TITLE AND PURPOSE

#### 1.1 TITLE.

The City of Harrison in accordance with the enabling legislation for Municipal Zoning as provided in Act 110 of 2006 (MCL 125.3101 et seq.) and P.A. 33 of 2008 (MCL 125.3801 et seq.) hereby provides as follows: a Zoning Ordinance which shall be known as and may be cited as the "City of Harrison Zoning Ordinance" of the City of Harrison, as amended, and is referred to as the "Zoning Ordinance."

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#### 1.2 AREA OF JURISDICTION ~~Area of Jurisdiction.~~

The provisions of this Zoning Ordinance apply to all development, public and private, throughout the City of Harrison, Clare County, Michigan, to the extent permitted by law.

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#### 1.3 PURPOSE.

The purpose of this Zoning Ordinance is to:

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~~A. Protect and~~ promote the public health, safety, and general welfare of the residents of Harrison ~~through the regulation of land uses.~~

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~~B. Establish the roles and responsibilities involved in the administration and enforcement of the Ordinance~~

~~C. Ensure that any new building or structure, or any new use or change that shall be made to any building, structure, or part thereof, shall be completed in conformity with the provisions of this Ordinance and compliance with the Ordinance is maintained. This Zoning Ordinance serves for the general good of the community in accordance with the adopted City of Harrison Master Plan and any additions and amendments as may be approved by Harrison.~~

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#### 1.4 INTERPRETATION AND RELATIONSHIP TO OTHER REGULATIONS.

These provisions shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, prosperity and general welfare. It is not intended by this Zoning Ordinance to interfere with or abrogate or annul any easements, covenants, restrictions established by other ordinances or statutes, or

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<sup>1</sup>Editor's note(s)—Printed herein is the Zoning Ordinance of the City of Harrison, as adopted by the City Council on November 6, 2017 Editor's note(s)—. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

agreements between private parties. However, where this Zoning Ordinance imposes a greater restriction upon the use of buildings or lots or upon the height of buildings, or requires larger open spaces than are imposed or required by any other applicable rule, covenant or law, the provisions of this Zoning Ordinance shall govern. The City has no responsibility or authority for enforcing private agreements or covenants.

### 1.5 CONFLICT WITH STATE OR FEDERAL REGULATIONS.

If the provisions of this Zoning Ordinance are inconsistent with those of the State or Federal government, the more restrictive provisions will control, to the extent permitted by law.

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### 1.6 OFFICIAL ZONING MAP.

The boundaries of the zoning districts established by the Zoning Ordinance are shown on a map designated the "Official Zoning Map." The Official Zoning Map including all notations, references, data and other information shown therein, is adopted and made a part of this Zoning Ordinance as fully as if it were contained within the pages of this Zoning Ordinance.

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**aA.** *Location:* The Official Zoning Map is filed in the office of the Harrison City Clerk.

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**bB.** *Updates:* The Harrison Planning Commission is responsible for updating the Official Zoning Map to reflect amendments adopted by the City Council.

**cC.** *Zoning District Boundaries:* Where uncertainty exists with respect to the boundaries of the various districts, the following rules shall apply:

1. The district boundaries are public rights-of-way including either streets, places or alleys unless otherwise shown; where the districts designated on the Official Zoning Map are approximately bounded by street, road, place or alley lines, the same shall be construed to be the boundary of the district.

Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines; where districts designated on the Official Zoning Map are approximately bounded by lot lines, the same shall be construed to be the boundary of the districts, unless otherwise indicated on the Official Zoning Map.

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2. Whenever any street, road, alley, place or other public way is officially vacated by the City or Clare County Road Commission (with the exception of platted subdivision), the district adjoining each side thereof shall be automatically extended to the center of such vacation and all area included in the vacation shall thereafter be subject to all appropriate regulations of the extended districts.
3. Where physical or natural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by rules "1" through "3" above, the Zoning Administrator shall interpret the boundaries.
4. Any dispute in the determination of the Zoning District boundaries shall be heard by the Zoning Board of Appeals.

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## ARTICLE 2 ZONING DISTRICTS AND ZONING MAP

## 2.1 RELATIONSHIP OF ZONING ORDINANCE TO COMMUNITY MASTER PLAN.

The zoning ordinance is enacted to regulate the use of private and public property and structures with the purpose of protecting public health, safety and welfare. Standards and regulations within the ordinance regulate the amount, type and use of a building allowable on a piece of land. The zoning ordinance is a tool used by the community to achieve the recommendations of the Harrison Community Master Plan, which is a guide for the long-term physical development of the City.

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## 2.2 DISTRICTS ESTABLISHED.

The City is hereby divided into the following districts, which shall be known as:

- R-1: Low Density Residential
- R-2: Medium Density Residential
- R-3: Seasonal Residential
- R-4: Mixed Use Residential
- MH: Mobile Home
- A-1: Open Space
- CR: Commercial Resort
- C-1: Downtown Commercial
- C-2: Corridor Commercial
- OS: Office Services
- L-1: Light Industrial

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## 2.3 INTENT AND PURPOSE.

- 2.3.1 *R-1 District — Low Density Residential.* The R-1 District is established to provide areas of ~~low density~~ lower density larger lot residential development. Desired development includes single-family dwellings, duplexes, and accessory dwelling units. These larger lots are to serve as a transition between built-up more dense residential subdivisions and the surrounding rural areas. Services, facilities and uses incidental or accessory to dwellings are included.



- 2.3.2 *R-2 District – Medium Density Residential*. The R-2 District is established to provide areas of higher density of residential development than is permitted in the R-1 District. Regulations include uses permitted in the R-1 District plus residential dwellings ~~with two or more families~~ including duplexes, triplexes, quadplexes, and rowhouses on legally conforming lots. Services, facilities and uses incidental or accessory to multiple family dwellings are included. It is not intended to permit commercial, industrial or similar uses except as authorized by this Ordinance.



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- 2.3.3 *R-3 District – Seasonal Residential*. The R-3 District is established to provide areas in recognition of the seasonal lakefront residential development in the community. This district provides for more concentrated single-family development, less restrictions on minimum lots and minimum yards and the inclusion in the district of commercial uses which are compatible with seasonal occupancy of the area.



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- 2.3.4 ~~*MH Mobile Home District*. The MH Mobile Home District is intended to give recognition to the fact that mobile homes can provide satisfactory living conditions provided certain minimum standards are maintained. All mobile home park development shall comply with the applicable requirements of Act 419 of the Public Acts of 1976, as amended, and the rules of the State Mobile Home Commission as set forth and provided for under Act 419, as amended.~~ *R-4 District- Mixed Use Residential*. The R-4 district is to provide for the development of higher density residential with ground-floor neighborhood commercial uses interspersed. This district is to serve as a buffer between the more intensive downtown uses and the City's lower density residential districts. More intensive residential and low-rise mixed-use developments that included live-work spaces, garden apartments, and mixed use buildings would provide for a mixture of uses and intensities.

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- 2.3.5 ~~A-1 District. The A-1 District is established in recognition of the areas of sparse development customarily occurring in the fringe of the City. This area is separated from concentrated development by prominent natural or man-made barriers and is intended to serve as a transition between urban and rural development.~~ MH-Mobile Home District. The MH-Mobile Home District is intended to give recognition to the fact that mobile homes can provide satisfactory living conditions provided certain minimum standards are maintained. All mobile home park development shall comply with the applicable requirements of Act 419 of the Public Acts of 1976 Public Act 96 of 1987, as amended, and the rules of the State Mobile Home Commission as set forth and provided for under Act 419 PA 96, as amended.

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- 2.3.6 ~~CR District (Commercial Recreational).~~ The CR District is established to provide areas of commercial development specifically oriented to the resort ~~and special event~~ industry in the community. These areas are intended to be used and occupied for tourist-resort ~~types of businesses~~ and special event uses that take advantage of existing scenic areas in the community.

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- 2.3.7 *C-1 District — Downtown Commercial*. The C-1 District is established to provide areas of high concentrations of pedestrian-oriented retail activities and upper-level urban living opportunities. Desired development includes a mixture of commercial, office, and residential -uses accompanied by off-street parking that provide vitality beyond the standard business hours.



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- 2.3.8 *C-2 District — Corridor Commercial*. The C-2 District is established to provide areas of commercial development which require large-larger lot sizes, and relies upon exterior spaces for storage, display or sale of merchandise or commercial uses which depend upon continual movement of steady vehicular traffic. Additional non-traditional commercial corridor uses may be permitted as long as they do not impact the overall commercial character of the district.



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- ~~2.3.9 — *O.S. Office Service District*. The O.S. Office Service District is designed to accommodate uses such as offices, banks, and personal services which can serve as transitional areas between residential and commercial districts and to provide a transition between major thoroughfares and residential districts.~~



- 2.3.10 *LI (~~Light Industrial~~) District – ~~Light Industriial~~.* The LI District is established to provide areas of industrial development or manufacturing or uses which are compatible with industry or manufacturing. ~~It is intended that all uses within this district conform to all applicable codes and laws pertaining to noise, fumes, smoke, vibrations, odors and other similar nuisances.~~ Light industrial uses do not have impacts that extend beyond the boundaries of their properties..

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## **2.4 OVERLAY DISTRICTS:** *Discuss overlay district goals with the PC*

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### 2.4.1 *W-1 Wellhead Protection Overlay District.*

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- a. INTENT: It is the purpose of this district to protect the public water supply wells from contamination by land use activities occurring or which may occur within the delineated recharge areas for such wells. The Wellhead Protection Overlay District (WPOD) shall apply to all land within the City of Harrison Wellhead Protection Area as mapped by the Michigan Department of Environmental Quality. A WHPA is defined as the surface and subsurface areas surrounding a water well or well field, which supplies a public water system, and through which contaminants are reasonably likely to move toward and reach the water well or well field within a 10-year time-of-travel.
- b. USE STANDARDS: The most significant sources of water supply contamination are landfills, surface impoundment areas, subsurface percolation from septic tanks and cesspools, open dumps, uncapped or improperly capped abandoned wells, injection wells and underground storage tanks. When considering approving new developments in the Wellhead Protection Overlay District, the City of Harrison will consider strategies for mitigating the following uses and associated activities that may have potential to contaminate the WHPA:



1. Manufacturing and Industrial Facilities
2. Utility Companies
3. Abandoned Wells
4. Registered Storage Tanks
5. Hazardous Waste
6. Generators
7. Ground Water Discharges
8. Agricultural Operations
9. Septic Systems or Dry Wells

2.4.2 ~~Downtown Development Authority~~ Commercial Overlay Districts. The purpose of ~~this~~ these overlay districts ~~is are~~ to facilitate redevelopment and commercial investment within both overlay districts. The additional requirements will ensure sound design, enhances the community, and supports the implementation of the Master Plan. The Central Business District Overlay design requirements are to support a facade improvement program and the redevelopment of the C-1 Downtown Commercial zoning district by -preserving and enhancing the existing small town mixed-use historic character within the district. The Greater Business District Overlay is focused on improving the aesthetic requirements for strip commercial development within the C-2 Corridor Commercial district so as reduce the negative impacts of commercial auto-orientated sprawl that are typical along arterials roads, by enhancing the community's up-north resort character through enhanced design nd landscaping requirements to create a long-lasting benefit to the City of Harrison, specifically the downtown development district. Please r. Refer to Article 5 for a complete description of the development design standards.

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## 2.5 PROPERTIES WITH MULTIPLE ZONING DESIGNATIONS.

When an individual recorded parcel, which exists at the time of adoption of this ordinance, has more than one zoning classification, the zoning designation which comprises the majority of the parcel area shall be applied to the entire parcel. In all other instances interpretation of the boundaries of a zoning district shall be referred to the Zoning Board of Appeals.

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2.6 \_\_\_\_ No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements of this Ordinance.

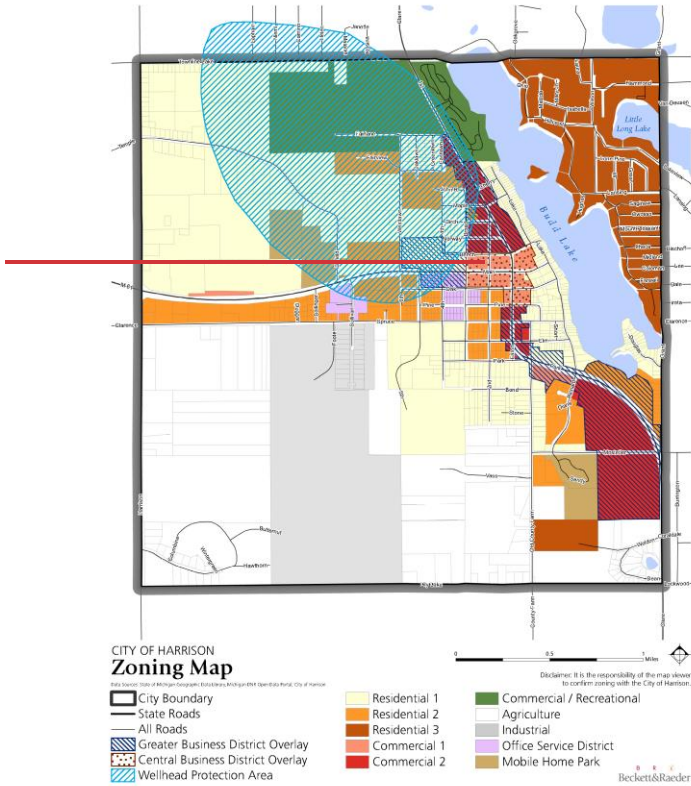
2.7 \_\_\_\_ In any R-1, R-2, R-3 or A-1 District, a single family dwelling and permitted accessory structures may be constructed or altered on any single lot of record at the effective date of adoption of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Appeals.

2.8 \_\_\_\_ In those instances where a lot owner's lot line is adjacent to an easement that runs perpendicular to Lake Street to Budd Lake or perpendicular to Hillcrest to Budd Lake that lot line shall be considered a side yard lot line for setback purposes.

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( ord. no. 2023-02, adopt: ~~XXX, XX~~, 2023 – Sec. 2.6, 2.7, and 2.8)





## ARTICLE 3 REGULATED USES AND DIMENSIONS

### 3.1 LAND USE AND ZONING DISTRICT TABLE.

The purpose of the regulated uses and the schedule of dimensional requirements tables are to centralize this basic information into tables so that identifying allowable and special uses and lot requirements is made easier for Ordinance users. The Use Table in this Article lists by Land Use Type (i.e. residential, commercial, etc.) where a particular land use is allowed in a respective base-zoning district.

### 3.2 PERMITTED USES [P].

If a land use is permitted by-right in a Zoning District, it is identified by the symbol "P."

### 3.3 SPECIAL ~~LAND~~-USE [S].

The symbol "S" is noted if a land use is permitted after review and approval as a Special ~~Land~~-Use in accordance with Article 4: Special Uses.

### 3.4 USES NOT ALLOWED.

If a land use type is not allowed in a Base Zoning District, it is blank without a "P" or "S."

### 3.5 SITE-SPECIFIC STANDARDS.

Land use types, denoted with an " \*," are further regulated with site-specific standards as identified in Article 7: Site Development Standards.

### 3.6 UNLISTED USES.

If an application is submitted for a use type that is not classified in the Land Use Table of this Article, the Planning Commission is authorized to classify the new or unlisted use type into an existing land use category that most closely fits the new or unlisted use. If no similar use determination can be made, the Planning Commission, zoning administrator, and/or their designee may initiate an amendment to the text of the Zoning Ordinance.

### 3.7 LAND USE TYPE.

Land use types listed in the Land Use and Base Zoning District Table are defined in Article 15: Definitions of this Zoning Ordinance.

### 3.8 COMPLIANCE WITH DISTRICT REGULATIONS.

Compliance with District regulations shall be required as follows:

- a. No building or structure shall be erected, converted, enlarged, reconstructed, relocated or structurally altered, nor shall any building or land be used, except for a purpose or use permitted in the district in

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which the building or land is located, nor in excess of the height and bulk limits established for such district.

- b. No building or structure intended for a dwelling use shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the floor area regulations of the district in which it is located.
- c. No building or structure shall be erected, converted, enlarged, reconstructed, relocated or structurally altered except in conformity with the yard and lot area regulations and the off-street parking and loading regulations of the district in which such building is located.
- d. The minimum yards, parking space and other open spaces, including lot area per family, required by this Zoning Ordinance for any building hereafter erected or structurally altered, shall not be encroached upon or considered open space or lot area requirement for any other building, nor shall any other lot area be reduced beyond the district requirements of this Zoning Ordinance.
- e. Every building or structure hereafter erected or structurally altered shall be located on a lot as defined, and in no case shall there be more than one (1) principal building on one (1) lot, except as provided in parts of this ordinance.

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**3.9 USES CONTRARY TO FEDERAL, STATE OR LOCAL STATUTES, LAWS, AND/OR ORDINANCES.**

Uses for enterprises or purposes that are contrary to Federal, State, and City statutes, laws, and/or ordinances are prohibited.

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### 3.10 REGULATED USES.

Zoning Districts											
Regulated Uses	R-1	R-2	R-3	MH	A-1 R-4	CR	C-1	C-2	GB	L-1	
Principal											
Single-Family Dwellings	P	P	P	P	P						
<u>Accessory Dwelling Units</u>	<u>P</u>	<u>P</u>			<u>P</u>		<u>P</u>				
Government Facilities and Offices	P	P		P	<u>P</u>				<u>P</u>		
Schools	P	P		P	<u>P</u>						
Medical Facilities	P	<u>P</u>		P	<u>P</u>				<u>P</u>		
Public Recreational Facilities	P	P	P	P	<u>P</u>	P	<u>P</u>	<u>P</u>		S	
Private Recreation Facility					S	P	S	S		S	
Religious Institutions	P	P		P	P			<u>P</u>	<u>P</u>		
Cemeteries	P	P		P	P						
Public Utility Facilities	S*	S*	S*		P		P	P			
Funeral Homes	S	S			S			P			
Bed and Breakfasts	S*	S*	S*		<u>P</u>						
Two-Family Dwellings		P	P		<u>P</u>						
<u>Triplexes</u>		<u>P</u>		<u>P</u>	<u>P</u>						
<u>Quadplexes</u>		<u>P</u>		<u>P</u>	<u>P</u>						
<u>Rowhouses</u>		<u>P</u>		<u>P</u>	<u>P</u>		<u>S</u>				
<u>Garden Court Apartment</u>					<u>P</u>		<u>P</u>				
<u>Mixed-Use Building</u>					<u>P</u>		<u>P</u>				
Multi-Family Dwellings		P	P		<u>P</u>						
Rooming Housing		P	P								
Hotels/Motels		P	S			P		S			
Senior Living Facilities		P			<u>P</u>			<u>S</u>			
Professional Offices		S			<u>P</u>		P	P	<u>P</u>		
Clinics		S					P	P	<u>P</u>		
Clubs or Lodges		S	S		<u>P</u>	P			<u>P</u>		
Nursing Homes		S*						<u>P</u>			
Grocery Stores			<u>S</u>				P	P	<u>P</u>		
<del>Gasoline Service Stations</del> <u>Motor Vehicle Refueling Station</u>			<u>S*</u>		<u>S*</u>		S*	P		P	
Mobile Homes	<u>SP*</u>	<u>S*</u> <u>P</u>	<u>S*</u> <u>P</u>	P	<u>P</u>						
Campground or Travel Trailer Park				S		P					
<u>Farming</u>					<u>P</u>						
Nurseries	<u>S</u>				P						
Kennels	<u>S</u>				<u>S</u>						
Radio and Television Stations					<u>P</u>			P			
Golf Courses	<u>P</u>				<u>P</u>						
Retail Establishments					S		P	P			

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Personal Service Establishments					S		P	P	P	
Farmers/Flea Market					S*	S*	S*	S*		
<del>Warehousing, Outdoor Storage, and Junkyards</del>					S*					P
Drive-thru Services							S*	P	S*	
Automobile Sales and Services								P		P
Theaters (including Drive-In)								P		
Banks							P	P	P	
Adult Entertainment Businesses								S*		S
Telecommunication Towers										P
<del>Research Facilities</del>										P
Ag Products and Services										P
Machine and Welding Shops										P
Transportation, Maintenance Facilities										P
Industrial Park Site										S*
<del>Sanitary Landfill</del>										S
Accessory										
Private Garages and Carports	P	P	P	P	P					
Private Pools	P	P	P		P	P				
Home Occupations	P	P	P	P	P					
Marine Docking and Launching			P			P				
<del>Farm Equipment Buildings</del>					P					
<del>Farm Stands</del>					P					
Second Floor Residential					P		P			

### 3.11 SCHEDULE OF DIMENSIONAL REQUIREMENTS.

The regulations in this section specify parcel dimensions, setback requirements for parcels in each Zoning District.

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Dimensional Requirements						
Zoning District	Min. Lot Area (sq. ft.)	Min. Lot Width (ft.)	Min. Front Yard (ft.)*	Min. Side Yard (ft.)	Min. Rear Yard (ft.)	Max Height (ft.)
R-1 Low-Density Residential	<del>10,000</del> 1 acre	<del>80-125</del>	<del>25-50</del>	<del>10-25</del>	<del>10-25</del>	25
R-2 Medium-Density Residential						
<del>One-Family Dwelling</del>	8,000	66	25	8 2	10	35**
<del>Two-Family Dwelling</del>	8,200	66	25	8	10	35
<del>Multiple-Family Dwelling</del>	3,000 per unit	66	25	20	20	35**
R-3 Seasonal Residential						

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One-Family-Dwelling	<del>8,000</del> 6,750	<del>60-50</del>	25	8 <del>2</del>	10	25
<del>Two-Family Dwelling</del>	8,200	60	25	8	10	35
<del>Multiple Family Dwelling</del>	3,000 per-unit	60	25	20	20	35**
<del>R-4 Mixed Use Residential</del>	8,000	66	25	5	10	35**
MH Mobile Home	N/A	N/A	N/A	N/A	N/A	N/A
<del>A-1 Open Space</del>	See residential requirements for residential uses in this district.					
CR Commercial Resort	N/A	N/A	N/A	N/A	N/A	35**
C-1 Commercial	N/A	N/A	<del>N/A</del>	N/A	N/A	35**
C-2 Commercial	N/A	N/A	N/A	N/A	N/A	35**
<del>OS Office Service</del>			20 ft. max.	15	20	35**
I-1 Light Industrial	<del>1020,000</del>	100	25	25	25	35**

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Notes:

- Buildings on lots having frontage on two or more intersecting or non-intersecting streets shall comply with front yard requirements on all such streets.
- The following buildings and structures shall be exempt from height regulations in all zoning districts: parapet walls not exceeding 4 feet in height, chimneys, cooling towers, elevator bulkheads, fire towers, stacks, elevated water towers, storage towers, monuments, cupolas, domes, spires, penthouses housing necessary mechanical appurtenances, and communication and transmission antennas and towers that are controlled by the FCC.
- If the side or rear yard of a commercial or industrial use abuts a property zoned residential a 30-foot side or rear yard is required.
- \*On waterfront lots, the minimum setback from the road-side property line is 10 ft. and the minimum setback from the ordinary high water mark is 25 ft.
- \*\* ~~Upon During~~ site plan review, ~~a special use permit may be issued for buildings that~~ buildings exceeding 35 feet ~~may be approved~~ as long as a ~~fire suppression agreement/plan is secured with neighboring jurisdiction(s)~~ fire suppression is provided and additional building height is approved by ~~Fire Marshal and Planning Commission~~.

## ARTICLE 4 SPECIAL USES

The intent of this section is to recognize and provide for certain uses which do not logically belong in any particular district or which may be allowable only if they comply with standards which ensure their being harmonious with the general character of the district in which they may be located. The general standards in this Section must be met by all uses authorized by ~~S~~special ~~U~~se ~~P~~ermit. Land uses requiring special considerations are listed in the remaining sections of this Article. ~~Any remodeling or renovations of the following listed Special Uses shall be in conformity with the requirements found within this section and be consistent with goals within the City's the Master Plan.~~

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#### 4.1 GENERAL PROVISIONS.

- a. Only uses which have been designated as Special Uses in each respective zoning district shall be considered for approval as Special Uses.
- b. All uses of land or structures which are designated as Special Uses in this Ordinance shall require the granting of a Special Use Permit in accordance with the procedures of Subsection 4.2 of this Ordinance prior to the issuance of a Building Permit or a Certificate of Occupancy.
- c. A request for the approval of a Special Use Permit may be considered, provided the following conditions are assured:
  - 1. The proposed use will comply with all special regulations as well as complying with all appropriate regulations applicable to the district.
  - 2. The proposed use is in harmony with the purpose and intent of this Ordinance.
  - 3. The proposed use will not adversely affect the health and safety of the public and the workers and residents of the area and will not be detrimental to the use or development of adjacent properties or of the general neighborhood.
  - 4. The proposed use will comply with all applicable laws, ordinances and regulations of the City of Harrison, Clare County and the State of Michigan.
- d. The Planning Commission may impose additional conditions and stipulations which are deemed necessary for the protection of the neighborhood and the health, safety, and general welfare of the public.
- e. Approval of a request for a Special Use Permit shall not be granted if any official or the Planning Commission of the City of Harrison finds that such Special Use would fail to comply with any requirements of this Ordinance.
- f. The Planning Commission may require that the applicant requesting authorization for a Special Use furnish any engineering or architectural drawings, specifications, site plans, impact statements, operating plans or any other reasonable data or information deemed necessary to completely clarify the proposed Special Use.
- g. In any case where a Special Use has not been established within one (1) year after the granting or approval of the Special Use Permit, then without further action by the Planning Commission, the Special Use Permit or the Certificate of Occupancy shall be canceled.
- h. Violations of this section or of any other portions of this Ordinance shall result in the automatic cancellation of the Certificate of Occupancy. Reinstatement may be made by the Zoning Administrator when violation(s) has been corrected.

#### 4.2 ADMINISTRATION AND PROCEDURE.

- 4.2.1 *Initiation of request for ~~S~~pecial ~~U~~se.* Any person owning or having an interest in property in the City of Harrison may initiate a request to operate or maintain a Special Use in the City of Harrison by submitting an application for a Special Use Permit.
- 4.2.2 *Application for ~~S~~pecial ~~use~~-~~Use~~ permit.* An application for a Special Use Permit shall be filed with the Zoning Administrator on a prescribed form. The application shall be accompanied by a site plan as required under Article 9 and shall include such plans, drawings or other data furnished by the applicant including a written statement by the applicant. Such plans, data, and statement shall indicate in necessary detail the type of use, size, location, and estimated time until occupancy of the proposed use.

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### 4.3 GENERAL STANDARDS.

Before formulating recommendations for a ~~S~~pecial ~~land-Use~~ application, the Planning Commission shall require that the following general standards below and any specific standards for uses listed in Section 4.4 through Section 4.14 be satisfied. The Planning Commission shall review each application for the purpose of determining that each proposed use meets the following standards:

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- a. *Compatibility with the Master Plan:* The proposed ~~S~~pecial ~~land-Use~~ shall be compatible with and in accordance with the general goals and objectives of the City of Harrison Master Plan and any associated sub-area and corridor plans.
- b. *Compatibility with Adjacent Uses:* The ~~S~~pecial ~~land-Use~~ shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area. In determining whether ~~a~~~~-the proposed~~ special land use will be harmonious and not create a significant detrimental impact, as compared to the impacts of permitted uses, consideration shall be given to the degree of impact the special land use may have on adjacent property, as compared with the expected value to the City. The following types of impacts shall be considered:
  1. Use activities, processes, materials, equipment, or conditions of operation;
  2. ~~V~~ehicular circulation and parking areas;
  3. ~~O~~utdoor activity, storage and work areas;
  4. ~~H~~ours of operation;
  5. ~~P~~roduction of traffic, noise vibration, smoke, fumes odors, dust, glare and light;
  6. ~~I~~mpacts on adjacent property values; and
  7. ~~T~~he relative ease by which the impacts above will be mitigated.
- c. *Impact of Traffic on the Road Network:* The location and design of the proposed special land use shall minimize the negative impact on the traffic network in consideration of items such as vehicle trip generation (i.e. volumes), types of traffic, access location and design, circulation and parking design, road capacity, traffic operations at proposed access points, and traffic operations at nearby intersections and access points. Efforts shall be made to ensure that multiple transportation modes are safely and effectively accommodated in an effort to provide alternate modes of access and alleviate vehicular traffic congestion.
- d. *Impact on Public Services:* The proposed special land use shall be located where it can be adequately served by essential public facilities and services, such as highways, streets, pedestrian or bicycle facilities, police and fire protection, drainage systems, refuse disposal, water and sewage facilities and schools. Whenever possible, such services shall be provided and accommodated without excessive additional requirements at a public cost.
- e. *Compliance with Zoning Ordinance Standards:* The proposed special land use shall be designed, constructed, operated and maintained to meet the stated intent of the zoning districts and shall comply with all applicable ordinance standards.
- f. *Impact on the Overall Environment:* The proposed special land use shall not have an unacceptable significant adverse effect on the quality of the natural environment in comparison to the impacts associated with typical permitted uses.
- g. *Licensing:* The application shall comply with all applicable licensing ordinances.
- h. *Additional Provisions:* The Planning Commission may stipulate such additional conditions and safeguards deemed necessary for the general welfare for the protection of individual property rights,

and for ensuring that the intent and objectives of this Ordinance will be observed. The breach of any condition, safeguard, or requirement shall automatically invalidate the granting of the ~~special Land use~~Special Use Permit.

- i. ~~Special Land Use~~ Specific Requirements: The general standards and requirements of this Section are basic to all uses authorized by ~~special land use~~Special Use. The specific and detailed requirements must be met by those uses in addition to the foregoing general standards and requirements where applicable.

#### 4.4 SPECIFIC STANDARDS.

In addition to meeting the General Standards, the following uses listed below shall also meet the Specific Standards:

- a. Public Utility Facilities
- b. Nursing Homes
- c. ~~Gasoline Service~~ Motor Vehicle Fueling Stations
- d. ~~Warehousing, Outdoor Storage, and Junkyards~~
- e. Drive-thru Services
- f. Open Air Markets
- g. Bed and Breakfasts
- h. Adult Entertainment Businesses
- i. Mobile Homes
- j. Industrial Park Site

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#### 4.5 PUBLIC UTILITY FACILITIES.

- a. The public utilities facility may be located within the district when operating requirements are necessary to serve the immediate vicinity.
- b. Any lighting on the premises for yard lighting, sign lighting or other similar types of exterior lighting shall be a white, steady light with the source not visible off the premises.
- c. Surrounding grounds may be used for the temporary parking of service or maintenance vehicles or for parking of employees or attendance vehicles while driver is on the premises, but shall not be used for the storage of equipment, supplies, or construction, or operating materials.
- d. Any property line abutting a residential lot or parcel shall be screened with an ornamental fence, wall or planted materials. Said screen shall obscure vision and provide separation between the two uses.

#### 4.6 NURSING HOMES.

- a. Nursing homes include convalescent homes, homes for the care of the sick or similar places which provide room and board for bedridden patients excluding hospitals.
- b. Off-street parking shall be provided in the rear yard only at a ratio of one (1) space ~~for each two hundred (200) square feet of usable floor area in the building per three beds~~. Entrance/exit drives shall be provided to permit safe and convenient access between parking areas and approved private or public streets.

- c. Any lighting on the premises, for parking areas, yard lighting, sign lighting or other types of exterior lighting shall be a white steady light with the source not visible off the premises.
- d. Any parking or drive areas which are within a required yard abutting a residential lot shall be screened with an ornamental fence or wall or planted materials such as trees or shrubs which shall obscure vision and provide separation between the two uses. Said screen shall be a minimum of five (5) feet in height.

#### **4.7 GASOLINE SERVICE STATIONS MOTOR VEHICULAR FUELING STATION.**

- a. The lot accommodating a gasoline service motor vehicular fueling station shall have a minimum area of forty-thousand (40,000) square feet with a minimum width of two-hundred (200) feet.
- b. Parking and storage areas and drives may be located within any required front yard and drives shall meet roadway access standards.
- c. All sales, services and storage shall be within an enclosed building, with the exception of parking and loading areas.
- d. All drives and parking areas shall be paved and well drained.
- e. Any gasoline service motor vehicular fueling station which abuts a residential property shall be screened with an a six (6) foot tall opaque ornamental fence or wall or planted materialsan opaque landscaped buffer strip of at least eight (8) feet in width which shall obscure vision and provide separation between the uses.
- f. Under canopy lighting shall not exceed 15 foot candles in brightness.
- g. Drives shall be located so as not to create a traffic hazard between vehicles entering or leaving the service station and vehicles traveling on adjacent streets.
- h. Means of providing safe pedestrian access shall be provided to all retail and food service accessory uses located on site.

#### **4.8 WAREHOUSING, OUTDOOR STORAGE, AND JUNKYARDS.**

- a. Any ~~buildings, fences, or walls~~outdoor storage shall be located no closer than fifty (50) feet from any property line.
- b. Any scrap, waste, junk or refuse material and any inoperable mechanical equipment shall be stored in a building.
- c. Any operable mechanical equipment and any materials not classified as scrap, junk or waste may be stored in open yards provided that said equipment or materials are located no closer than 100 feet from any property line.
- d. The property shall be screened with an ornamental fence or wall or planted materials such as trees or shrubs which shall obscure vision and provide separation between the two uses. Said screen shall be a minimum of ~~five (5)~~eight (8) feet in height and fully opaque up to eight (8) feet.
- e. Storage yards shall be graded to provide adequate drainage and shall be surfaced with compacted stones or gravel or with a hard surfaced material.
- f. Any lighting on the premises for parking areas, yard areas, sign lighting or other similar types of exterior lighting shall be a white steady light with the source not visible off the premises.
- g. There shall be no burning of any waste, scrap, junk, or any other similar materials on the premises.

#### 4.9 DRIVE-THRU SERVICES.

- a. A drive-thru service must be accessory to a principal use on the same parcel.
- b. Each drive-thru window shall be served by a paved drive.
- c. Entrance to a drive-thru window shall be from an off-street drive or parking lot which shall permit the accommodation of a minimum of four cars.
- d. Exit from a drive-thru window shall be to a minor street or to a major street with a service drive or service lane.
- e. The required off-street parking area for the facility shall not be used for drives to the drive-thru windows.
- f. Any drive-thru use which abuts a residential property shall be screened with a six (6) foot tall opaque ornamental fence or wall or an opaque landscaped buffer strip of at least eight (8) feet in width which shall obscure vision and provide separation between the uses.

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#### 4.10 FARMERS/FLEA OPEN AIR MARKETS.

- a. The market shall not have a negative impact on surrounding properties related to visibility, accessibility, traffic flow, parking and other site related issues.
- b. All parking should be accommodated on-site.
- c. All products sold at the market shall be agricultural and/or locally crafted and shall be in compliance with all applicable laws and codes of the City of Harrison, Clare County, the State and the Federal Government.
- d. The market shall promote economic development in the City of Harrison.
- e. Any lighting provided for the open air market shall be located on premises, shall be a steady white light with the source not visible off the premises.
- f. An appropriate time frame for the market with a specific starting and ending time must be agreed upon by the City.
- g. The market shall be immediately cleaned up at the conclusion of the market/event.

#### 4.11 BED AND BREAKFASTS.

- a. The dwelling unit in which the bed and breakfast takes place shall be the principal residence of the operator and said operator shall live on the premises when the bed and breakfast operation is active.
- b. All premises used for a bed and breakfast operations must comply with all relevant building code and sanitary regulations.
- c. Minimal outward modification of the structure may be made only if such changes are compatible with the character of the structure and the intent of the zoning district in which the bed and breakfast is located. Any modifications are subject to architectural review by the Planning Commission at the time of Special Use permit review.
- d. Each operator shall keep a log of the names of all persons staying at the bed and breakfast inn operation. The log shall show the name, arrival and departure dates of all guests. Such log shall be available for inspection by City officials at any time. The maximum stay for any occupants (other than the owner and family) of bed and breakfast operations shall be fourteen (14) days.



- e. No portion of any bed and breakfast shall be operated in any garage.
- f. No cooking facilities shall be permitted in any of the rooms available for rent.
- g. In the event of a small gathering or event, twenty people or less, a light meal may be served to guests not staying at the Bed and Breakfast. The structure shall remain a residential structure, i.e. the kitchen shall not be remodeled into a commercial kitchen.
- h. The maximum number of rooms which may be rented is five (5) unless it can be shown that the structure and/or parcel is of sufficient size to contain more rooms while meeting the purpose of the article.

(amend. by ord. no. 2020-2, adopt Jan. 13, 2020)

#### 4.12 ADULT ENTERTAINMENT BUSINESSES.

Special regulation is needed to ensure these uses are not concentrated in any one area, thus, preventing adverse effects upon the surrounding neighborhood, such as blight and urban deterioration, negative effects on economic development potential, social disorder and crime, negative effects on community standards for aesthetics, the reduction of property values, and the subsequent negative impact on the community tax base. The primary objective is to prevent a concentration of these uses by establishing spacing standards and, thus, ensuring disbursement of these uses throughout the community. Uses subject to these controls are as follows:

- ~~a~~1. Adult book stores, adult novelty stores, or adult video stores;
  - ~~b~~2. Adult cabarets;
  - ~~c~~3. Adult motion picture theaters;
  - ~~d~~4. Nude or semi-nude model studios; and
  - ~~e~~5. Sexually oriented businesses.
- a. Adult entertainment businesses shall not be approved if there is already in existence, one or more adult entertainment businesses within 1,500 feet of the proposed business.
  - b. Adult entertainment businesses shall not be approved if the proposed location is within 1,000 feet of any residential district; 1,500 feet of any licensed day-care facility, adult foster-care home, senior citizens' center, park, or church; or 2,650 feet from any K-12 school.

#### 4.13 HOTELS AND MOTELS.

~~Hotel and motels exceeding 35 feet in height may be permitted in the event that the developer reaches an agreement with surrounding jurisdictions to secure fire emergency response and suppression services.~~

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#### 4.14 MOBILE HOMES.

~~INTENT: While Mobile Homes offer an alternative to conventional single-family housing in such areas as structural design, facility arrangement and cost, they can have potential adverse impacts on a residential neighborhood because of marked differences from single-family housing in design, placement, structure and site size, and fire and wind resistance. Generally, mobile homes have been restricted to locations within mobile home parks, positioned at areas specifically zoned for them, in order to assure compatibility with nearby residential uses. However, through the application of certain standards, mobile homes and mobile home sites may be designed to more closely resemble nearby conventional housing and be permitted outside mobile home parks and within residential zoning districts.~~

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The Planning Commission shall have the discretion to permit, as a use, one-family dwelling units (mobile homes), based upon the following standards:

- a. Mobile homes shall be excluded from a residential district of site-built homes when a mobile home fails to satisfy reasonable standards designed to assure a favorable comparison. Mobile home dwelling units shall be permitted, provided:
  1. Such dwelling units shall be in harmony of appearance and quality of materials and landscaping with surrounding dwelling units in the area. "Surrounding Area" shall mean all dwelling units within three hundred fifty (350) feet in any residential district in all directions from the lot on which such dwelling unit is to be located. In those instances where no site-built dwelling units or pre-manufactured, or mobile home dwelling units approved under this Section, exist within the required distance above set forth, the surrounding area shall then mean the first three (3) dwelling units nearest the site in all directions.
  2. Such dwelling units shall conform to the applicable requirements of the Pre-manufactured Unit Rules of the State Construction Code, being Section 6 of Act 230 of the Public Acts of 1972, as amended, including the display of a manufacturers data plate, or the display of the HUD Construction Code Standards for Mobile Homes.
  3. Such dwelling units shall be permanently attached to a perimeter foundation, except that in those instances where the applicant elects to set the dwelling on piers or when the type of unit requires placement of an under frame on piers or other acceptable foundations which are not at the perimeter of the dwelling, then a perimeter wall shall also be constructed. Any such perimeter wall shall be constructed of durable materials and shall also meet all local requirements with respect to materials, construction and necessary foundations below the frost line. Any such wall shall, furthermore, provide an appearance which will be compatible with the dwelling itself and with the site-built homes in the surrounding area. Where a perimeter wall is used, the wall shall extend upwards from the ground to a point uniformly three (3) inches below the base of the perimeter wall of the dwelling. A flange attached to the base of the dwelling wall shall extend along the outside of the perimeter wall not more than six (6) inches on all sides of the dwelling. The wheels and towing mechanisms shall be removed. The latter to the extent that it is not visible beyond the perimeter wall.
  4. Such dwellings shall have a minimum width of at least fourteen (14) feet on at least one (1) side within any single vertical plan (through section), and a minimum living area of not less than seven hundred and twenty (720) square feet, excluding any attached living areas, carports, garages, screened or open porches or patios.
  5. Such dwellings shall have a roof with a pitch of not less than that of a majority of the dwellings in the surrounding area.
  6. Such dwellings shall be constructed with materials approved by the State Construction Code of HUD Standards for Mobile Homes.
  7. Such dwellings shall consist of windows and doors that are of the same general construction and quality as exists in homes in the surrounding area.
  8. Such dwellings shall have a storage area capability either in a basement located under the dwelling, in a utility room, in an office, in closet areas, or in a separate structure of standard construction similar to or of better quality than the principal structure, which storage shall be equal to ten (10) percent of the square footage of the dwelling. Any separate structure used for storage shall be located in compliance with the various other provisions of the Zoning Ordinance.

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#### 4.15 INDUSTRIAL PARK SITE.

- a. Before a building permit for an industrial park site will be issued the owner and/or builder must submit a complete site plan review application with the following additional material to Planning Commission for review and comment:
  1. ~~A detailed site plan as required under Article 7: Site Plan Review, and including at a minimum, the location of all buildings, improvements, signage, parking spaces, loading zones, walls or fencing, lighting and landscaping.~~
  2. ~~Engineering/architectural plans for all buildings and utilities i.e., water, sewer, gas and electricity.~~
  31. A description of the operation including, but not limited to, type of activity, number and type of employees, hours of operation, water and sewer usage, solid waste disposal needs, air pollution, noise and vibration levels as measured at the property line, handling of hazardous materials and any health or safety hazards.
  42. The proposal shall be submitted to the Harrison Area Economic Development Corporation for their review and comment; such written comments shall be submitted to the Planning Commission for their consideration prior to approving the site plan.
- b. Outdoor storage of equipment, raw materials, semi-finished products may be permitted only when such outdoor storage is necessary and incidental to the operations being carried on in the building located on the site. No storage shall be permitted within any required yard. All storage shall be shielded by fence or landscaping so as to screen such storage area from public streets and adjoining properties.
- c. All building site area not used for buildings, roads, parking, loading and storage area shall be landscaped. It shall be done attractively with lawn, trees, shrubs, etc., and be properly maintained thereafter.
- d. In the event that an Industrial Use is located within 100 ft. of an established Residential Use, after the enactment of this Ordinance, it shall be required, that, in order for the Industrial Use to become operative, there shall be, on the Industrial Use property a combination of the following:
  1. A solid fence or opaque landscaped buffer zone no less than six feet (6') in height set back from the property line no less than three feet (3'). In the event that an Industrial Use is adjacent to a Commercial Use there shall be on the industrial property a fence no less than six feet (6') in height or a solid wall no less than six feet (6') in height or a n opaque landscaped buffer zone as defined in this Ordinance no less than ten feet (10') in width.
  2. Any industrial park building permit shall become null and void if construction has not begun within one year from date of approval. Building construction must begin within twelve (12) months from the date of property acquisition and be completed within twelve (12) months from the start of construction.
  3. All principal structures must be of new steel or other metal, masonry and glass construction and all exposed concrete block or metal must be painted within sixty (60) days after date of occupancy except those materials not normally painted or prefinished.
  4. Walls and fences must be built within setback requirements and require prior approval of the Harrison Area Economic Development Corporation and county building inspector.
  5. Signs shall be permitted, but sign lighting or other similar types of exterior lighting shall be a white steady light with the source not visible off the premises.

6. When an industrial park site fronts on two (2) streets, the Harrison Area Economic Development Corporation will determine which side of the property is the front yard.

- e. ~~ODORS: The emission of obnoxious odors that negatively impact public health, safety and general welfare are not permitted.~~
- f. ~~GASES: No gas shall be emitted which is detrimental to the public health, safety and general welfare.~~
- g. ~~GLARE AND HEAT: Glare and heat from arc welding, acetylene torch cutting or similar processes shall not be seen from any point beyond the outside of the property.~~
- h. ~~FIRE AND SAFETY HAZARDS: The storage and handling of flammable liquids, liquefied petroleum gases and explosives shall comply with State rules and regulations as established in Public Act No. 207, P.A. of 1941, as amended. Bulk storage of flammable liquids, liquefied petroleum gases and explosives will be permitted below ground only.~~
- i. ~~NOISE: Noise shall not be determined to cause a disturbance to the surrounding neighborhood and shall not exceed 80dB(A) as measured from the property line between 6 A.M. and midnight and shall not exceed 75dB(A) between midnight and 6 A.M.~~

#### 4.16 WIRELESS TELECOMMUNICATIONS TOWERS.

- (a) *Purpose and goals.* The purpose of this section is to establish guidelines for the siting, use, and maintenance of wireless telecommunications towers and antennas. The goals of this section are to:
  - (1) Protect residential areas, park or recreation areas, and protect future land uses from potential adverse impacts of towers and antennas.
  - (2) Protect the public health and safety.
  - (3) Permit telecommunications facilities within city boundaries as required by law.
  - (4) Minimize the total number of towers throughout the city by encouraging the joint use of existing and new tower sites.
  - (5) Require users of towers and antennas to configure or shield them in a way that minimizes the adverse visual impact of the towers and antennas.
  - (6) Avoid potential damage to adjacent properties from tower failure.
  - (7) Provide for the maintenance of existing facilities as well as timely removal of obsolete, unused or abandoned facilities.

In furtherance of these goals, the city shall give due consideration to the city's master plan, zoning map, existing and future land uses, and sensitive areas in approving sites for the location of towers and antennas.

- (b) *Applicability.* Wireless communications equipment is a permitted use of property and is not subject to special land use approval or any other approval under this ordinance if all of the following requirements are met:
  - (1) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.
  - (2) The existing wireless communications support structure or existing equipment compound is in compliance with the City's zoning ordinance or was approved by the appropriate City zoning body or official.
  - (3) The proposed collocation will not do any of the following:

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- (i) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.
    - (ii) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.
    - (iii) Increase the area of the existing equipment compound to greater than 2,500 square feet.
  - (4) The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the appropriate zoning body or official of the City.
- (c) *Applicability Special Use.* Wireless communications equipment that will be collocated on an existing wireless communication support structure or in an existing compound and is in compliance with the City's Zoning Ordinance or was approved by the City but does not comply with the height requirements, width requirements, area requirements, or the previous approval of the wireless communications support structure as set forth in (b) (3) and (4) above, shall be subject to a special land use approval in accordance with the terms of this section and the overall site plan requirements of this ordinance. New wireless communications equipment shall be subject to special land use approval, as set forth above, except as provided in Section 20.925.
- (d) *Exemptions.*
- (1) Amateur radio station operators. This section shall not govern any tower, or the installation of any antenna, that is owned and operated by a federally licensed amateur radio station operator. Amateur radio towers will be governed by maximum heights for non-attached structures in appropriate districts, as required elsewhere in this Ordinance.
  - (2) Receive only antennas. This section shall not govern any receive only antenna or tower installed and used by an individual to receive a fixed-wireless data signal at only a single location, except receive only antennas or towers shall meet the following conditions:
    - a. A tower or antenna is permitted only as an accessory use in all districts.
    - b. The tower or antenna height shall not exceed 50 feet.
    - c. The tower shall be setback from all property lines the minimum of the tower height or the underlying setbacks of the district, whichever is greater.
    - d. Guy wires are not permitted on the tower.
    - e. The tower shall be equipped with an anti-climbing device.
    - f. No ground equipment or additional buildings are permitted to accommodate the tower or antenna.
    - g. No antenna or structure shall extend more than six feet horizontally from the tower.
    - h. A certificate of zoning compliance is required prior to constructing the tower.
    - i. The antenna or tower shall not be used to retransmit a data signal to multiple individuals' locations.
  - (3) Preexisting towers and antennas. Towers and antennas that existed prior to enactment of this Ordinance shall not be required to meet the requirements of this section, other than any applicable requirements elsewhere in this ordinance.
  - (4) Small cell wireless facilities are exempt from this ordinance. See Section 20.925.

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- (5) Installing a cable microcell network through use of multiple low powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

(6) Collocation of additional antenna equipment on existing wireless towers as permitted by State and Federal law.

- (e) *[Special use application and approval process necessary for equipment.]* An application for special land use approval of wireless telecommunications equipment described in section (c) above shall be subject to a special use application and approval process as set forth in this ordinance.
- (1) A site plan as required by this ordinance, including a map of the property and existing proposed buildings and other facilities shall be submitted in accordance with City Code Chapter 52, Article VII, Site Plan Review.
- (f) *Determination of an administratively complete application.* After an application for a special land use approval is filed with the City, the City shall determine whether the application is administratively complete. Unless the City determines that the application is administratively incomplete as set forth in this provision, the application shall be considered to be administratively complete fourteen days after the City receives the application or makes a determination, whichever is first.

If before the expiration of the fourteen day period, the City official responsible for approving the special land uses notifies the applicant that the application is not administratively complete, the notification must 1) specify the information necessary to make the application administratively complete, 2) or notify the applicant that a fee required to accompany the application has not been paid and specify the amount due. If notification is given under this subsection, the running of the fourteen-day period to determine whether the application was administratively complete is tolled, until the applicant submits to the body or official the specified information or fee amount due. All notices under this section shall be given in writing or by electronic notification.

*Time.* The City shall approve or deny the special land use application not more than ninety days after the application is considered to be administratively complete. If the City fails to timely approve or deny the application, the application shall be considered approved and the body or official shall be considered to have made any determination required for approval, subject to notice by the applicant as required by MCL 125.1315(2).

- (g) *Conditions.* Special land use approval of wireless communication equipment may be made conditional only on the equipment meeting the requirements of local ordinance, and state and federal laws before the equipment begins operation.
- (h) *Requirements for Special Uses Defined in Section (c) above.*
- (1) *Principal or accessory use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- (2) *Lot size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, road frontage requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- (3) *Inventory of existing sites and justification of new sites.* Each application for an antenna and/or tower shall provide to the city an inventory of existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the city or within three miles of the border thereof, including specific information about the location, height, and design of each

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tower. The city may share such information with other applicants applying for siting approvals under this Ordinance, provided however that the city is not, by sharing such information, in any way representing or warranting that such sites are available or suitable. In addition, the applicant shall supply a written statement from an independently hired radio frequency professional that justifies the need for the proposed new site by describing the unsuitability of existing towers for the proposed use.

- (4) *Height.* Overall heights for new towers and antennas shall meet the following requirements:
- a. Maximum height for a single-user tower is 150 feet. A single-user tower must have a foundation capable of supporting a tower with a height of 195 feet, to facilitate possible future tower height extension in the event of colocation by other users.
  - b. Maximum height for a tower with allowances for multiple users is 195 feet. The applicant must provide written assurance, verifying that there are reasonable provisions (including the tower, the equipment structure plan, and site location) for colocation by two other users. In addition, the applicant must provide written assurance that permission to co-locate will be granted for compensation at the prevailing market rate. Suitability of this documentation will be assessed by the zoning administrator (for certificate of zoning compliance) or by the planning commission during site plan review.
- (5) *Setbacks.* The following setback requirements shall apply to all new towers:
- a. Towers must be setback a distance equal to at least the height of the tower from an adjoining lot line, except in an industrial district where the setback from an adjoining lot line will be half the tower height. These setback requirements are in addition to meeting the requirements of Section (h) above.
  - b. Accessory buildings must satisfy the minimum zoning district setback requirements.
- (6) *Road frontage.* For the entire lot, including a sub-parcel on which a tower or antenna is sited, there shall be a minimum of 150 feet of road frontage.
- (7) *Separation distances.* New towers shall be located a minimum of 400 feet from any existing residential dwelling on adjacent properties.
- (8) *Tower and antenna appearance.* Towers and antennas shall meet the following requirements:
- a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
  - b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
  - c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- (9) *Landscaping.* The following requirements shall govern the landscaping surrounding towers:
- a. Towers and accompanying facilities shall be landscaped in a manner that effectively screens the view of the tower compound from property used (or potentially to be used) for residences. A landscaping plan shall be submitted for approval by the zoning administrator (certificate of zoning compliance) or by the planning commission (site plan review).



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- b. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may provide sufficient buffer.
- (10) *Security.* Towers shall be equipped with anti-climbing devices and enclosed by security fencing not less than eight feet in height. The fence may be equipped with an appropriate anti-climbing device, at the discretion of the owner.
- (11) *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, all available lighting options must be presented to the zoning administrator (certificate of zoning compliance) or to the planning commission (site plan review).
- (12) *State or federal requirements.* All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards and regulations. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense, as required in section 52-321.
- (13) *Building codes; safety standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers. If, upon inspection, the city concludes that a tower fails to comply with applicable codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have 60 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 60 days shall constitute grounds for removal of the tower or antenna at owner's expense, as required in section 52-321.
- (14) *Engineering certification and liability insurance.* Application for tower or antenna siting approval must be accompanied by a signed certification from an independently hired State of Michigan licensed professional engineer. The engineer shall certify integrity of the design and indicating how the tower or antenna would fall in event of such occurrence. Application for tower or antenna siting approval must also include evidence of at least \$1,000,000.00 U.S. dollars of general liability insurance to cover the applicant, land owner, city and damage to other persons or property that may result from unforeseen events or circumstances. The city shall be notified of any notice cancellations or changes in liability insurance.
- (15) *Measurements.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the city irrespective of municipal, county, and state jurisdictional boundaries.
- (16) *Not essential services.* Towers and antennas shall be regulated or permitted pursuant to this section and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- (17) *Licensed or franchised.* Owners and/or operators of towers or antennas shall certify that all licenses or franchises required by law for the construction and/or operation in the city have been obtained and shall file a copy of all required licenses or franchises with the zoning administrator.
- (18) *Signs.* No signs shall be allowed on an antenna or tower except for usual regulatory signs required by the State of Michigan or the FCC such as "No Trespassing", "Danger", or a sign indicating who should be contacted in case of an emergency.

(19) *Buildings and support equipment.* Buildings and support equipment associated with antennas or towers shall comply with the requirements of section 52-319(i).

(20) *Provision for removal.* The application for siting of any antenna or tower shall require the applicant to deposit with the city clerk security of a performance guarantee (in a time duration and with a financial institution deemed acceptable to the city) in the form of cash, a certified check, or irrevocable bank letter of credit, which will ensure full compliance with this Ordinance and any conditions of approval. The security shall cover removal of the facility when it has been abandoned, is no longer in use, or is in violation as provided in section 52-321. The security shall be in the amount indicated in the following schedule:

Total Construction Cost	Security
\$0.00.00—\$2,500.00	\$500.00
\$2,501.00—\$7,500.00	\$1,000.00
\$7,501.00—\$15,000.00	\$2,000.00
\$15,001.00—\$25,000.00	\$5,000.00
\$25,001.00—\$50,000.00	\$15,000.00
\$50,001.00 and greater	\$25,000.00

Total construction cost includes all costs for construction, including engineering and design costs, governmental review, permitting fees, labor, and parts. The security shall be kept in full force and effect and irrevocable and non-cancelable (except by the written consent of both the city and the then-owner of the antenna, tower or related facility) during the entire time while the antenna or tower exists or is in place. The applicant and owner shall further agree as a condition of the security that the applicant and owner are responsible for the payment of any costs and attorney fees incurred by the city in securing removal.

(21) *Tower spacing.* Minimum spacing between tower locations shall be two miles. The planning commission may waive this standard where the proposed location of the tower will serve to cluster two or more towers in close proximity to one another and, thereby, minimize the visual impacts upon panoramic views in the city.

(i) *Buildings and other equipment storage.*

(1) *Antennas located on towers.*

- The related unmanned equipment structures shall not contain more than 300 square feet of gross floor area per user or be more than 12 feet in height. It shall be located within 50 feet of the associated tower. Multiple users will be strongly encouraged to share an equipment structure with a common wall.
- The structure or cabinet shall be screened as required in subsection (h)(9).
- The structure shall be surrounded by a security fence as required in subsection (h)(10).
- The structure will comply with all applicable building codes.

(2) *Antennas mounted on structures or rooftops.* The equipment cabinet or structure used in association with antennas shall comply with the following:

- The cabinet or structure shall not contain more than 300 square feet of gross floor area per user or be more than 12 feet in height. In addition, for buildings and structures that are less than 65 feet in height, the related unmanned equipment structure, if over 100 square feet

of gross floor area or eight feet in height, shall be located on the ground and shall not be located on the roof of the structure.

- b. If the equipment is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 25 percent of the roof area.
- c. If the equipment structures or cabinet is located on the ground, it will be surrounded by a security fence.
- d. Equipment storage buildings or cabinets shall comply with all applicable building codes.

(j) *Nonconforming uses.*

- (1) *Not expansion of nonconforming use.* Towers that are constructed and antennas that are installed, in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use of a structure.
- (2) *Pre-existing towers.* Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such pre-existing towers. New construction (other than routine maintenance), height modification, expanded use, or application for colocation on a pre-existing tower shall comply with the requirements of this Ordinance.
- (3) *Replacing Damaged or Destroyed Nonconforming Towers or Antennas.* Pre-existing or nonconforming antennas or towers that are damaged or destroyed are governed by reconstruction in Section 78 of this Ordinance. In the event of abandonment or termination of use, such towers will be removed.

( ord. no. 2019-19, adopt. Aug. 5, 2019)

## **ARTICLE 5 CENTRAL BUSINESS AND GREATER BUSINESS OVERLAY DISTRICT DESIGN DEVELOPMENT STANDARDS**

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### **5.1 GOALS AND PURPOSE.**

Purpose. The purpose of these standards is to establish clear and concise principles for the areas known as the Central Business Overlay District and the Greater Business Overlay District. The boundaries of both districts are defined on the Zoning Map. The purpose of the standards is as follows:

- a. To promote good, consistent design for new development and for redevelopment.
- b. To encourage business and building owners to improve the exterior appearance of their stores and buildings with modifications ranging from cleaning off graffiti to replacing storefront windows, doors and lighting.
- c. To ensure the economic viability of the commercial area within Harrison by addressing alterations that will help draw customers into their businesses such as the restoration of storefronts with large, uncluttered display windows.
- d. To encourage and direct development and renovation within downtown Harrison such that the development will have the physical qualities necessary to produce the desired, attractive city character.

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- e. To preserve, promote and protect the integrity of the buildings, structures, streetscape and neighborhoods in the downtown area through restoration of original elements and the removal of elements that cover the original architectural details.
  - f. To direct building development and renovation in such a way that new buildings are compatible with their surrounding context.
  - g. To encourage building development and renovation so that new buildings and structures will enhance the pedestrian oriented nature of the downtown area.
  - h. To foster civic pride in the beauty and accomplishments of the past.

## 5.2 CONFLICTS BETWEEN STANDARDS.

The standards noted below apply to the downtown development district. When there are conflicts between the standards herein and those of other sections, the standards of this section shall take precedence. Except as otherwise noted, buildings and facades in downtown Harrison shall comply with the following requirements:

## 5.3 DESIGN STANDARDS - GREATER BUSINESS OVERLAY DISTRICT AND CENTRAL BUSINESS OVERLAY DISTRICT.

5.3.1 *Building placement.* Buildings can be built with no minimum setbacks, or the average setback of other buildings on the block as measured by the applicant. The upper stories may be recessed to help maintain a human scale.

5.3.2 *Landscaping.* New landscaping shall comply with the city standards, in addition to the standards as described below:

1. Street trees shall be provided at 25- to 40-foot intervals.
2. On every site involving new development or total redevelopment, a landscape plan shall be submitted for review and approval.
3. Window boxes with attractive, live plants are encouraged. The window boxes shall be placed below the windows and their width shall be proportionate to the window width.

5.3.3 *Outdoor cafes and eating areas.*

- a. Size: Any outdoor eating area outside of the building footprint shall not exceed 15 percent of the gross floor area of the ground floor level of the principal building.
- b. Location: Outdoor eating areas (with the exception of sidewalk cafes) shall be located no closer than five feet from any street right-of-way or any vehicular parking or maneuvering areas and shall provide the minimum five feet of clearance space for pedestrian circulation. Such eating areas shall be separated from all vehicular parking and maneuvering areas by means of a greenbelt, wall, or architectural feature.
- c. Location and screening: The outdoor eating area shall not be located within 50 feet of any properties used or zoned for single-family residential purposes. The area shall be screened from view from all single-family residential properties.
- d. Preparation of food and beverages shall be prohibited in this outdoor area. The sale and consumption of alcohol are governed by the Michigan Liquor Control Act and any applicable local ordinance.
- e. Liability issues for use of the public sidewalk shall be addressed and reviewed by the city attorney.

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5.3.4 *Sidewalk Displays.* A sidewalk display, defined as an outdoor display for the exhibition and sale of goods, services, or produce on any portion of the sidewalk or other public property adjacent to a retail sales establishment, shall be permitted directly in front of a business establishment by the business owner or their authorized representative, provided that the display benefits the business and that at least five feet of clearance is maintained along pedestrian circulation routes.

- a. Displays shall be located against the building wall and shall not be more than two feet deep. The display area shall not exceed 50 percent of the length of the storefront.
- b. Displays shall be permitted only during normal business hours and only between April 1st and October 31st. No sidewalk displays are permitted from November 1st to March 31st to accommodate winter maintenance and snow removal efforts.
- c. Sidewalk displays shall maintain a clean, litter-free, and well-kept appearance.

(ord. no. 2024-03, adopt. Oct. 7, 2023)

#### 5.4 DESIGN STANDARDS - CENTRAL BUSINESS OVERLAY DISTRICT ONLY.

##### 5.4.1 *Building Entrance.*

- a. All buildings shall have at least one public, pedestrian entrance that faces the main street on the frontage line and is directly accessible from the sidewalk. In the event that the building is located on a corner lot or faces upon a public space, said building face shall also be treated as a building front face. Rear entrances are permitted, only if there is a primary entrance from the main street.
- b. All buildings shall retain the original building entrance, if historically accurate.
- c. Doors:
  1. Doors shall use transparent glass.
  2. Front entrance doors shall be constructed out materials compatible with the historic character of the district.
  3. Entrances must be barrier-free and universally accessible.

##### 5.4.2 *Front facade design.* All building facades that face a street shall conform to the following design criteria:

- a. *Street face:* Walls facing a public street shall include windows and architectural features customarily found on the front facade of a building such as awnings, edge details or decorative finish materials. Blank walls shall not face a public street. Significant protrusions (more than six inches), such as awnings, cornice lines, details at the top of windows and sills are encouraged to create shadow lines or bands on the facade.
- b. *Storefront entrance:* The storefront opening shall be a rectangular opening ten feet to 12 feet high and approximately 20 percent of the width of the storefront or bay. The opening shall be almost entirely glass (window or showcases) with few subdivisions to help maintain visual contact between the street and the building interior. Recessed openings are required.
- c. *Window and door openings:* All facades visible from the street must be glazed with transparent glass.

##### 5.4.3 *Building materials.*

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- a. **Buildings:** The buildings are to be constructed from permanent materials that will weather well over time, such as brick, stone, masonry, or other natural materials. The use of metal panels, wood siding, and cement board siding shall not be allowed. The zoning administrator and/or planning commission may grant special approval of metal panels, wood siding, or cement board siding in circumstances where the architecture is in keeping with the historic nature of the district.
- b. **Facade frame:** The facade frame, or wall shall be brick or stone masonry constructed principally in a single plane. The top of the parapet wall shall be flat or step slightly to accentuate end piers unless a sloped roof is allowed by the city. The facade frame shall be capped by a stone coping.
- c. **Storefront opening:** Wood is preferred; however, aluminum or pre-painted steel storefront glazing system may be acceptable upon approval by the city. Glass shall be clear. Reflective, mirror, heavily tinted, or unusually colored glass must be approved by the city.
- d. **Canopies** shall be narrow in elevation, six inches to 12 inches and flat or slightly angled. Typically, the canopies shall be flat or slightly angled so that the overall height dimension does not exceed 18 inches. Canopies shall be self-supporting or supported by tension rods. Canopy projections shall be limited to 48 inches. Canopies shall be designed as an integral component of the building.
- e. **Awnings** shall be traditional in design and must be made from fabric or similar material, rather than metal, plastic or rigid fiberglass. Awnings shall be proportional to the window opening and compatible in height, length, depth and bulk with the building facade. All awnings shall be attached directly to the building, rather than supported by columns or poles. Internally illuminated or back-lit awnings are allowed and should comply with the Clear Skies Act of 2003.

5.4.4 *Balconies, railings and porch structures:*

- a. **Windows:** Second story windows shall maintain the height and width of the original historic window openings.
- b. **Security systems:** Security bars, solid metal security gates or solid roll-down windows shall be prohibited. Any exterior security lighting shall be installed per the lighting section of these design standards and must meet the lighting requirements of the city.
- c. **Mechanical equipment:** Roof top mechanical equipment shall be hidden from view for adjacent properties and from the rights-of-way.

5.4.5 *Side and rear facade design:* Rear and side storefronts should be similarly designed as front facades described above.

5.4.6 *Courtyards and plazas:* Exterior public and semi-public spaces, such as courtyards or plazas, shall be designed to enhance surrounding buildings and provide functional amenities for the users. Courtyards and plazas shall be connected to the public sidewalk pathway system.

5.4.7 *Mechanical equipment and wireless telecommunications facilities devices.*

- (a) **Mechanical equipment.** All air conditioning units, HVAC systems, exhaust pipes or stacks, elevator housing, and satellite dishes and other telecommunications receiving devices, including small cell wireless facilities, as defined in the Small Cell Wireless Facilities Deployment Act, being MCL 460.1315, shall be thoroughly screened from view from the public rights-of-way by using walls, fences, roof elements, penthouse-type screening devices, or landscaping without impeding on the function of device.

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- (b) *Fire escapes.* Fire escapes shall not be permitted on a building's front façade. In buildings requiring a second means of egress pursuant to the local building codes, internal stairs or other routes of egress shall be used.
- (c) *Service alley.* A service alley or designated loading space shall be reserved at the rear of the building.

( ord. no. 2019-19, adopt. Aug. 5, 2019)

## ARTICLE 6 GENERAL PROVISIONS

The intent of this Article is to recognize that there are certain conditions concerning land uses that warrant specific exceptions, regulations, or standard in addition to the requirements of the Zoning district in which they are permitted to be located.

The following standards are generally applicable to all uses regardless of zoning district.

### 6.1 SCOPE OF ORDINANCE REGULATIONS.

The provisions of this Ordinance shall be held to be the minimum requirements and shall apply uniformly to each kind or class of structure or land.

- a. Where the conditions imposed by any provision of this Ordinance upon the use of structures or land are either more or less restrictive than comparable conditions imposed by the provisions of any other lawful ordinance or of any law, resolution, rule or regulation of any kind, the regulations which are more restrictive (or which impose higher standards or requirements) shall govern.
- b. This Ordinance is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this Ordinance are more restrictive (or impose higher standards or requirements) than such easements, covenants or other private agreements, the regulations of this Ordinance shall govern.
- c. Structures or uses which were unlawfully existing at the time of the adoption of this Ordinance shall not become or be made lawful solely by reason of adoption of this Ordinance.
- d. All structures erected hereafter, all uses of land or structures established hereafter, all structural alterations or relocations of existing structures occurring hereafter and all enlargements of or additions to existing uses occurring hereafter shall be subject to all regulations of this Ordinance which are applicable to the zoning districts in which such structures, uses or land shall be located.
- e. Nothing contained in this Ordinance shall be deemed to be a consent, license or permit to use any property or to locate, construct or maintain any structure or facility or to conduct any trade, industry, occupation or activity.
- f. Any building permits issued prior to the effective date of this Ordinance shall be considered valid and structure may be completed and used or occupied in accordance with plans provided that use or occupancy is on the basis for which building permit was originally designated and provided that construction is begun within sixty (60) days.. Any such use which would become nonconforming by virtue of the passage of this Ordinance shall thereafter be considered nonconforming and subject to the provisions of this Ordinance.
- g. All land, property or territory hereafter to be annexed to the City of Harrison shall be considered to be in an ~~AR~~-1 District until otherwise classified.

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- h. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition any structure or part thereof declared to be unsafe by any official charged with protecting the public safety upon such order of such official.
- i. Uses not expressly permitted are prohibited. Uses for enterprises or purposes that are contrary to federal, state, or local laws or ordinances are prohibited.
- j. The City of Harrison elects not to permit licensed marihuana facilities in accordance with the Medical Marijuana Facilities Licensing Act.

~~k. The city elects to prohibit recreational marihuana establishments within its boundaries.~~

(amend. by ord. no. 2018-1, adopt. Apr. 2, 2018 ; ord. No. 2018-4, adopt. Nov. 5, 2018 )

## 6.2 SCOPE OF DISTRICT REGULATIONS.

- a. No part of a yard or other open space or off-street parking or loading space required about or in connection with any structure for the purpose of complying with this Ordinance, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other structure or use.
- b. In case of a lot having a side yard along any zoning district boundary line, on the other side of which is a more restrictive district, said side yard shall have a width of not less than that required for the more restrictive district.
- c. No part of any required yard except a rear yard shall be occupied for any accessory use or structure or for the storage of vehicles unless otherwise provided in this Ordinance.
- ~~d. On any corner lot in the R-1, R-2 and A-1 Districts nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two and one half (2½) feet and eight (8) feet above the established curb grade within a triangle formed by the two street right of way lines and a line connecting them at points twenty-five (25) feet from the intersection of the right of way lines.~~
- e. On double-frontage lots, a front yard as prescribed for the district as herein established shall be provided on both streets.
- f. Every structure hereafter erected or relocated shall be on a lot adjacent to a public street or with access to an approved private street and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.
- g. In any district, no more than one structure housing a permitted or permissible principal use or a structure housing more than one permitted or permissible use may be erected or maintained on a single lot.
- h. In those instances where a ~~lot-parcel~~ owner's lot line is adjacent to an easement that runs perpendicular to Lake Street to Budd Lake or perpendicular to Hillcrest to Budd Lake that lot line shall be considered a side yard lot line for set back purposes.

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## 6.3 ACCESSORY STRUCTURES.

- a. In any R-1, R-2, R-3 or ~~A-1R-4~~ District where a lot has frontage on a lake as well as a street, the street-side front yard may be used for the erection of a garage or carport providing such garage or carport be no closer than ten (10) feet from the street front property line and side yard requirements for the District are met. Storage of recreational equipment may be permitted in the water-side front yard.

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- b. Any uses or buildings permitted in this Ordinance as accessory buildings or uses shall be clearly incidental to and on the same zoning lot as the principal use to which they are accessory. No accessory use or building shall be higher than the maximum height permitted in the district. Accessory uses or buildings shall be located no closer than five (5) feet from any lot line in the rear yard and unless otherwise specified in this Ordinance an accessory use or building shall not be located within a required side yard or a required front yard. Any permitted accessory use or buildings shall occupy no more than twenty-five percent (25%) of the total rear yard in which it is located.

c. Structures larger than ten feet by ten feet (100 square feet) must receive a zoning permit from the Zoning Administrator prior to construction/placement.

d. Cloth/plastic temporary structures and shipping storage containers may not be placed within any required or unrequired yard space.

#### **6.4 GENERAL RULES FOR NONCONFORMING USES AND STRUCTURES**

~~a. A nonconforming use or structure is that which is not specifically designated in a given zoning district as a principal use, accessory use or special use but was lawfully existing immediately prior to the time this Ordinance or applicable amendments become effective.~~

~~b. A nonconforming use or structure can be made conforming only by:~~

~~1. Ordinance amendment.~~

~~2. Changing the use or structure to that as listed as principal, accessory or special use as designated in the district concerned as provided by this Ordinance.~~

~~3. Variance, provided that only the terms of this Ordinance such as lot size, lot dimension, distance from lot lines or height restrictions are involved. (Dimensional variance, not use variance.)~~

~~c. A nonconforming use or structure may not be enlarged, extended, increased or moved in any district in which this use is not designated as a principal, accessory or special use.~~

~~d. If the operation of a nonconforming use or structure ceases for any reason for a period of more than two (2) years, the subsequent use of the land or structure shall be treated using the regulations specified in this Ordinance for a principal use, accessory use or a special use in the district in which the land or use or structure is located. In the event that a nonconforming use or structure has been terminated due to action by any governmental agency or if the use is of a seasonal nature and has ceased to operate for a period of less than a total of six (6) months in a 24 month period the use shall not thereafter be used except in conformity with the regulations of the district in which it is located.~~

~~e. A nonconforming use or structure may revert to another nonconforming use or structure providing that in the opinion of the Zoning Board of Appeals the new use is of a nature that is no more nonconforming than the original use.~~

~~f. Any nonconforming use or structure may be materially altered or repaired to bring it to a safe condition provided that the cubic content of such use or structure is not enlarged.~~

~~g. Change of ownership of a nonconforming use or structure does not remove the nonconforming status nor does it change any time limits imposed by this Ordinance.~~

~~h. If any parcel of land has located on it, a nonconforming use or structure, no additional structure shall be erected, placed or otherwise located on such parcel except in compliance with the various provisions of this Ordinance.~~

~~i. In the event that a nonconforming use or structure has been accidentally destroyed or damaged to an extent of more than fifty percent (50%) of its replacement cost at the time of damage or destructions, such use or structure shall thereafter conform to the regulations for the district in which it is located.~~

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~~J. Destruction of nonconforming residences. Any residence in existence at the time that the City enacted this Zoning Ordinance, that would not be permitted under the terms of this ordinance because there is a dimensional deficiency:~~

- ~~1. The lot or parcel does not meet the requirements of this ordinance for minimum size, width, depth, or road frontage; or~~
- ~~2. The residence occupies part or all of a required yard or setback specified by this ordinance; or~~
- ~~3. The residence covers proportionately more of the available lot, than would be possible under the terms of this ordinance; If destroyed by fire, or a sudden destruction by the elements (as opposed to becoming obsolete or dilapidated by the passage of time itself) may be replaced, as follows:~~
- ~~4. The residence is replaced upon the exact footprint of the previous, destroyed home; or~~
- ~~5. If practicable given the dimensions of the nonconforming lot, the residence is replaced with the required yards or setbacks observed as required by this ordinance, including the maximum structure height is observed; and~~
- ~~6. The minimum residence size requirements of this ordinance are met.~~
- ~~7. The minimum residence size for all residential zones shall be 990 Sq. Ft.~~

#### **6.4 SINGLE FAMILY HOME**

All single family homes shall meet the following basic design requirements:

- a. The minimum length of a single elevation of a residential structure shall be at least 18 feet.
- b. The main roof structure shall have a minimum of 4 over 12 roof pitch.
- c. The minimum size of a residential structure shall be 600 square feet.

#### **6.5 ACCESSORY DWELLING UNITS**

A single independent accessory dwelling unit shall be permitted on all legally conforming lots within the R-1, R-2, R-4, and C-1 districts.

- a. Accessory dwelling units shall measure at a minimum of 400 square feet, but it shall not exceed 75 percent of the primary square feet measurement of the primary structure. The accessory dwelling unit shall clearly be physically diminutive to the primary structure in scale, bulk, and massing.
- b. Within the rear yard, accessory dwelling units may be located within five feet of the side or rear property line so long as the structure is more than ten feet from an adjoining structure and more than twenty feet from a primary residential structure on an adjoining property.
- c. Accessory dwelling units shall be required to have fully separate public utilities from the primary structure.
- d. Temporary structures or recreational vehicles shall not be permitted to serve as an accessory dwelling unit.

#### **6.6 CLEAR VISION TRIANGLE**

In all districts excluding R-4 and C-1, no fence, wall, shrubbery, sign or other obstruction to vision above the height of thirty (30) inches from the established street grades shall be permitted within a clear vision triangular area at the intersection of any street drawn at said right-of-way lines at a distance along each line of twenty five (25) feet from their point of intersection. Trees may be permitted within the clear vision triangle if all limbs are trimmed up to a minimum height of eight (8) feet from roadway grade.

#### **6.7 ESSENTIAL SERVICE**

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These service facilities shall be permitted within every zoning district, and they are defined to include the erection, construction, alteration or maintenance by public utilities, municipal departments, or other governmental agencies of underground or overhead gas, electrical, communication, steam, or water transmission or distribution systems or collection, supply or disposal systems; including electric power stations, relay stations, gas regulator stations, pumping stations, poles, wires mains, drains, sewers, pipes, conduits, cables, towers, fire alarm boxes, police or other call boxes, traffic signals, hydrants and other similar facilities, equipment and accessories in connection therewith reasonable necessary for furnishing adequate service by such utilities or agencies, or for the public health or safety or general welfare; but not including offices and buildings or yards used for bulk storage, fabrication, or manufacture of materials used by such utilities or municipal departments or other governmental agencies. No such building constructed as a part of an essential service, shall be used for human occupancy.

#### **6.8 PARKING AND STORAGE OF MOBILE HOMES, RECREATIONAL VEHICLES (RVs), AND TRAVEL TRAILERS**

Storage of one mobile home, RV or travel trailer shall be permitted within all residential districts shall occur completely within the side and rear yards or completely enclosed within a structure

#### **6.9 PRIVATE POOLS.**

Private pools when eighteen (18) inches or more in depth shall be permitted as an accessory use within the rear and side yards only provided they meet the following requirements:

- a.. Pools shall have a minimum of twenty (20) feet between any adjoining property line and outside wall of the pool.
- b. Pools shall be set back a minimum of six (6) feet from the outside pool wall and any building located on the same lot. ▲
- c. No swimming pool shall be located closer to the front lot line than the front wall of the primary structure.
- d. No swimming pool shall be located in an easement.
- e. All pools shall be protected by an approved security system including fencing with locking gates, automated safety covers, or other means. The Zoning Administrator or Building Official shall approve these safety measures prior to the initiation of construction. ▲

#### **6.10 PERMITTED YARD INTRUSIONS**

Decks and patios that are less than two feet higher than building grade may extend fifty (50) percent into required side and rear yard setbacks.

Utility equipment including gas meters, air conditioning units, heat pumps, generators, etc. may extend two (2) feet into required side and rear yards.

#### **6.11 WATERFRONT YARD SETBACK REQUIREMENTS**

To limit the opportunity for visual obstructions to interfere with the viewing of Budd and Little Long Lakes from adjoining properties and to enhance the environmental quality, no structures shall be permitted to be built within fifty (50) feet of the ordinary high water mark of the waterfront front yard. Within a twenty-five (25) foot wide lakeside setback from the ordinary high water mark, shrubs and decorative trees shall be trimmed to under four (4) feet in height or trimmed up to at least ten (10) feet in height to allow for viewing under the plant canopy. Decorative plantings may be allowed to grow for up to five (5) years to achieve the minimum height that would allow the plants to be trimmed up to the minimum understory clearance height.

#### **6.12 RECREATIONAL VEHICLE STORAGE**

Within all residentially zoned districts, recreational vehicles shall only be stored in side and rear yards.

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( Sec 6.4 added by ord. no. 2021-01, effective. Aug. 27, 2021; Sec 6.4.J added by ord. no. 2022-03, adopt. Nov 7, 2022)

## ARTICLE 7 SITE DEVELOPMENT STANDARDS

The purpose of this article is to centralize the design requirements related to the construction of improvements within the City. These requirements are designed to improve the overall appearance of the community and ensure that developments operate safely while limiting adverse off-site impacts.

The following standards are intended to be applied to site plans for a specific zoning district.

### 7.1 PARKING.

The orderly provision of motor vehicle parking is important to the overall character and function of the City. Insufficient parking creates congestion and safety concerns while too much parking is wasteful and expensive, harms the environment by increasing stormwater run-off, exacerbating the creation of the heat-island effect, impacts the ability to create vibrant walkable communities, and large expanses of poorly designed and maintained parking areas cause blight. Well-designed parking ensures proper onsite maneuverability, safe ingress and egress from parking areas, proper access for loading and unloading while ensuring emergency vehicle access.

In all zoning districts, excluding the R-4 and C-1 districts, off-street parking and loading facilities for the parking of vehicles for the use of occupants, employees, and patrons of the buildings hereafter erected, altered, or extended after the effective date of this ordinance shall be provided as herein prescribed.

#### 7.1.1 SCHEDULE OF PARKING REQUIREMENTS.

- a. To encourage the redevelopment of downtown Harrison in an urban manner, there shall be no parking requirements within the R-4 and C-1 districts. It shall be the developer's responsibility to determine the appropriate mix of available street and off-street parking necessary for the success of their development. For all other districts, the ordinance enforcement officer shall determine the minimum number, calculate the maximum number of parking spaces required-allowed for accessory off-street parking by applying the "Schedule of Parking Requirements", the most recent version of the Institute of Transportation Engineers Parking Generation Manual, and any other applicable provisions of this ordinanceOrdinance. Where the computation results in a fractional space over 1/2, it shall be counted as one additional space requiredallowed.
- b. Provision of common parking areas for several uses in the same vicinity is encouraged. In such cases the total space requirements are the sum of the maximum individual requirements. In cases where the hours of operation are significantly different between two or more uses, a reduction in the total space requirements may be permitted byshall be considered by the Planning Commission during the Site Plan Review Process.
- c. In the instance of dual function of off-street parking spaces where the off-street parking is located on the same lot or an off-street parking lot connected by a common drive the property owner(s) at their discretion may utilize the Shared Parking standards defined in Section 7.1.1.(#).
- d. The following table provides the specific off-street parking space requirements for each common land use. In cases of uses not specifically mentioned, the requirements of off-street parking spaces shall be in accord with the use which the Zoning Administrator and/or Planning Commission considers is similar in type, or through reference to the Institute of Transportation Engineers' most recent Parking Generation Manual. Parking standard publications from the American Planning Association may be consulted in making a determination. The term "GFA" refers to gross floor area.

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RESIDENTIAL	MINIMUM	MAXIMUM	MEASUREMENT
Single-Family Dwelling	<del>2</del>	N/A	per unit
Multiple-Family Dwelling	<del>1.5</del>	1.5	per unit

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NON-RESIDENTIAL	MINIMUM	MAXIMUM	MEASUREMENT
Agriculture	<del>Exempt</del>		
Automobile Sales and Services	<del>2.5</del>	<del>4-2.5</del>	per 1,000 GFA
Consumer/Personal Services	<del>2</del>	<del>3-1</del>	per <del>1,000</del> 400 GFA
Eating and Drinking Places	<del>1</del>	1	per 3 seats
Office Uses	<del>2.5</del>	<del>3-2.5</del>	per 1,000 GFA
Places of Assembly	<del>1</del>	1	per 3 seats or by Fire Code
Commercial and Retail Businesses	<del>2</del>	<del>3-2</del>	per 1,000 GFA

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- e. *Size of parking space:* Each off-street parking space shall have the following minimum requirements:

PARKING PATTERN	MINIMUM LANE WIDTH	PARKING SPACE WIDTH	PARKING SPACE LENGTH
Parallel Parking	12'	7'	22'
30° to 53°	12'	<del>8'6"9'</del>	20'*
54° to 75°	15'	<del>8'6"9'</del>	20'*
75° to 90°	20'	<del>9'-10'</del>	20'*

\* *Where a parking stall extends over a landscaped area or an adjacent sidewalk that measures at least seven (7) feet in width, the parking stall length may be reduced by two (2) feet.*

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- f. *Shared parking:* Shared Parking, ~~or Effective Parking~~, is allowed based on the following calculation which is based on the general type of land use or function of the property. The Shared Parking Factor for two land use functions, when divided into the sum of the two amounts as listed on the Required Parking table below produces the Effective Parking needed. For example, residential parking is calculated at 12 spaces and retail parking is calculated at 32. Summed they equal 44. Using the Shared Parking Table this amount is divided by 1.2 to derive an Effective Parking amount of 36.6 or 37 parking spaces.

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SHARED PARKING TABLE				
	Function			
Function	Residential	Lodging	Office	Retail
Residential	1.0	1.1	1.4	1.2
Lodging	1.1	1.0	1.7	1.3
Office	1.4	1.7	1.0	1.2
Retail/Restaurant	1.2	1.3	1.2	1.0

- g. *Reduction of off-street automobile parking:*

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- Establishments Not Located Along a Designated Public Pathway:* For each One (1) bicycle parking space the automobile parking ~~can may~~ be reduced by ~~One one~~ (1) parking space.
- Establishments Located on a Designated Public Pathway:* For each ~~One one~~ (1) bicycle parking space the automobile parking can be reduced by ~~Two~~ (2) parking spaces.

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3. *Establishments that Connect to a Designated Public Pathway:* For each ~~One-one~~ (1) bicycle parking space the automobile parking can be reduced by ~~Two-two~~ (2) parking spaces.

h. *Bicycle parking.* For every off-street parking area constructed within the C-2 and I-1 districts, a bicycle parking rack that accepts at least five (5) bicycles shall be provided within close proximity to the main entrance. For parking lots that accommodate more than fifty (50) vehicles, racks shall be provided for the parking of least ten (10) bicycles.

h.i. *Requirements of parking areas:* Every parking area containing six or more spaces shall require site plan review in accordance with Article ~~4-9~~ and shall be developed and maintained in accordance with the following requirements:

1. Designed to provide adequate drainage.
2. ~~Meet the minimum parking lot landscape design requirements found within Section 7.10. One tree, hardy to the Michigan climate and at least 2 inches in diameter, is required for every 10 parking spaces. Appropriate trees include Norway Maple, Red Maple, Cleveland Pear, Aristocrat Pear or Little Leaf Linden.~~
3. Surfaced with concrete or asphalt pavement. ~~Parking-~~At the discretion of the Planning Commission, parking areas for outdoor recreational uses may be graveled.
4. ~~Maintained in good condition and free of dust, trash, and debris.~~
5. The parking area shall be provided with entrances and exits so located as to minimize traffic congestion.
6. ~~Lighting facilities shall reflect the light away from adjoining properties.~~
7. No part of any parking area shall be closer than ~~10 five (5)~~ feet to the street right-of-way or closer than ~~5 ten (10)-~~ feet to a lot line in any residential district.
8. All spaces shall be provided adequate access by means of maneuvering lanes. Backing directly onto a street shall be prohibited except in the case of one-family dwellings.
9. Adequate ingress and egress to the parking lot by means of clearly limited and defined drives shall be provided for all vehicles.
10. Ingress and egress to a parking lot lying in an area zoned for other than single-family residential use shall not be across land zoned for single-family residential use.
11. All maneuvering lane widths shall permit one-way traffic movement, except that the 90-degree pattern may permit two-way movement.
12. Each entrance and exit to and from any off-street parking lot located in an area zoned for other than single-family residential use shall be at least 25 feet from adjacent property located in any single-family residential district.

i.i. *Parking Lot Operation.* The following requirements shall be in effect for the operation of all off-street parking spaces:

1. *Maintained in good condition and free of dust, trash, and debris.*
2. *All signs, paint markings, and parking lot surface shall be maintained in a well-kept manner.*
3. *All required buffer landscaping and parking lot canopy landscaping shall be replaced within four months when found to be diseased or dying.*
4. *All parking lot buffering shrubs shall be maintained in a manicured manner.*

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5. Parking of vehicles with signage printed on the sides of the vehicle for longer than one day shall be prohibited.

6. Storage of commercial fleets in surface parking lots located within the front yards of businesses shall be prohibited.

Off-street loading spaces: For every building or addition to an existing building requiring the receipt or distribution in vehicles or materials or merchandise, an area adequate for maneuvering and ingress and egress for delivery vehicles and off-street loading spaces as follows shall be provided and maintained on the same lot:

1. From 0 to 1,400 Square Feet of Floor Area: None

2. From 1,401 to 20,000 Square Feet of Gross Floor Area: One space

3. From 20,001 to 50,000 Square Feet of Gross Floor Area: Two Spaces

4. One additional space for each additional 50,000 square feet of gross floor area or fraction thereof.

Each such loading space shall be at least 10 feet in width, 35 feet in width, 35 feet in length, and 14 feet in height.

No such space shall be located within the front setback area or closer than 25 feet to a lot line in any residential district.

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## 7.2 MINIMUM STANDARDS FOR OFF-STREET LOADING FACILITIES REQUIREMENTS.

a. Requirement for Provision of Off-Street Loading Facilities. Off-street loading spaces: For every building or addition to an existing building requiring the receipt or distribution in vehicles or materials or merchandise, an area adequate for maneuvering and ingress and egress for delivery vehicles and off-street loading spaces as follows shall be provided and maintained on the same lot:

1. From 0 to 1,400 2,500 Square Feet of Floor Area: None

2. From 1,401 2,501 to 20,000 Square Feet of Gross Floor Area: One space

3. From 20,001 to 50,000 Square Feet of Gross Floor Area: Two Spaces

4. One additional space for each additional 50,000 square feet of gross floor area or fraction thereof.

Each such loading space shall be at least 10 feet in width, 35 feet in width, 35 feet in length, and 14 feet in height. During Site Plan Review, the Planning Commission may make a determination that this requirement should be waived within the R-4 and C-1 districts, based upon the intent of the Master Plan to support the development of a vibrant downtown district and that the delivery operations of the project will not generally impact the safe operation of streets adjacent to the development.

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b. No such space shall be located within the front setback area or closer than 25 feet to a lot line in any residential district. Loading and unloading spaces shall be provided in all commercial districts subject to the following standards and regulations:

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1. a.—Off-street loading areas shall be surfaced with a concrete or bituminous mix pavement and shall be sloped and drained to dispose of surface water.

2. b.—Any lighting used to illuminate off-street loading areas shall be so arranged so as to direct light away from adjoining premises.

3. c.—Each loading space shall be at least ten (10) feet wide, twenty-five (25) feet long and shall have a clearance of fourteen (14) feet above grade.

4. d.—Required loading areas shall be in addition to required off-street parking areas.

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5. ~~e.~~ Loading spaces may occupy all or any part of any required yard or court space.

6. ~~f.~~ No loading spaces shall be located closer than fifty (50) feet to any lot in any R-1 or R-2 District unless wholly within an enclosed building or enclosed on all sides facing R-1 or R-2 Districts, by a wall or uniformly painted solid board or masonry fence of uniform appearance which is not less than six (6) feet in height.

### 7.3 SIDEWALKS AND NONMOTORIZED PATHWAYS.

The purpose of this subsection is to support the development of a network of sidewalks and nonmotorized pathways that once completely developed, would enable all individuals, regardless of mobility limitations or motor vehicle access, to safely traverse the City on a fully integrated network.

All new developments, except those located in the R-1 and R-3 districts, shall include sidewalks serving the site and along the public right of way. All public sidewalks and pathways shall:

- a. Be handicap accessible;
- b. Be no less than ~~four (4)~~ five (5) feet wide; ~~and~~
- c. Create a complete linked network of walkways connecting all uses with parks and other areas; ~~and~~
- d. In residential areas sidewalks shall be separated from streets by "planting strips" a minimum of ~~eight (8)~~ five (5) feet wide, planted with shade trees; ~~and~~ Where nonmotorized pathways are planned to link transportation nodes within the City and adjoining Hayes Township, a ten (10) foot wide nonmotorized asphalt pathway shall be installed instead of a sidewalk.

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### 7.4 STORMWATER MANAGEMENT.

As a condition for approval the applicant shall provide official documentation indicating the stormwater run-off system as proposed meets the requirements of the Clare County Storm Water Control Ordinance, and has been reviewed and approved by the Clare County Soil Erosion Officer. When possible, the use of green infrastructure including rain gardens, bioswales, and porous pavement is encouraged.

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### 7.5 STREET TREES.

The intent of this requirement is to increase the City's urban tree canopy and to leverage the wide number of benefits that develop from a well-managed urban tree canopy. Street trees are an important component of a community's tree canopy. The urban forest provides a wide range of measurable benefits which include: reduced stormwater flow; reduction in heat island effect, reduction in air conditioning costs, improved air quality, improved resident well-being, reduced road maintenance expenses, noise reduction, traffic calming, increased property values, and improved biodiversity.

New street trees in commercial districts are required in all districts and shall comply with the standards below:

- a. ~~1.~~ Spacing: On every site involving new development or re-development, street trees shall be provided at 25- to 40-foot intervals.
- b. ~~2.~~ Variety: The species of street tree and exact locations shall be as specified on the future streetscape plan. In the event that future streetscape plan has not been prepared, then trees identified as being recommended for street tree locations by the Michigan Department of Nature Resources or any other professional landscape organization or appropriate governmental body. ~~any of the following street~~

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~~trees shall be planted within the road right-of-way at 25- to 40-foot intervals: Norway Maple, Red Maple, Cleveland Pear, Aristocrat Pear or Little Leaf Linden.~~

- c. **Engineered Tree Well:** Within the C-1 and C-2 districts, whenever street trees are planted in areas where paving significantly constricts the unimpeded root growth area, the tree wells shall be designed to reduce tree mortality and improve long-term tree health. A variety of solutions may be deployed including: creating enlarged unimpeded rooting areas, use of engineered soils, pavement support structures (aka Silvia Cells) irrigation, drainage, root aeration, and other appropriate means. The solutions to be employed shall be clearly described within the project's Site Plan Review application.

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## 7.6 FENCES.

Any fences, walls or similar enclosures which are located in the required front yard in any residential district shall be of an "open-type" or "see-through" material and shall not exceed four (4) feet in height. Also, any fences, walls or similar enclosures which are located in a required side yard or required rear yard in any residential district may be of an obscure type in nature but shall not exceed eight (8) feet in height.

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## 7.7 SIGNS.

Sign regulations are addressed in City of Harrison Ordinance 22.050. Please refer to this ordinance for sign standards in all zoning districts.

## 7.8 CRITERIA APPLICABLE TO ALL WIRELESS COMMUNICATIONS FACILITIES INSTALLED WITHIN THE PUBLIC RIGHT-OF-WAY OR UPON PUBLIC OR SEMI-PUBLIC PROPERTY.

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- (a) The City may require a wireless provider to repair all damage to the right-of-way directly caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing wireless facilities, small cell wireless facilities, utility poles or wireless support structures in the right-of-way and must return the right of way to its functional equivalent before the damage. Should a wireless provider fail to make the repairs required by the City within 60 days after a written notice, the City may make the repairs and charge the wireless provider the reasonable and documented cost of the repairs. The provider shall remit the invoice provided under the terms of this provision forthwith.
- (b) Before discontinuing its use of a wireless facility, small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify the City 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 City may impose reasonable and nondiscriminatory requirements and specifications for the wireless provider to 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. The provider shall remit the invoice provided under the terms of this provision forthwith. A permit under this section for a small cell wireless facility expires upon removal of the small cell wireless facility.
- (c) Should a wireless provider undertake work that will unreasonably affect traffic patterns or obstruct vehicular or pedestrian traffic in a public right-of-way or public or semi-public lands, the wireless provider must submit a permit to the City as provided elsewhere in this code.
- (d) The notice that an application is administratively incomplete or that a fee has not been paid as set forth in the Small Cell Wireless Facilities Deployment Act tolled the running of the time period to

approve or deny the application as set forth in the Small Cell Wireless Facility Deployment Act. The running of time tolled under the law and this ordinance resumes when the applicant makes a supplemental submission in response to the City's notice of incompleteness. If a supplemental submission is inadequate, the City 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 the missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified herein. A second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

[(e) Reserved.]

(f) The City shall approve or deny the application and notify the applicant in writing as follows: Should the City fail to comply within the time set forth, the completed application is considered to be approved subject to the condition that the applicant provide the City not less than 7 days advance written notice that the applicant will be proceeding with the work pursuant to the automatic approval provisions of the Small Cell Wireless Facility Deployment Act, Section 15, being MCL 460.1315(H).

### 7.9 PERFORMANCE STANDARDS.

No permitted or Special Use shall conform to the following minimum requirements and standards of use, occupancy and operation:

a. Smoke; It shall be unlawful for any person, firm or corporation to permit the emission of any smoke from any source whatever to a density greater than that density described as No. 1 of the Ringlemann Chart; provided that the following exceptions shall be permitted; smoke, the shade or appearance of which is equal to but not darker than No. 2 of the Ringlemann Chart for a period, or periods aggregating four minutes in any thirty minutes.

b. Dust, Dirt and Fly Ash:

1. No person, firm or corporation shall operate or cause to be operated, maintained or cause to be maintained, any process for any purpose, or furnace or combustion device for the burning of coal or other natural or synthetic fuels, without maintaining and operating, while using said process or furnace or combustion device, recognized and approved equipment, means, method, device or contrivance to reduce the quantity of gas borne or airborne solids shall not exceed 0.20 grains per cubic foot of the carrying medium at a temperature of 500 degrees Fahrenheit.

2. Method of Measurement: For the purpose of determining the adequacy of such devices these conditions are to be conformed to when the percentage of excess air in the stack does not exceed fifty (50) percent at full load. The foregoing requirement shall be measured by the A.S.M.E. Test Code for dust-separating apparatus. All other forms of dust, dirt, and fly ash shall be completely eliminated insofar as escape or emission into the open air is concerned. The Building Inspector or Official may require such additional data as is deemed necessary to show that adequate and approved provisions for the prevention and elimination of dust, dirt and fly ash have been made.

c. Glare and Radioactive Materials; Glare from any process (such as or similar to arc welding, or acetylene torch cutting) which emits harmful ultraviolet rays shall be performed in such a manner as not to be seen from any point beyond the property line, and as not to create a public nuisance or hazard along lot lines. Radioactive materials and wastes, and including electro-magnetic radiation such as x-ray machine operation, shall not be emitted to exceed quantities established as safe by the U.S. Bureau of Standards, when measured at the property line.

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d. Fire and Explosive Hazards: The storage and handling of flammable liquids, liquefied petroleum, gases, and explosives shall comply with the State Rules and Regulations as established by Public Act. No. 207 of 1941, as amended.

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e. Noise: No operation or activity shall cause or create noise that becomes a nuisance to adjacent uses.

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f. Odors: Odorous matter released from any commercial or industrial use or district shall not exceed the odor threshold concentration beyond the property lines when measured either at ground level or habitable elevation.

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#### **7.10 LANDSCAPING AND BUFFERING** (Additional materials to be added)

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a. Purpose: The intent of this section is to provide general landscaping and screening requirements that will enhance the aesthetic character of the City, protect property values by buffering uses from each other, support the small-town character of the City, and assist in accomplishing the goals of the Master Plan.

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b. Applicability: All multiple family developments over four units, commercial, and industrial uses shall provide landscaping and screening according to this Section.

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c. Landscaping Plan: At the discretion of the Zoning Administrator or Planning Commission, a landscape plan shall be prepared by a landscape architect for all developments requiring site plan approval illustrating all site landscaping, parking lots, fences and walls, and buffer areas. If the proposed development's landscaping is limited in extent, the licensed landscape architect requirement may be waived by the reviewing agent/body.

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d. Landscaping Requirements:

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1. Open Space Planting: In commercially and industrially zoned districts and multifamily developments, for each one thousand (1,000) square feet of open space that is not utilized for buildings, stormwater control, or parking lots, the open space shall be planted at a minimum with one canopy shade tree, five decorative trees or shrubs, and 25 ornamental grasses or perennials. These plantings may be bunched together for enhanced visual effect. At the written request of the applicant, the Planning Commission may adjust this requirement during the Site Plan Review process, if they are satisfied as to how the intent and purpose of this section is achieved through a non-conforming design.

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2. Native and Low Maintenance Plantings: Use of at least fifty percent (50%) native plant species to Northern Lower Michigan shall be required and the selection of plants requiring only periodic maintenance is encouraged.

3. Parking Lot Landscaping:

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a) Public Right-of-Way Buffer: A minimum of a five (5) foot wide planting strip shall be located along all street frontages within the C-2 and I-1 districts where parking lots and drive aisles are located within the front yard. This buffer strip may be comprised of a decorative brick knee wall, decorative brick piers and landscaping, or opaque row of shrubs measuring three (3) feet in height. Installation of additional decorative shrubs and plantings is recommended.

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b) Parking Lot Perimeter Landscaping: For parking lots of ten (10) or more vehicles, canopy shade trees shall be planted on the perimeter of all parking lots on forty-foot (40') centers wherever more than fifteen (15) feet exists between buildings and the edge of the parking lot and/or seven (7) feet between the surface of the parking lot and other paved surfaces including sidewalks and adjoining parking areas.

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c) Interior Parking Lot Landscaping:

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d) The number of required parking lot trees based on size are as follows:

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- 1) Parking lot areas containing less than twenty (20) parking spaces are not required to plant parking lot trees.
- 2) Parking lots areas containing fifty (50) parking spaces or less shall provide one (1) tree per six (6) parking spaces.
- 3) Parking lots areas containing fifty-one (51) or more parking spaces shall provide one (1) tree per five (5) parking spaces.
- 4) Parking lots fifty-one (51) or more parking spaces shall have one-third (1/3) of the required trees must be located within the interior or the parking lot envelop in an island or peninsula.
- 5) The minimum size for interior parking lot islands or peninsula shall be eight (8) foot width with a total gross floor area of two-hundred (200) square feet.
- 6) Placement of parking lot landscaping should be done in a manner that permits convenient snow storage during winter while protecting the required interior parking lot landscaping from damage caused by plows, snow mounding, and ice melter distribution and run-off.
- 7) Parking lot design encourages the use of connected islands with combination of spill ways into bio-swales or rain gardens.

1. Plant Materials:

- a) Canopy shade trees shall measure two inches in caliper at five feet diameter breast height.
- b) Evergreen trees shall measure five feet tall at the time of planting.

2. Plant Material: Plant material and grasses shall be of generally acceptable varieties and species, be comprised predominantly of species indigenous to the Roscommon County area, be free of insects and diseases, and not be prone to disease, low wood strength and/or high wood-splitting tendencies, such as box elder, mulberry and willows, unless specifically authorized otherwise during site plan approval. A mixture of plant species shall be required as a protective measure against insect and disease infestation.

3. Maintenance:

Any required plant materials shall be planted within six (6) months from the date of issuance of a certificate of occupancy and shall thereafter be reasonably maintained with permanent plant materials to provide a screen to abutting properties. Suitable materials equal in characteristics to the plant materials listed with the spacing as required shall be provided.

All plant growth in landscaped areas be controlled by pruning, trimming or other suitable methods so that plant materials do not interfere with public utilities, restrict pedestrian or vehicular access, or otherwise constitute a traffic hazard.

All planted areas be maintained in a relatively weed-free condition and clear of undergrowth and irrigated at such intervals as are necessary to promote optimum growth.

Any dead or diseased plants shall be replaced with the same or similar credited species of similar size in a timely manner.

4. Waivers and Modifications: Any of the requirements of this Article may be modified through site plan review proceedings, provided the approving body makes a finding that identifies characteristics of the site or site vicinity that would make required buffer areas, fencing, or screening unnecessary, inappropriate, or ineffective, or where it would impair vision at a driveway or street intersection.

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( ord. no. 2019-19, adopt. Aug. 5, 2019)

## ARTICLE 8 ~~PLANNED UNIT DEVELOPMENTS~~NONCONFORMITIES

### 8.1 PURPOSE.

~~The purpose of this Article is to permit legal nonconforming lots, buildings, and structures, or uses to continue until they are removed, but not to encourage their survival. The regulation within this Article shall conform to Section 208 of the Michigan Zoning Enabling Act 110 of 2006. This section provides for planned unit developments to further the health, safety, and general welfare of City residents by permitting the City flexibility in the regulation of land development and encouraging innovation and variety in land use and design of projects. The standards of this section are intended to encourage and provide for a more efficient arrangement of land uses, buildings, circulation systems, and infrastructure.~~

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## 8.2 LEGALITY OF NONCONFORMITIES

- a. Legal nonconformities are those that exist legally before the effective date of this Ordinance, or before some amendment to this Ordinance which resulted in the nonconformity.
- b. To avoid undue hardship, in this Ordinance 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 carried on is not required. Actual construction is hereby defined to include the placing of construction material in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.
- c. Illegal nonconformities are those that have been developed in conflict with the zoning regulations.

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## 8.3 NONCONFORMING LOTS

- a. A nonconforming lot may include nonconformity with minimum lot width, lot area, lot depth to width ratio, frontage to roadway, or combination of multiple factors which were established prior to effectiveness of this Ordinance or amendments.
- b. In any district a lot of record at the effective date of adoption or amendment of this Ordinance may be developed, provided it complies with any other provisions of this Ordinance.
- c. In the case of two (2) or more nonconforming contiguous lots under one (1) ownership, the lots shall be considered as separate lots and shall be considered one (1) lot as a single parcel only once combined as a single tax parcel with the owner's permission.
- d. In the situation where there are two (2) nonconforming contiguous lots, the property boundary may be adjusted to bring one (1) property closer to conformity or conforming without requiring a variance from the Zoning Board of Appeals as long as it is not increasing the nonconformity of the other parcel. These adjustments would be reviewed and approved by the Zoning Administrator and City Assessor.
- e. A legal nonconforming lot cannot be created in error, but only by amending the lot area and/or width of the zoning districts or by rezoning of a lot.

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## 8.4 NONCONFORMING BUILDINGS

Where a lawful building exists at the effective date of adoption of this Ordinance that could not be built under the terms of this Ordinance, such building may be continued so long as it remains otherwise lawful, subject to the following provisions:

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- a. No such nonconforming building may be enlarged or altered in any way which increases its non-conformity.
- b. Should such nonconforming building be destroyed by any means to an extent of more than sixty (60%) percent of the physical building, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

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1. This provision does not apply to nonconforming single-family homes, which may be replaced even if completely destroyed, provided the new structure does not increase the nonconformity.

2. The construction or repair shall begin within one (1) year of the day that the destruction is officially documented. The Zoning Administrator may grant up to a one (1) year extension if the applicant can show diligently pursuing reconstruction. If repairs or construction are not completed in the required timeframe, it may only be reconstructed if in full compliance of Ordinance requirements.

c. Should such building be moved for any reason whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

d. If any building, manufactured home, or other structure is moved for any reason, it shall thereafter conform to the regulations for the district in which it is located after it is moved. However, legal nonconforming manufactured housing (single-wide mobile homes) may be replaced with another single-wide as long as the replacement unit is less nonconforming than the unit being replaced, and the unit is no more than ten (10) years old when it is placed on the property. Any replacement single-wide mobile home must be fully installed and under a certificate of occupancy within one (1) year of the date of the removal of the prior mobile home.

### **8.5 NONCONFORMING USES OF LAND OR STRUCTURES**

Where at the time of passage of this Ordinance, lawful use of land or structures exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided:

a. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater floor area of land or additional structures, intensity of activities, or more services and activities than that occupied at the effective date of adoption or amendment of this Ordinance.

b. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

c. No existing structure or building devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted.

### **8.6 REPAIR**

If a nonconforming building or structure housing a nonconforming use is destroyed by an Act of God or other incident, the building may be fully reconstructed as long as the existing nonconformities are not increased.

### **8.7 ABANDONMENT**

a. When the City identifies an abandoned nonconformity, the Zoning Administrator shall submit the property to the Planning Commission for a determination of abandonment.

b. The Planning Commission shall hold a public hearing following the requirements found in Article 11.

c. The Planning Commission shall determine whether intent to abandon the nonconforming use was demonstrated based on a preponderance of the following factors:

1. Report from the Building Inspector or Central Michigan District Health Department indicating the property is or has not been suitable for occupation.

2. Disconnection of utilities.

3. Evidence of a "going out of business" sale.

4. Signs advertising the business has been removed.

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5. The use has been disconnected for one (1) year, except where government action such as road construction has prevented access to the premises, or where a clear intent to discontinue has not been demonstrated.
6. Removal of equipment or fixtures necessary for the operation of the nonconforming use.
7. Request by the property owner for changes in their property tax designation inconsistent with the nonconforming use.
8. Other actions by the property owner or lessee that demonstrates an intent to abandon the nonconforming use such as allowing the property to go into foreclosure.

### **8.8 CHANGE OF TENANCY OR OWNERSHIP**

Change of tenancy, ownership, or management of any existing nonconformity shall be permitted indefinitely provided there is no change in the nature or character of the nonconformity.

### **8.9 CHANGE TO ANOTHER LESSOR NONCONFORMING USE**

The Planning Commission may authorize a change from one nonconforming use to another nonconforming use, provided that the proposed use would be more suitable to the Zoning District in which it is located than the nonconforming use which it is being replaced.

## **8.2 ELIGIBILITY.**

8.2.1 Generally. An application for a planned unit development may be submitted on any parcel or contiguous parcels within the City where the site meets one (1) or more of the following criteria:

- a. Mixed or varied uses are proposed that cannot be achieved under a single zoning district;
- b. The site exhibits unusual topography or a unique setting within the community;
- c. Innovation and variety of design are proposed that are not achievable under the current zoning districts of this ordinance;
- d. Additional amenities are made possible by and incorporated within the development;
- e. A substantial public benefit is proposed within or as a result of the project;
- f. A cross-jurisdictional development is proposed that warrants flexibility in terms of design and layout.

Approval will not be granted when the planned unit development is determined to be sought primarily to avoid the imposition of standards and requirements of existing zoning classifications rather than to achieve the objectives of this ordinance.

8.2.2 Minimum Site Size. The site on which an application for planned unit development is proposed shall be self-contained and shall contain no less than five (5) contiguous acres (exclusive of all existing public and private road rights-of-way on the perimeter of the site). Notwithstanding anything contained in the preceding sentence to the contrary, in the event that a planned unit development is proposed which lies partially within and partially outside the jurisdictional boundary of the City and that portion lying within the City is less than five (5) acres in size, that portion lying within the City may, in the discretion of the Planning Commission, be combined with the acreage of those areas of the proposed planned unit development lying beyond the City's jurisdictional boundaries for purposes of establishing whether the five (5) acre minimum has been met.

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To encourage flexibility and creativity consistent with the objectives of the zoning ordinance, the Planning Commission may approve projects of less than five (5) acres. Such a deviation shall be approved through a finding of fact by the Planning Commission that the deviation meets the purpose of a planned unit development set forth in Approval Criteria. In granting such a deviation, the Planning Commission shall consider factors such as preservation of steep topography, soils unsuitable for development, surrounding land uses which may make the parcel unsuitable for traditional development, transfer of acreage or easements to the City or other appropriate organization for broadly beneficial public projects, or truly innovative design. Such a dimensional deviation is not subject to variance approval by the Zoning Board of Appeals.

**8.2.3 Site Accessibility.** A planned unit development shall be directly accessible from a major thoroughfare. The City may authorize a project that does not have direct access to a major thoroughfare, provided appropriate findings of fact are made demonstrating that:

- a. The project is directly accessible from a public road of suitable design and construction to handle any anticipated traffic that will be generated by the project;
- b. The anticipated traffic volumes are not reasonably expected to result in adverse impacts for those uses and properties along the public road system; and
- c. The efficiency and safety of the overall public road system will not be negatively impacted.

**Open Space:** A Planned Unit Development shall be designed to incorporate a minimum of 20% usable open space to supplement the residents of the PUD and/or City. These areas are anticipated to provide recreational opportunities such as parks, trails, playgrounds, and other similar opportunities.

### **8.3 PRELIMINARY REVIEW AND DECISION.**

**8.3.1 Generally.** Preliminary review shall establish proposed land uses, project density, site layout and design, proposed vehicular and pedestrian circulation patterns, natural resource protection areas, open space, land use buffers, grading, storm water management patterns, and site servicing. Final engineering is not required for preliminary review and decision.

**8.3.2 Completeness Review.** The Zoning Administrator or Planner of Record shall conduct a completeness review. The Zoning Administrator will also bring in other departments as needed to ensure the application meets all relevant agency standards and codes.

**8.3.3 Planning Commission.**

- a. The Planning Commission shall hold a public hearing on the development application.
- b. Following review and public hearing on the application, the Planning Commission shall make a preliminary recommendation to the City Council on whether to approve or deny the request for preliminary planned unit development approval. Preliminary recommendation of a planned unit development shall specify all conditions that must be satisfied prior to submission of the planned unit development under Final Review and Decision.
- c. Preliminary plans may not be changed or amended except as required by final engineering.

**8.3.4 City Council.**

- a. Upon receipt of the Planning Commission's recommendation, the City Council may hold a public hearing on the application for preliminary planned unit development approval and may specify additional conditions or requirements that shall be satisfied prior to submission of the planned unit development under final review and decision.
- b. Preliminary plans may not be changed or amended except as required by final engineering.

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## **~~8.4 FINAL REVIEW AND DECISION.~~**

~~8.4.1 Generally, Final review shall address all conditions imposed by the Planning Commission and/or City Council in the preliminary decision on the planned unit development. Applications for final review and decision shall not be considered until all conditions have been addressed.~~

~~8.4.2 Completeness Review. The Zoning Administrator or Planner of Record shall conduct a completeness review to determine that all conditions of the preliminary decision have been addressed. No application shall be referred to the Planning Commission until this standard has been satisfied. The appellate agency for purposes of this completeness review is the Planning Commission. Upon certification by the Zoning Administrator or Planner of Record that all requirements of the preliminary recommendation have been satisfied, the application shall be referred to the Planning Commission for its final review and recommendation.~~

### ~~8.4.3 Planning Commission.~~

- ~~a. The Planning Commission may hold a public hearing on such application for final review and decision.~~
- ~~b. After review, the Planning Commission shall transmit its final recommendation to the City Council to approve, approve with final conditions, or deny the request.~~

### ~~8.4.4 City Council.~~

- ~~a. The City Council shall hold a public hearing on the application for final review and decision.~~
- ~~b. Following review and public hearing, the City Council shall deny, approve, or approve with final conditions the request for final planned unit development approval. Approval of a planned unit development shall be incorporated in a Report and Decision Order that shall include the decision, the basis for the decision and any final conditions imposed. The decision shall be made within 90 days of receiving all requested information.~~

## **8.5 APPROVAL CRITERIA.**

In its review of an application the City shall, at a minimum, consider the criteria as defined in 8.5.1, 8.5.2, and 8.5.3.

**8.5.1 Scope of Authority—Uses.** A planned unit development may include any principal and other use(s) permitted by right, permitted under special condition or permitted by special use permit in the zoning district where the land is located. The City Council may also authorize principal and other uses not permitted in the zoning district where the land is located, provided appropriate findings of fact are made demonstrating that:

- ~~1. The proposed uses, within the context of the overall development plan, are harmonious and compatible with the planned uses of the site and the surrounding area, as provided for within the Master Plan;~~
- ~~2. The proposed density is in accordance with the policies and objectives set out in the Master Plan; and~~
- ~~3. In areas where the surrounding lands have been substantially developed in accordance with a particular land use character, pattern and density, the planned unit development shall be consistent and compatible with that existing land use character, pattern and density.~~

**8.5.2 Scope of Authority—Dimensional Standards.** A planned unit development may alter and establish lot size limits, required facilities, buffers, open space areas, density limits, setback requirements, height

limits, building size limits, off-street parking regulations, landscaping rules, miscellaneous regulations, and intensity limits where such regulations or changes are consistent with the intent of this section and the standards set forth herein.

#### OBJECTIVES

The following objectives shall be considered in reviewing any application for a planned unit development:

- a. To permit flexibility in the regulation of land development;
- b. To encourage innovation in land use and variety in design, layout, and type of structures constructed;
- c. To achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities;
- d. To encourage useful open space; to provide improved housing, employment, and shopping opportunities particularly suited to the needs of the Region;
- e. To encourage the innovative use, re-use, and improvement of existing sites and buildings; and
- f. To permit development in accordance with the policies and objectives of the Master Plan.

8.5.3 *Criteria.* In order to foster the attractiveness of a planned unit development and its surrounding neighborhoods, preserve property values, provide an efficient road and utility network, ensure the movement of traffic, implement comprehensive planning, and better serve the public health, safety, and general welfare, the following criteria apply to planned unit developments. These criteria shall neither be regarded as inflexible requirements, nor are they intended to discourage creativity or innovation:

1. The uses will be compatible with the natural environment, and with adjacent and surrounding land uses and properties, and will not have an adverse economic, social or environmental impact on adjacent and surrounding land uses and properties;
2. The uses will be compatible with the capacity of existing public services and facilities, or of planned and feasible future public services and facilities, and such use is consistent with the public health, safety and welfare of the City residents;
3. The uses and development are warranted by the design of additional amenities made possible with, and incorporated by, the development proposal;
4. As is practicable, the landscape shall be preserved in its natural state by minimizing tree and soil disturbance and removal;
5. Existing important natural, historical and architectural features within the development shall be preserved;
6. Proposed buildings shall be sited harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings;
7. With respect to vehicular and pedestrian circulation and parking, special attention shall be given to the location and number of access points to public streets, minimizing potential motorized/non-motorized conflict points, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and the arrangement of parking areas that are safe and convenient and, insofar as is practicable, do not detract from the design of proposed structures and neighboring properties;

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- ~~8. Landscaping is provided to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property and, where applicable, to create a pleasant pedestrian scale outdoor environment;~~
- ~~9. The development consolidates and maximizes usable open space;~~
- ~~10. The benefits of the development are not achievable under any single zoning classification; and~~
- ~~11. The development is compatible with the intent and purpose of the adopted Master Plan.~~

## **~~8.6 AMENDMENTS.~~**

~~Amendments to an approved Planned Unit Development shall be considered according to the review procedure under Final Review and Decision.~~

# **ARTICLE 9 SITE PLAN REVIEW.**

## **9.1 APPLICABILITY.**

The Site Plan Review Process is designed to:

- a. Ensure that renovation and new development projects within the City comply with the requirements of this Ordinance
- b. Ensure that all new developments support the implementation of the land use vision that have been developed within the City's Master Plan
- c. Ensure that the proposed development addresses buffering, accessibility, circulation, protects natural features, and other land use concerns
- d. Ensure that site designs are consistent with the small-town "Up North" character of the community
- e. Support renovation projects to be carried out in a manner that brings the site closer to the requirements of this Ordinance

A site plan is required for the following:

- a. ~~Minor Administrative~~ Site Plan:
  1. For a change in use to any permitted or special land use where no increase in the building footprint or other site changes are proposed;
  2. For an expansion of an existing permitted or special use, where the building footprint and parking area is increased by no more than twenty-five (25) percent and no more than one thousand (1,000) square feet in area;
  3. For the construction of new site features or activities including accessory structures, trash enclosures, loading bays, fencing, and other new installations at existing facilities;
  4. For reoccupancy of existing uses; and
  35. For any other use as required in this Ordinance.
- b. Full Site Plan:
  1. Special use in any district;
  2. Special regulated uses in accordance with Article 4;

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3. Non-single-family use permitted in any district; and
4. Residential subdivision or condominium project with over four residential units.
- c. *Applicability Exceptions:* A site plan is not required for the following:
  1. Construction of or alteration to a single-family dwelling; and
  2. Construction of an accessory structure in any residential zoning district.

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## 9.2 INFORMATION REQUIREMENTS FOR ~~A MINOR~~ ADMINISTRATIVE SITE PLAN.

- a. Site plans shall be drawn at a scale depicting no more than one hundred (100) feet per inch and shall include plan preparation and revision dates, a graphical scale, and a north arrow.
- b. For a previously undeveloped property or where otherwise deemed necessary by the Zoning Administrator or the Planning Commission, a survey of the property showing property line dimensions, and easements of record, and required setbacks.
- c. Present zoning of the subject property and adjacent property.
- d. All existing or proposed public and private right-of-way and easement lines located on and adjacent to the subject property.
- e. Location and total number of curb cuts, driveways, off-street parking, and loading spaces.
- f. Area of subject property to be covered by buildings including the location and dimensions of all existing and proposed structures; and a description of the proposed use(s) for all structures.
- g. Such other information regarding the development area that may be required to determine conformance with this Ordinance.
- h. The site plan shall be accompanied by a signed application; the application shall, at a minimum, include the applicant's name, address and telephone number and the property owner's name, address and telephone number, if different than that of the applicant, and tax identification number; signature of the applicant and the property owner or of someone acting upon written consent of the owner.

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## 9.3 INFORMATION REQUIREMENTS FOR A FULL SITE PLAN.

All information required for a ~~minor~~ administrative site plan shall be required for a full site plan in addition to the following:

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- a. Location map depicting the proposed development site, section lines and numbers, and major roadways within two thousand (2,000) feet of the site;
- b. Existing and proposed sewer, water, and other utility lines, plus location and type of sewage treatment facility and water sources;
- c. Location and dimension of exterior drains, dry wells, catch basins, retention and/or detention areas, sumps, and other facilities designed to collect, store or transport storm water or wastewater as well as point of discharge; ~~and~~
- d. Location, size, height and description of all trash receptacles, light fixtures, and any other accessory structures and uses; and

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- e. Additional information as listed within the City's Site Plan Review application or requested by the Zoning Administrator or Planning Commission during consideration of the Site Plan Review application.

## 9.4 PROCEDURES.

- a. *Submission of Site Plan for Review.* ~~The For Full Site Plan Reviews, the~~ applicant shall provide to the Zoning Administrator seven (7) copies of the proposed site plan. If the proposed site plan is found to be incomplete, it shall be returned to the applicant with a list of deficiencies. The Zoning Administrator may waive information requirements of the Site Plan Review upon finding that the information is not pertinent to the review of the application. The Zoning Administrator will also bring in other departments as needed to ensure the application meets all relevant agency standards and codes. Upon finding that the Site Plan is complete, the Zoning Administrator shall place the Site Plan on the Planning Commission's next regular or special meeting agenda.
- b. *Action.* Upon full study and review of the site plan and application, and upon receiving input from outside agencies and if necessary consulting reviewers, the ~~Planning Commission~~ *reviewing body (may be either the Zoning Administrator or Planning Commission)* shall deny, approve, or approve with conditions the Site Plan. ~~The Planning Commission~~ *The reviewing body* may also ~~table the~~ *postpone a decision on the* application for further study. ~~The Planning Commission~~ *reviewing body* may impose conditions in addition to the specific requirements of this Ordinance. The Planning Commission may require a performance guarantee. Any conditions required by the ~~Planning Commission~~ *reviewing body*, together with the reasons for those conditions, shall be provided in writing to the applicant. The decision shall be made within ~~90~~ *forty-five (45)* days of receiving all requested information.
- c. *Permitting: Once Site Plan Approval is granted either administratively or by the Planning Commission, the applicant is able to apply for a building permit. The City will retain a copy of the Site Plan Approval as a permanent record of the approval and any conditions.*
- d. *Duration of Approval: Site Plan Approvals are valid for one year from issuance. If construction has not begun on the project, the applicant may request a six-month extension from the Zoning Official. With valid cause, the Zoning Official may grant up to two six-month extensions.*
- e. *Maintenance: All requirements of the site plan including landscaping, parking lot design and condition, shall remain in effect in perpetuity.*

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## 9.5 STANDARDS FOR GRANTING SITE PLAN APPROVAL.

- a. *Conformity with Zoning Ordinance Requirements:* Each Site Plan shall conform to the applicable provisions of this Ordinance (including all use and dimensional standards, parking requirements, setbacks, etc.).
- b. *Arrangement of Structure:* Site plans shall demonstrate that buildings, parking areas, signs, walls, fences, and the like are designed to minimize adverse effects on adjacent properties and future users.
- c. *Vehicular and Pedestrian Traffic:* Site plans shall fully conform to applicable driveway and traffic standards. Further, the site shall be designed to protect the safety and convenience of pedestrian and vehicular traffic.
- d. *Public Safety:* Site plans shall fully conform to any applicable fire safety and emergency vehicle access requirements.
- e. *Drainage:* Site Plans shall provide proper storm drainage meeting all local standards.
- f. *Hazardous Waste Management:* Site Plans shall demonstrate that reasonable precautions will be taken to prevent hazardous materials from entering the environment.
- g. *Public Health:* Site Plans shall fully conform to the requirements of the Michigan Department of Public Health and other applicable agencies. All site plans shall be designed to protect current or future

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residents from obnoxious, objectionable, nuisances, or dangerous off-site impacts including, but not limited to, heat, glare, fumes, dust, noise, vibration, and odors.

- h. *Statutory Compliance*: Site Plans shall fully conform to all applicable state and federal statutes.
- i. *Conformance with City Master Plan*: Site Plans shall fully conform to the land use policies, goals and objectives of the Master Plan.

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## 9.6 SITE PLAN AMENDMENTS.

No change shall be made to an approved site plan prior to or during construction except upon application to the Zoning Administrator and according to the following procedures:

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- a. Except for major changes as detailed below, amendments to administratively approved or Planning Commission approved site plans may be approved by the Zoning Administrator or referred to the Planning Commission.
- b. Major Change. A change or amendment to a Planning Commission-approved site plan, involving a change in the number of parking spaces over ten (10) percent, a major relocation or re-siting of a building, or significant increase in gross floor area or building height shall be considered a major change and shall require Planning Commission approval.

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## ARTICLE 10 ZONING BOARD OF APPEALS

### 10.1 APPOINTMENT AND ESTABLISHMENT.

The Zoning Board of Appeals is the administrative body that has been created to hear appeals to decisions made administratively or by the Planning Commission in the administration of the Ordinance. The Zoning Board of Appeals is authorized by the provisions of the Michigan Zoning Enabling Act, being MCL 125.3601, State of Michigan which states that the City Council may act as a Zoning Board of Appeals or the City Council may appoint the Zoning Board of Appeals. The Board of Appeals shall be appointed in accordance with Section 3 of MCL 125.3601. Such Board of Appeals shall consist of not less than three (3) members and it may fix rules and regulations to govern its procedure.

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( ord. no. 2023-01, adopt. Jan. 23, 2023)

### 10.2 DUTIES AND RESPONSIBILITIES.

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirements, decision or determinations made by an administrative official charged with the enforcement of this Ordinance. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, or to make any change in the terms of this code, nor to allow a use not otherwise permitted in a zoning district, but does have the power to act on those matters where this Ordinance provides for administrative review or interpretation and to authorize a variance after proper review and public hearing. Any decision of the Zoning Board of Appeals, after following correct and lawful procedure, shall be final after the Chairman of the Zoning Board of Appeals certifies its decision in writing or approves the minutes of its decision.

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- a. *Appeals*. The Board shall hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or determination made by the administrative official or body charged with the enforcement of this Zoning Ordinance. ~~The Zoning Board of Appeals shall not hear any appeal in the decision on a request for a special use. Conditions included within any approved Site Plan or a denial~~

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determination made by the Planning Commission regarding a Special Use Permit may be appealed to the Zoning Board of Appeals.

b. *Interpretations.* Upon application by a City official or person interested in a specific affected parcel of land, when other administrative appeals have been exhausted, the Board shall have the power to:

1. Interpret this Zoning Code in such a way as to carry out its intent and purpose;
2. Determine the precise location of a zoning district;
3. Classify a use which is not specifically mentioned, determine the district within which the use is permitted and determine the necessary parking to support the use; and
4. Interpret other ordinance standards.

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c. *Variances.* The Board shall have the power to authorize specific variances or departures from this Zoning Code, if all of the basic conditions are satisfied, and if there are practical difficulties in the way of carrying out the strict letter of this Zoning Code. A variance from the dimensional requirements of this Zoning Code may only be granted if it is determined that all basic conditions have been satisfied and that there is a practical difficulty in carrying out the requirement.

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d. *Basic conditions.* Any variance granted from this Zoning Code shall meet ~~all of the following~~ ~~the following~~ ~~basic~~ conditions:

1. The spirit of this Zoning Code shall be observed, public safety secured and substantial justice done;
2. There is no substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located;
3. The difficulty ~~or hardship~~ relating to the property is not so general or recurrent in nature that the formulation of a general regulation for such conditions is preferable;
4. The practical difficulties ~~or unnecessary hardships~~ are unique to the property under consideration and not to the general neighborhood, and shall apply only to property that is under the control of the applicant;
5. It shall be necessary for the preservation of a substantial property right possessed by other properties in the same zoning district;
6. The alleged ~~hardship or~~ difficulty is not solely economic, and is based on the reasonable use of a particular parcel of land; and
7. It may be denied where the alleged practical difficulties resulted from an act of the applicant or associated party.

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e. *Practical difficulties.* In order to determine if there are practical difficulties which prevent carrying out the strict letter of this ordinance, a practical difficulty shall exist where there are exceptional or extraordinary circumstances or physical conditions, such as narrowness, shallowness, shape or topography of the property involved, that do not generally apply to other property or uses in the same zoning district.

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### 10.3 RULES OF PROCEDURE.

The Board of Zoning Appeals shall follow such procedures as are established by statute, ordinance and resolution of the Board. These procedures shall include:

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a. *Appeals Generally.* For purposes of these rules of procedure, an appeal shall include all applications for appeals, interpretations, variances, exceptions and matters involving nonconforming uses.

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- b. *Initiating Appeals.* Appeals shall be filed with the Zoning Administrator within thirty (30) days after written notice is given of the action being appealed. An appeal must be submitted at least twenty-eight (28) days before the Board meeting at which it will be considered.
- c. *Filing Fees.* The filing fee for appeals shall be established by resolution of the City Council.
- d. *Notices and Advertisements.* Notice and advertisement of an appeal will be given pursuant to the ~~Michigan Zoning Enabling Act~~ public notice requirements section in Section 11.5.
- e. *Application Contents.* In addition to all other requirements of statute and ordinance, applications shall be in a form determined by the Zoning Administrator and shall contain such information as the Zoning Administrator shall direct. Such applications shall also include the following:
  - 1. A site plan or site diagram reflecting accurate dimensions of the property, the location of structures on the property and the location of buildings on adjacent properties. If requested by the Board or the Zoning Administrator, such drawing shall be a survey performed by a registered land surveyor;
  - 2. The name, address and telephone number of the applicant and all authorized agents of the applicant;
  - 3. The application must be signed by the owner or someone acting upon written consent of the owner, which written consent must be submitted with the application; and
  - 4. All known previous appeals involving the property noted on the application as to the subject, date and outcome of the appeal.
- f. *Reconsideration.* An applicant may re-appeal a decision regarding an interpretation or variance after twelve (12) months from the decision of the Board. The Board will not reconsider any appeal within twelve (12) months from the date of the decision unless circumstances have substantially changed, that were unknown to the board. The substantial change in circumstances shall be described, in writing, by the applicant at the time of the application. Before rehearing the matter, the Board shall decide whether there is a substantial change in circumstances allowing the rehearing.
- g. Decisions of the Zoning Board of Appeals may be appealed to the 55<sup>th</sup> Circuit Court.

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## ARTICLE 11 ADMINISTRATION AND ENFORCEMENT

### 11.1 ~~ZONING ADMINISTRATOR~~INTENT.

This article is to clearly state all of the responsible entities engaged in the administration of the Zoning Ordinance and detail enforcement duties and responsibilities. ~~A Zoning Administrator shall be appointed by and on such terms as determined by the City Council. The Zoning Administrator is hereby designated as the authorized City official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.~~

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### 11.2 ~~DUTIES~~ADMINISTRATIVE DUTIES

A. *Zoning Administrator:* A Zoning Administrator shall be appointed by and on such terms as determined by the City Council. The Zoning Administrator is hereby designated as the authorized City official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

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- 1. It shall be the duty of the Zoning Administrator to receive and process applications for land use permits and issue or deny same; to inspect buildings or structures in order to determine compliance

with the land use permits issued in compliance with this Ordinance, and to be in charge of the enforcement of this Ordinance.

2. ~~The Zoning Administrator shall have the authority to conduct periodic inspections to ensure Ordinance compliance, and t~~The City Council may, ~~in its discretion,~~ instruct the Zoning Administrator to make efforts to obtain voluntary compliance with this Ordinance. The City Council may instruct the Zoning Administrator in writing, to initiate a ~~criminal-civil~~ complaint or other legal action. ~~Under no circumstances is the Zoning Administrator permitted to make changes in this Ordinance or to vary its terms in carrying out the Zoning Administrator's duties.~~
3. ~~The Zoning Administrator shall endeavor to record all nonconforming uses in existence at the effective date of this Ordinance so that their operation may be recorded and changes to the nonconformities monitored.~~
4. ~~The Zoning Administrator shall have the authority and duty to enforce any Site Plan Review approval or Special Use conditions that may be issued by the Planning Commission or the Zoning Board of Appeals.~~
5. ~~The Zoning Administrator shall not be responsible for any land use controls that are applied by third parties through covenants, private agreements, or other legal means.~~
6. ~~The Zoning Administrator shall prepare and submit to the Planning Commission a written record of all zoning permits issued during the previous month. The record shall state the owner's name, property location, intended use, and estimated cost of construction for each permit.~~
7. ~~The Zoning Administrator shall ensure that written records are maintained regarding all his/her actions related to the enforcement of this Ordinance.~~

B. *Planning Commission;*

1. Per the Michigan Planning Enabling Act, PA 33 of 2008, as amended, the Planning Commission shall draft and approve a master plan as a guide for land use decisions within the City of Harrison and serves as a foundation for this Ordinance.
2. The Harrison Planning Commission is hereby designated as the Commission specified in Section 301 of Michigan Zoning Enabling Act and shall perform the duties of said Commission as provided in the statute in connection with the amendment of this Ordinance.
3. The Planning Commission shall review site plan applications submitted under Article 9 of this Ordinance and deemed to meet the submission requirements found there. After consideration, it shall deny, approve, or conditionally approve the site plan as presented or modified during the Commission review.
4. The Planning Commission shall review all special land use zoning permit applications submitted under Section of this Ordinance and deemed to meet the submission requirements found in Section 4.2. Prior to deliberation upon the application, the Planning Commission shall hold a public hearing that complies with requirements found in Section 11.5. The action to deny, approve, or conditionally approve the special land use shall meet the approval standards found in Section 4.3. include statements of findings regarding the request, and that the proposed land use shall comply with the specific requirements delineated in Section 4.4.
5. Zoning Map and Zoning Text Amendments: Per Sections 12.X and 12.X, the Planning Commission may initiate map or text amendments to this Ordinance by its own motion or respond to a petition of one or more property owners. The Planning Commission shall follow the procedures described in 12.X.
6. The Planning Commission may classify a use that is not specifically listed as part of the use regulations of any Zoning District found in the Table of Uses in Section 3.10. It shall record its determination of

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use similarity and that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each District.

**C. Zoning Board of Appeals**

The roles and responsibilities of the Zoning Board of Appeals are specifically described in Article 10.

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**D. Legislative Body**

1. The City Council shall consider recommendations from the Planning Commission regarding Zoning Ordinance text amendments and rezonings (map amendments).
2. The City Council shall consider the hiring of City staff and consultants necessary to assist in the implementation of this Ordinance, including the Zoning Administrator and the Code Enforcement Officer.
3. The City Council shall appoint individuals to serve on the Planning Commission and Zoning Board of Appeals, if appropriate.

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**E. City Clerk**

1. The Clerk shall retain a copy of all approved site plans.
2. The Clerk shall assist in the preparation and distribution of all Public Hearing notices.
3. The Clerk shall ensure that the records of the Planning Commission and Zoning Board of Appeals are maintained per statutory requirements.

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**F. Treasurer**

1. The Treasurer shall enable the collection of all fees required through the application of this Ordinance.

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**11.3 LAND USE PERMITS.**

11.3.1 *General.* No person shall erect or move a structure to the extent of more than one hundred square feet of floor area or to establish a new use or change in use for any parcel, without a land use permit. An applicant shall complete an application as furnished by the City, and the Zoning Administrator or Building Official shall issue a land use permit if the proposed structure or use is in compliance with the provisions of this Ordinance. The applicant shall furnish permits or approvals from the Clare County Health Department, the Clare County Road Commission, and the Michigan Department of Natural Resources, if required, before the Zoning Administrator may issue a permit. A copy of each land use permit will be retained by the Zoning Administrator as a part of the permanent records of the City. The Zoning Administrator shall promptly inform the applicant of the denial of a land use permit if the proposed structure or use does not comply with the provisions of this Ordinance.

11.3.2 *Evidence of Ownership.* All applications for land use permits under the provisions of this Ordinance shall include the land owner's signature authorizing the application for the permit and be accompanied with proof of ownership of all property affected by the coverage of the permit. Proof of ownership shall be established by one of the following means:

- a. Current title policy, or commitment, abstract or attorney's opinion of title;
- b. For properties in Residential Districts, a certification of ownership by the owner or his agent, shall be deemed sufficient or such other evidence of ownership as the Zoning Administrator determines acceptable.

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11.3.3 *Property Boundaries*. In cases where property boundaries are not clearly indicated by corner markers or other means, the Zoning Administrator may require, at the applicant's expense, the property to be located by a registered surveyor. In cases on properties located along a stream or shoreline, if there is any question of the location of the "high water mark", the Zoning Administrator may also require this level to be set and marked by a registered surveyor.

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11.3.4 *Supporting Documentation*. In the event the Zoning Administrator feels additional information is required before determining the suitability of an application for a land use permit, the Zoning Administrator may request that the applicant submit such additional information as surveys, deed descriptions, soil suitability tests, surface water disposal surveys, erosion control surveys, excavation disposal plans, easements, and permits from other governmental agencies.

11.3.5 *Voiding Permit*. Any permit granted under this section shall become null and void after one year from the date of granting such permit unless the development proposed shall have passed its first Clare County Construction Code inspection. Before voidance is actually declared, the Zoning Administrator shall notify the applicant of such voiding action by sending a notice by certified mail to the applicant at the address indicated on the permit application. The applicant shall have the option of extending the permit by a maximum of six months upon written notice to the Zoning Administrator. Said notice shall be filed no later than five working days following the expiration of the permit.

11.3.6 *Inspection*. The developer of the property is solely responsible for meeting the conditions and terms of the land use permit and this Ordinance.

11.3.7 *Proceeding without a Permit*. If work is completed without or prior to issuance of a land use permit, a fine at an amount, as periodically determined by the City Council, shall be levied against the violator. A certificate of occupancy may not be issued until compliance with all applicable zoning regulations is achieved.

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#### 11.4 FEES.

The fees for applications, permits and other requests shall be established by the City Council. Fees must be paid before a land use permit is issued any required Zoning Ordinance required review activities will be initiated by the City.

#### 11.5 PUBLIC HEARING PROCESS

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a. Hearing Notice Content: Unless otherwise required by State Law or this Ordinance where applicable, all mail, personal and newspaper notices for public hearings shall accomplish all of the following:

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1. Describe the nature of the request including whether the request is for a text amendment, zoning map amendment (rezoning), special land use, variance, appeal, ordinance interpretation or other purpose.
2. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used such as a tax parcel identification number. No street addresses must be listed when eleven (11) or more adjacent properties are proposed for rezoning, or when the request does not involve a specific property.
3. Indicate the date, time and place of the hearing(s).
4. Indicate when and where written comments will be received concerning the request.

b. Recipients and Means of Notice: Unless otherwise required by or this Ordinance where applicable, notice shall be provided to the following and shall include the information specified in (A) above.

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1. To the general public, by publication of the hearing notice in a newspaper of general circulation

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in the City of Harrison.

2. To the owners of property for which approval is being considered, and the applicant if the applicant is different than the property owner, by mail or personal delivery.
  3. To all persons to whom real property is assessed within 300 feet of the boundary of the project subject to the request, and to the occupants of all structures within 300 feet of the property, regardless of whether the property or occupant is located in the municipality in which the property subject to the application is located, by mail or personal delivery. If the name of the occupant is not known, the term "occupant" may be used in making notification.
    - a) Subsection (3) above shall not apply in the case of rezoning requests involving eleven (11) or more adjacent properties, or an ordinance interpretation request that does not involve a specific property.
    - b) If a single structure contains more than four (4) dwelling units or other distinct spatial areas owned or leased by different persons, a single notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.
  4. In the case of a text amendment or zoning map amendment, to each electric, gas and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected and the airport manager of each airport, that registers its name and mailing address with the clerk of Harrison in which the property is located that is subject to the public hearing, for the purpose of receiving notices of public hearings, by mail.
- c. Timing of Notice and Determination of Notice Given: Unless otherwise required by or this Ordinance where applicable, all mail, personal and newspaper notices for public hearings shall be given not less than fifteen (15) days before the date the request will be considered, including applications for zoning map amendments (rezonings), text amendments, special land uses, variances, appeals and ordinance interpretations. The notice under subsection (B) shall be considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service.
- d. Confirmation of Notices Made by Mail or Personal Delivery: The Zoning Administrator shall prepare a list of property owners and registrants, that are subject to the Public Hearing notice and maintain date of notice.

## 11.6 CONDITIONS

- a. The Planning Commission and Zoning Board of Appeals may impose conditions or limitations in granting approval as may be permitted by State law and this Ordinance which it deems necessary to fulfill the spirit and purpose of this Ordinance.
- b. The conditions may include, conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall do all the following:
  1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
  2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
  3. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in this Ordinance; and be necessary to insure compliance with those standards.

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c. The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The Planning Commission shall maintain a record of changes granted to its conditions.

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d. Alterations to any granted conditions must follow the same procedure required when they were first created.

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#### **11.70 PERFORMANCE GUARANTEES**

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a. To insure compliance with the provisions of this Ordinance, the Planning Commission may require that a performance guarantee be deposited with the City to insure faithful completion of the improvements, in accordance with Section 505 of the Michigan Zoning Enabling Act.

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b. Improvements for which the City may require a performance guarantee including, but are not limited to, accessory structures, landscaping, berms, walls, lighting, driveways and parking, streets, acceleration/deceleration lanes, traffic control devices, storm drainage, sidewalks, exterior lighting and utilities and land reclamation activities. The performance guarantee shall not cover the principal building(s).

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c. A schedule for such security shall be established by resolution of the City Council upon the recommendation of the Planning Commission, and the guarantee shall be administered by the Treasurer and Clerk.

d. The amount of the performance guarantee shall be sufficient to cover the estimated cost of the improvements for which the performance guarantee is required. The applicant shall provide an itemized schedule of estimated costs to complete all such improvements to be covered by the guarantee, and such estimate shall be verified by the Building Official and/or Zoning Administrator.

e. The City Manager shall determine the means of releasing portions of the deposit in proportion to the amount of work completed on the covered improvements. All required inspections for improvements for which the guarantee is held shall have been completed before any release shall be made.

f. In the event that the applicant shall fail to provide improvements according to the approved final site plan, the City Manager, Zoning Administrator, or City Council shall have the authority to have such work completed, and to reimburse itself for costs of such work by appropriating funds from the deposited security, or may require performance by the bonding company.

#### **11.80 ENFORCEMENT PROCEDURE**

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A. Process. The violation and enforcement process shall adhere to following procedures:

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1. Identification of the violation by either citizen complaint, Zoning or Code Enforcement officer observation, or other means.

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2. Inspection of the violation shall be conducted by an authorized representative of the City.

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3. If a violation is verified, the appropriate City staff shall make a reasonable effort to discuss the violation with the property owner, business owner, or tenant and agree to a time period to cure the violation.

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4. If the violation is not cured within the agreed to time frame or a verbal agreement cannot be made, a formal violation shall be sent to the responsible party, formally notifying them of the violation.

5. If the violation is remedied, it shall be noted in the City property records. If compliance is not provided, legal action as deemed appropriate by the City shall be taken.

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B. *Enforcement and Penalty.* Any person who shall violate any provision of this Ordinance, or who fails to comply with any of the regulatory measures or conditions of the Board of Appeals adopted pursuant hereto, shall, upon conviction thereof, be fined not to exceed \$500 or may be imprisoned not to exceed 90 days, or may be both fined and imprisoned in the discretion of the Court, and each day such violation continues shall be deemed a separate offense.

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C. *Municipal Civil Infraction.* Any person, partnership, corporation, or association who creates or maintains a nuisance per se as defined above or who violates or fails to comply with any provision of this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction. Every day that such violation continues shall constitute a separate and distinct offense under the provisions of this Ordinance. Nothing in this section shall exempt the offender from compliance with the provisions of this Ordinance.

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D. *Nuisance Abatement.* In addition to enforcing this Ordinance as a municipal civil infraction the City may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

## **11.90 NUISANCE PER SE**

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

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## **ARTICLE 12 AMENDMENTS**

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### **12.1 REQUEST.**

~~The Planning Commission shall consider a proposed Ordinance provision brought to the commission by an interested property owner who requests a hearing by certified mail, addressed to the City Clerk.~~

### **12.2 CONDITIONAL REZONING.**

~~It is recognized that there are certain instances where it would be in the best interests of the City, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of the City to provide a process consistent with the provisions of Section 405 of the Michigan Zoning Enabling Act, being MCL 125.3405, by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.~~

### **12.3 PROCEDURE.**

~~Except as set forth in this Section, the procedure for the amendment of this Ordinance shall be as provided for by the Michigan Zoning Enabling Act.~~

### **12.1 PURPOSE**

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The intent of this Article is to identify the procedure for initiation and review of amendments of the zoning district boundaries shown on the Official Zoning Map (rezoning) or the provisions of this Ordinance (text amendment). This Article ensures the implementation of the Harrison Master Plan and compliance with the requirements of the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended.

12.2 TEXT AMENDMENT APPLICATION PROCEDURES

- Text amendments may be initiated by the City Council, Planning Commission, Zoning Board of Appeals, and City staff.
- a. The City shall send the necessary notices per the requirements in Section 11.50.
  - b. Approval Standards. The Planning Commission shall hold the public hearing on the proposed text amendment and provide a recommendation to the City Council. The standards for approval of the proposed text amendment must satisfy at least one (1) of the below requirements:
    - 1. The change is necessary to clarify a provision in this Ordinance.
    - 2. The change is necessary to correct a mistake or an oversight in this Ordinance.
    - 3. The change is necessary to implement a goal or policy in the City of Harrison Master Plan.
    - 4. The change is necessary to improve the administration of this Ordinance or to better serve the community.
  - c. Adoption of the text amendments by the City shall comply with Article IV of the Michigan Zoning Enabling Act and other relevant sections of said Act.

12.3 REZONING APPLICATION PROCEDURE

- a. Initiation of rezoning or zoning map amendment can be by the City Council, Planning Commission, property owner, or petition as stated in Section 420 of the Michigan Zoning Enabling Act.
  - 1. An amendment to this Ordinance or the Official Zoning Map also known as a rezoning, except those initiated by the City Council or Planning Commission, shall be initiated by submission of a completed application on a form supplied by the City, including an application fee, which shall be established from time to time by resolution of City Council.
- b. Application. In the case of an amendment to the Official Zoning Map, the following information shall accompany the application form:
  - 1. Completed application form and fee as established by resolution of City Council.
  - 2. A legal description and street address of the subject property(ies), together with a map identifying the subject parcel(s) in relation to surrounding properties.
  - 3. The name and address of the owner of the subject property(ies), and a statement of the applicant's interest in the subject parcel(s) if not the owner in fee simple title.
  - 4. The existing and proposed zoning district designation of the subject property(ies).
  - 5. Conditional rezoning requests shall include the applicant's proposed offer of conditions.
  - 6. A written description of how the requested rezoning meets requirements in subsection D below.
- c. The City shall publish and mail the necessary notices as provided in Section 11.5.
- d. The Planning Commission shall hold the public hearing on the proposed text amendment and provide a recommendation to the City Council. The standards for approval of the proposed text amendment must satisfy at least one (1) of the below requirements:
  - 1. The requested amendment is in compliance with the City Master Plan, or
  - 2. A mistake in the Master Plan or change in general community conditions have occurred that are relevant to the request, or
  - 3. The property cannot be reasonably used as it is currently zoned and the proposed request represents the most suitable alternative zoning classification based on the Master Plan.
- e. Adoption of the text amendments by the City Councils shall comply with Article IV of the Michigan Zoning Enabling Act and other relevant sections of said Act.

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~~f. Resubmittals. Identical or basically similar rezoning requests regarding a subject property shall not resubmitted to the City for review less than one (1) year from the decision date, unless conditions have changed or new information has been provided.~~

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## ARTICLE 13 SEVERABILITY

### 13.1 VALIDITY.

If any part of this Ordinance be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not invalidate the remainder thereof, but shall be confined in its operation to the part thereof directly involved in the controversy in which said judgment shall have been rendered.

### ~~13.2 NUISANCE PER SE.~~

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

## ARTICLE 14 VIOLATIONS

### 14.1 PENALTY

~~Any person who shall violate any provision of this Ordinance, or who fails to comply with any of the regulatory measures or conditions of the Board of Appeals adopted pursuant hereto, shall, upon conviction thereof, be fined not to exceed \$500 or may be imprisoned not to exceed 90 days, or may be both fined and imprisoned in the discretion of the Court, and each day such violation continues shall be deemed a separate offense.~~

### ~~14.2 MUNICIPAL CIVIL INFRACTION.~~

~~Any person, partnership, corporation, or association who creates or maintains a nuisance per se as defined above or who violates or fails to comply with any provision of this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction. Every day that such violation continues shall constitute a separate and distinct offense under the provisions of this Ordinance. Nothing in this section shall exempt the offender from compliance with the provisions of this Ordinance.~~

### ~~14.3 NUISANCE ABATEMENT.~~

~~In addition to enforcing this Ordinance as a municipal civil infraction the City may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.~~

## ARTICLE 15 DEFINITIONS

### [15.1 Definitions.]

For the purpose of this Ordinance the following rules shall apply to the terminology in the text and the following definitions shall apply to words and phrases used in the text.

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*Accessory uses and structures.* Uses and structures which are customarily accessory and clearly incidental and subordinate to, and on the same zoning lot as permitted principal or special uses and structures in any zoning district.

*Adult Entertainment Businesses.* Any adult bookstore, adult hotel or motel, adult motion picture arcade, adult motion picture theater, cabaret, sexual encounter center, or any other business or establishment that offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, but not including those uses or activities, the regulation of which is preempted by state law.

*Alteration.* Any change in size or shape, of a building or structure.

*Awning.* A roof-like cover located at the top of the store front and above windows meant to give shelter from the elements.

*Bed and breakfast establishments.* A private residence that offers sleeping accommodations to transient tenants in five (5) or fewer rooms for rent, is the innkeeper's residence in which the innkeeper resides while renting the rooms to transient tenants, serves breakfast at no extra cost to its transient tenants, does not involve the employment of persons other than the occupants of the residence, ~~and has a properly operating smoke detector in every sleeping room and a properly operating fire extinguisher on every floor.~~ For the purpose of this definition, a transient tenant shall mean a person who rents a room in a bed and breakfast establishment for fewer than fourteen (14) consecutive days.

~~*Bracket.* An overhanging member that projects from a structure (as a wall) and is usually designed to support a vertical load or to strengthen an angle.~~

~~*Board of Appeals.* The Zoning Board of Appeals of the City of Harrison.~~

*Building.* Any structure, either temporary or permanent, having a roof and walls, and intended for the shelter or enclosure of persons, animals, chattels or property of any kind. A building shall include tents, mobile homes, manufactured housing, storage sheds, garages, greenhouses, pole barns, semi-trailers, vehicles situated on a parcel and used for the purposes of a building and similar structures. A building shall not include such structures as signs, fences, smokestacks, canopies or overhangs but shall include structures as storage tanks, produce silos, coal bunkers, oil cracking towers, or similar structures.

*Building alignment or line.* A line usually parallel to a front, rear or side property line beyond which a structure may not extend. This line is located at the point of the foundation of a principal building nearest to the front, rear or side lot line and generally does not apply to uncovered entrance platforms, porches, terraces or steps.

*Building height.* The vertical distance measured from the established grade at the center of the building at the front building line to the highest point of the roof surface in a flat roof, to the deck line for a mansard roof, to the mean height level between the eaves and the ridge for hip, gable and gambrel roofs.

*Bulkhead.* The bottom part of the storefront face, ~~which that~~ is typically one to two feet high and carries the storefront display window.

*Campgrounds.* Any parcel or tract of land, under the control of any person where sites are offered for the use of the public or members of an organization, either free of charge or for a fee for the establishment of temporary living quarters for five (5) or more recreational units. The definition of campground shall not include the Fairgrounds which has temporary camping, which is not regulated by this zoning ordinance. ~~Why not regulated by the Ordinance?~~

*Canopy.* A permanent roof-like cover located at the top of the store front entry door meant to give shelter from the elements. It is constructed of non-rigid materials except for the supporting framework.

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*Car Wash Establishment.* A building or portion thereof containing facilities for washing more than two vehicles, using production-line methods. The use of personnel for one or more phases of this operation in conjunction with or without complete automatic or mechanical devices does not alter its classification. For the purpose of this chapter, coin-operated devices operated on a self-service basis shall be construed to be the same.

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*Chattels.* Movable property: an item of personal property that is not freehold land and is not intangible. Chattels are typically movable property chattels personal, e.g., furniture or cars, but may also be interests in property chattels real, e.g., leases.

*Child care home – family or group.* "Family child care home" and "group child care home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111, and only apply to the bona fide private residence of the operator of the family or group child care home.

*Clinic.* An institution for the medical treatment of humans or in the case of a veterinary clinic the medical treatment of small animals and dealing chiefly with outpatients.

*Club or lodge.* The room, building or other facilities used for the meetings of a group of people organized for a common purpose such as a fraternal organization or a society.

*Co-locate.* To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Co-location" has a corresponding meaning. Co-locate does not include make-ready work or the installation of a new utility pole or new wireless support structure.

*Decibel.* A unit for measuring the amplitude of sounds, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure of 20 micropascals.

*Drive-in facilities.* Any place or premises which offers the sale of goods or services to customers in vehicles including those establishments where customers may serve themselves and use the goods or services on the premises.

*Dwelling, single-family.* A detached residential dwelling unit other than a mobile home, but including a modular home, designed for and occupied by one family only.

*Dwelling, two-family or duplex.* A detached residential building containing two dwelling units, designed for occupancy by not more than two (2) families.

*Dwelling, multiple-family.* A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

*Dwelling, quadplex.* A residential building designed for or occupied by four (4) families, often in the configuration of two (2) floors of two (2) side-by-side residential units.

*Dwelling, row-house.* An arrangement of attached single-family units connected horizontally in a row.

*Dwelling, tri-plex.* A residential building designed for or occupied by three (3) families, often configured as three stacked single residential units.

*Dwelling unit.* One or more habitable rooms which are occupied or intended for occupancy by one family with facilities for living, sleeping, cooking and eating.

*Essential services.* Equipment and accessories reasonably necessary for the furnishing of adequate service by public utilities or governmental departments or commissions or for the public health or safety or general welfare, but not including buildings other than such buildings as are primarily enclosures or shelters of the essential service equipment.

*Exterior architectural appearance.* The architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color, texture and dimension of the building material.

arrangement of window and door openings; wall plane length and decoration; and the type, design, color and character of all windows, doors, light fixtures, signs and accessory elements.

*Facade.* The exterior wall of a building exposed to public view.

*Family.* ~~An individual or two (2) or more persons related by blood or marriage or a group of not more than two (2) persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.~~ A domestic family which is one or more persons living together and related by the bonds of consanguinity and marriage or adoption which function as a single housekeeping unit in the dwelling. A family shall be deemed to include domestic servants, gratuitous guests and not more than three (3) boarded children.

The functioning family is one or more persons living together in a dwelling unit whose relationship is of a permanent and distinct character and is the functioning equivalent of a domestic family with a demonstratable and recognizable bond and function as cohesive unit. This definition shall not include any society, club, fraternity, sorority, association, lodge, coterie, organization or group where the common living arrangement and/or basic unit for the establishment of the functioning equivalent of the domestic family is likely or contemplated to exist for a limited or temporary duration. In no case, shall more than six (6) persons reside in a dwelling be considered a functional family.

*Flea market.* A shop or open market selling antiques, used or new household goods, tools, handicrafts, curios and the like.

*Foster home, Family or Group.* A Foster Family Home is a private home in which at least one but not more than four minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan Adoption Code, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian. A Foster Family Group Home means a private home in which more than four (4) but fewer than seven (7) minor may reside. PA 116 of 1973, as amended, governs foster homes.

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*Front yard.* The open space or minimum horizontal distance extending from the full width of the lot between a building or required setback and the front lot line.

~~*Gasoline service station.* Any structure or premises arranged, designed or used for the retail sales of fuels, lubricants, air, water and other operating commodities for motor vehicles and including the customary space and facilities for the installation of such commodities on or in such vehicles and for the washing or polishing of such vehicles but not including the use of space or facilities for the refinishing of motor vehicles or for the dismantling for the purpose of reuse or resale of motor vehicles or parts thereof or for the outdoor storage or repair of motor vehicles or parts thereof.~~

*Garden Court Apartment Building.* A low-rise apartment building that has the building arranged around a courtyard, providing residents with common usable outdoor space.

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*Greenway.* A greenway is a contiguous or linear open space, including habitats, wildlife corridors, and trails, that link parks, nature reserves, cultural features, or historic sites with each other, for recreation or conservation purposes.

*Hardscape.* Any exterior paving such as driveways, sidewalks, patios and terraces which are constructed of a brick paver, stone, compacted gravel, concrete or bituminous concrete surface.

*Height of structure.* The vertical distance measured from the established grade at the center of the front of the structure to the highest point of the structure whether it be a roof, wall, parapet or similar appurtenance of the structure.

*High Water Elevation.* A mark delineating the highest water level of a body of water which has been maintained for a sufficient period of time to leave evidence upon the landscape. The normal high-water elevation is commonly that point where the natural vegetation and landscape changes from predominantly aquatic to predominately terrestrial.

*Home occupation.* Any occupation customarily conducted within a dwelling unit by its occupants as a subordinate use and within one room thereof; provided that:

- No stock in trade may be kept or article sold or offered for sale in the dwelling except such as are produced by such home occupation.
- No display of goods or signs pertaining to such uses are visible from any public way.
- No persons shall be employed other than dwelling occupants.
- No such home occupation shall be conducted in any accessory building.
- No such home occupation shall require interior or exterior alterations or the use of mechanical equipment except that customarily utilized for residential or office purposes.

*Improvements.* Those features and actions associated with a project that are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety, and welfare of the residents of a local unit of government and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, and drainage. Improvements do not include the entire project that is the subject of zoning approval.

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*Intensity of Development.* Height, bulk, area, density, setback, use, and other similar characteristics of development all contribute to the intensity of development.

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*Junkyard.* An open area where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including, but not limited to, scrap iron and other metals, paper, rags, rubber tires and bottles and also including an auto wrecking yard but not including uses established entirely within closed buildings.

*Kennel.*—Any premises on which dogs, cats or other household pets are maintained, boarded, bred or cared for, in return for remuneration or are kept for the purpose of sale.

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*Landscaping.* Any modification or embellishment of the plant cover or hardscape pavement of a property or resource.

*Loading space, off-street.* Space logically and conveniently located for merchandise or passenger pickups and deliveries, located on the same lot with the use which it is to serve for the temporary parking of vehicles which are performing the said pickups and deliveries.

*Lot.* A parcel, tract or portion of land separated from other parcels or portions of land by description on a recorded plat or by metes and bounds description.

*Lot, corner.* Any lot having at least two (2) contiguous sides abutting upon one or more streets, provided that the interior angle at the intersection of such two sides is less than one hundred thirty-five (135) degrees. Any lot line separating the lot from any street shall be construed as a front lot line.

*Lot, double frontage.* Any lot including a corner lot as defined herein, and a lakefront lot having two (2) or more sides abutting on one (1) or more streets or on a street and a lake. Any lot line separating the lot from any street or a lake shall be construed as being a front lot line.

*Lot, Waterfront.* A lot having a frontage directly upon a lake, river or other reasonable sized impoundment of water. The portion adjacent to the water shall be designated as the lake frontage of the lot and the opposite side shall be designated the road frontage of the lot.

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*Lot line.* Any line bounding a lot.

- Front Lot Line—The lot line separating the lot from the street or from a lake.
- Rear Lot Line—A line, or series of connected lines representing the boundary of the property usually opposite and usually most distant from the front property line. In the case of a corner lot only one rear

yard will be required. In the case of any other double-frontage lot no rear yard will be required. In instances of converging side lot lines at the rear of the yard, an imaginary line ten (10) feet in length most nearly parallel with and furthest from the front lot line shall be construed as the rear lot line.

- Side Lot Line—Any lot line other than a front or rear lot line.

Master Plan. The comprehensive plan prepared and adopted by the City Planning Commission in accordance with Public Act 33 of 2008 relative to the agreed upon desirable physical land use pattern for future City development. The plan consists of a series of maps, plans, charts, and written material, representing in summary form, the soundest planning direction for the City to develop in order to realize the vision and goals included with the plan.

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Mini-warehouse enclosed leased storage. A building divided into small storage units for the purpose of rental or leasing of the individual units on a contractual basis to non-commercial entities.

Mobile home. A manufactured relocatable residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, eating, cooking and sanitation located on a permanent foundation.

Mobile home park. A lot, parcel or tract of land used as the site of occupied mobile homes, including any structure, vehicle or enclosure used as part of the equipment of such mobile home park and licensed or licensable under the provisions of Michigan Public Act 96 of 1987 Act No. 243, P.A. of 1959, State of Michigan, as amended.

Modular home. A dwelling which consists of prefabricated units transported to the site on a removable undercarriage or flatbed and assembled for permanent location on the lot.

Nonconforming use or structure. Any use or structure which was lawfully existing immediately prior to the time this Ordinance became effective and which does not now comply with the requirements thereof.

Non-residential. Any resource containing commercial, office, institutional uses or mixed uses.

Nuisance. An offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being.

Nuisance Per Se. Any act, erection, or use of property that is unlawful or unauthorized by a competent authority can be a nuisance per se. A nuisance per se is also defined as an act, occupation, or structure which is a nuisance at all times and under any circumstances, regardless of location or surroundings. Buildings open to trespass or condemned are nuisances per se.

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Open Storage. A land area occupied and used for outdoor storage of building materials, sand, gravel, stone, lumber, equipment, and other supplies.

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Parking space, off-street. Any space used for the off-street parking of motor vehicles in all districts in accordance with Section 5037.1, this Ordinance [15.410].

Pool, private swimming. Any artificially constructed basin or other structure for the holding of five hundred (500) or more gallons of water for the use by the owner, his family or guests for aquatic sports or recreation.

Practical difficulty. For determining dimensional variances, a practical difficulty exists when all four of the following apply:

- i. Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use or would render conformity necessarily burdensome.
- ii. The practical request, or a lesser relaxation of the ordinance standard, would provide substantial justice to the landowner and neighbors.

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iii. The plight of the applicant is due to unique circumstances of the property and is not shared by neighboring properties in the same zone.

iv. The problem is not self-created.

*Principal use.* The primary or chief purpose for which a lot is used.

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

i. ~~(i)~~ A private right-of-way.

ii. ~~(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.~~

*Public utility.* Any person, firm, corporation, municipal department or board, duly authorized to furnish and furnishing to the public under federal, state or municipal regulations, electricity, gas, steam, communications, transportation, or water.

*Public utilities facilities.* Electric transformer stations, gas regulator stations, gas valve houses, booster stations, telephone exchange buildings and telephone repeater buildings, and other similar utility uses. Also referred to as Essential Services.

*Rear yard.* A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the required setback.

*Recreation Vehicle.* A vehicle primarily designed and used as temporary living quarters for recreational, camping or travel purposes, including a vehicle having its own motor power or a vehicle mounted on or drawn by another vehicle

*Repair.* To restore a decayed or damaged resource to a good and sound condition by any process. Repairs which do not change the exterior architectural appearance of a resource except through the elimination of the usual and expected effects of time and weathering do not constitute work.

*Rooming house.* Also referred to as a boarding home, lodging house, fraternity house, sorority house or dormitory. A dwelling having one kitchen and used for the purpose of providing lodging or lodging and meals for pay or compensation of any kind, to more than two persons other than members of the family occupying such dwelling.

*Setback line.* The line limiting the minimum horizontal distance between the front of a structure and the front property line.

*Sign.* Any device designed or intended to inform or attract the attention of any person.

*Site Plan.* Documents and drawings required by the zoning ordinance to ensure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes.

*Small Cell Wireless Communications Facilities Deployment Act.* Public Act 365 of 2018, as amended, the Small Cell Wireless Communications Facilities Deployment Act.

*Small cell wireless facility.* 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.

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- (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.

~~Sexuality house. SEE ROOMING HOUSE~~

*Special use.* A use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, location, size or relation to the surrounding area would be in the best interest of the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in accordance with the provisions set forth in ~~Section 501, this Ordinance [15.330]~~Article 4 of this Ordinance.

*Story.* That part of a building, except a mezzanine as defined herein, included between the surface of one floor and the surface of the next floor, or if there is no floor above, then the ceiling next above. A story thus defined shall not be counted as a story when more than 50 percent, by cubic content, is below the height level of the adjoining ground. A basement is not counted as a story.

*Structure.* Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground including buildings, building walls, but not including open and uncovered decks, patios, terraces and similar outdoor areas.

*Temporary building and use.* A structure or use permitted by this zoning ordinance to exist during periods of construction of the main building or for special events.

*Telecommunication system.* A system of antennas, cables, amplifiers, towers, microwave lengths, and any other conductors, converters, equipment or facilities designed and constructed for the purpose of distributing communication services to homes and businesses.

*Telecommunication tower.* All structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals. This may include, but shall not be limited to, radio towers, television towers, telephone devices and exchanges, micro-wave relay facilities, telephone transmission equipment buildings and private and commercial mobile radio facilities. Not included within this definition are: small cell wireless facilities; micro wireless facilities; citizen band radio facilities; short-wave receiving facilities; radio and television broadcast reception facilities; federally Licensed amateur (ham) radio facilities; satellite dishes, and governmental facilities which are subject to state or federal law or regulations which pre-empt municipal regulatory authority.

~~Topographical map. A map showing existing physical characteristics, with contour lines at sufficient intervals to permit determination of proposed grades and drainage.~~

~~Traffic impact study. The analysis of the potential traffic impacts generated by a proposed project. This type of study and level of analysis will vary dependent upon the type and size of the project.~~

- ~~(1) Rezoning traffic impact study. A traffic impact study which contrasts typical uses permitted under the current and requested zoning or land use classification. This study usually includes a trip generation analysis and a summary of potential impacts on the street system.~~
- ~~(2) Traffic impact assessment. A traffic impact study for land uses which are not expected to have a significant impact on the overall transportation system but will have traffic impacts near the site. This type of study focuses on the expected impacts of a development at site access points and adjacent driveways.~~
- ~~(3) Traffic impact statement. A traffic impact study which evaluates the expected impacts at site access points and intersections in the vicinity.~~

~~(4) —Regional traffic impact study. A comprehensive traffic impact study for land uses expected to have a significant long-term impact on the street system. Such a study evaluates the impacts over a long period and may involve analyses of alternate routes. This type of study is typically prepared using a computer model which simulates traffic patterns.~~

*Travel Trailer.* Vehicular, portable structure built on a chassis, designed or used as a temporary dwelling for travel, recreational, and vacation uses.

*Travel Trailer Park.* An area or premises on which space available is rented, held for rent, or on which free occupancy or camping is permitted for travel trailer owners or users on a temporary basis.

*Transition line.* A horizontal line extending the full width of the facade expressed by a one foot material change, a trim line or a balcony a minimum of two and one-half feet in depth.

*Undeveloped state.* Preserving the natural resources, natural features, scenic or wooded conditions, agricultural use, open space, or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

*Use, lawful.* A use or enterprise or purpose that is not contrary to federal, state, or local laws or ordinances.

*Utility pole.* 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.

*Motor vehicle fueling station.* Any structure or premises arranged, designed or used for the retail sales of fuels, lubricants, air, water and other operating commodities for motor vehicles and including the customary space and facilities for the installation of such commodities on or in such vehicles and for the washing or polishing of such vehicles but not including the use of space or facilities for the refinishing of motor vehicles or for the dismantling for the purpose of reuse or resale of motor vehicles or parts thereof or for the outdoor storage or repair of motor vehicles or parts thereof. These stations may include accessory retail and restaurant establishments that provide services to the motoring public.

*Wireless facility.* 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 co-located.
- (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.

*Wireless infrastructure provider.* 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 the City under this section, provides written authorization to perform the work on behalf of a wireless services provider.

*Wireless provider.* 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.

*Wireless services.* Any services, provided using permitted or unpermitted spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

*Wireless services provider.* A person that provides wireless services.

*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.

All other terms and phrases. used herein shall be defined consistent with the ~~Act~~PA 365 of 2018.

*Yard.* An open space on the same lot with a structure, unoccupied and unobstructed on or above grade level which extends along a lot line and to a depth or width specified in the yard requirements for the zoning district in which it is located.

*Yard, ~~required-front.~~* The open space extending the full width between the side lot lines and also the full depth between the front lot line and the required setback line as specified for each zoning district.

*Yard, ~~required-rear.~~* The open space extending the full width between the side lot lines and also the full depth from the rear lot line to the line specified as the minimum distance a structure may be located from the rear lot line as specified for each zoning district.

*Yard, total.* The total yard, whether it be front, side or rear, is that yard that is the remaining space between the outside limits of the principal use or structure and the respective lot line. This total yard may contain a portion of the buildable area as well as the required yard on the lot.

*Yard, total rear.* The open space extending the full width between the side lot lines and also the full depth from the rear lot line to the rear of the principal structure located on the lot.

*Zoning administrator.* The duly authorized official of the City of Harrison who is responsible for the administering and enforcing of this Ordinance.

*Zoning districts.* The areas into which the City of Harrison has been divided and for which the regulations and requirements governing use and size of lots and structures are specified in this Ordinance.

( amend. by ord. no. 2019-19, adopt. Aug. 5, 2019)

## ARTICLE 20 SMALL CELL WIRELESS FACILITIES

### 20.925 Small cell wireless facilities.

- (a) ~~Definition. For purposes of this section, the following words, terms and phrases shall be defined as follows:~~

~~Act means Public Act 365 of 2018, as amended, the Small Cell Wireless Communications Facilities Deployment Act.~~

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

~~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.~~

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~~(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.~~

~~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.~~

~~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 (f) of this ordinance 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.~~

~~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 co-located.~~

~~(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.~~

~~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 the City under this section, provides written authorization to perform the work on behalf of a wireless services provider.~~

~~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.~~

~~Wireless services means any services, provided using permitted or unpermitted spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.~~

~~Wireless services provider means a person that provides wireless services.~~

~~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.~~

~~All other terms and phrases used herein shall be defined consistent with the Act.~~

- (b) *Permit required.* A wireless provider may not co-locate a small cell wireless facility or install, modify, or replace a utility pole or wireless support structure on which a small cell wireless facility will be co-located within the public right-of-way without first applying for and receiving a small cell wireless permit from the City in a form and subject to such terms and conditions as are acceptable to the City.

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(c) *Permitting process.* The processing of an application for a permit under this section is subject to all of the following:

- (1) An application in such form as prepared by the City Clerk or City Manager from time to time shall be completed and submitted as set forth in this section.
- (2) The City may require an applicant to provide information and documentation to enable the City to make a compliance determination with regard to the criteria in this section involving, without limitation, subsection (d)(3). The City may also require a certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.
- (3) 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 jurisdiction, 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. The City may require proof of other necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.
- (4) The City may require an applicant to attest 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 City and the applicant agree to extend this period or delay is caused by lack of commercial power or communications transport facilities to the site.
- (5) An applicant may, at the applicant's discretion, file a consolidated application and receive a single permit for the co-location of up to 20 small cell wireless facilities within the City. 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. The City 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.
- (6) The application for a permit under this section shall be accompanied by an application fee as set by resolution of the City from time to time.
- (7) The permit application shall be accompanied by a map(s) for any proposed small cell wireless facilities which shall be legible, to scale, labeled with streets, and contain sufficient detail to precisely identify the proposed small cell wireless facilities' locations and surroundings. Where applicable, the required map(s) shall include and identify any requested pole height(s), all attachments and detailed drawings of any attachment.
- (8) The permittee shall field-stake all proposed locations for small cell wireless facilities which shall be subject to the advance approval of the Clare County Road Commission and/or the Michigan Department of Transportation as applicable. All approved small cell wireless facilities' locations shall be on a per pole/equipment/other basis.
- (9) Once precise locations have been approved, the permittee shall provide latitude and longitude coordinates for the small cell wireless facilities' locations to the City's engineering department as well as detailed as-built drawings within 90 days of the completion of installation.
- (10) The permittee shall be responsible to obtain such other permits and approvals as otherwise required by law.

(d) *Determination.*

- (1) Within 25 days after receiving an application, the City shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically identify all missing documents or information.

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- (2) Upon receipt of a complete application, the City shall approve or deny the application and notify the applicant in writing within the following period of time after the completed application is received:
- (A) For an application for the co-location of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:
    - (i) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.
    - (ii) Add 15 days if, before the otherwise applicable 60-day or 75-day time period elapses, the City notifies the applicant in writing that an extension is needed and the reasons for the extension.
  - (B) For an application for a new or replacement utility pole that meets the height requirements of section 13(5)(a) of the Act and associated small cell facility, 90 days, subject to the following adjustments:
    - (i) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.
    - (ii) Add 15 days if, before the otherwise applicable 90-day or 105-day time period elapses, the City notifies the applicant in writing that an extension is needed and the reasons for the extension.

If the City fails to comply with this subsection, an application otherwise complete is considered to be approved subject to the condition that the applicant provide the City not less than 7 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval and the applicant shall be responsible to comply with all provisions of this section and the Act.

The City and an applicant may extend a time period under this subsection by mutual agreement.

- (3) The City may deny a completed application for a proposed co-location 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) of the Act if the proposed activity would do any of the following:
- (A) Materially interfere with the safe operation of traffic control equipment.
  - (B) Materially interfere with sight lines or clear zones for transportation or pedestrians.
  - (C) Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
  - (D) Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of the City.
  - (E) With respect to drainage infrastructure under the jurisdiction of the City, either of the following:
    - (i) Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
    - (ii) Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.

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- (F) Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by the City by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.
  - (G) Fail to comply with applicable codes.
  - (H) Fail to comply with any provision of this section.
  - (I) Fail to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a historic district or other designated area, as specified in an ordinance or otherwise and non-discriminatorily applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the City.
- (4) Within 1 year after a permit is granted, a wireless provider shall complete co-location of a small cell wireless facility that is to be operational for use by a wireless services provider, unless the City 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 co-location within the applicable time, the permit is void, and the wireless provider may reapply for a permit.
- (5) Approval of an application authorizes the wireless provider to do both of the following:
- (A) Undertake the installation or co-location.
  - (B) 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.
- (6) The City may propose an alternate location within the ROW or on property or structures owned or controlled by the City within 75 feet of the proposed location to either place the new utility pole or co-locate 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. The City may request written confirmation of any decision rendered by the applicant under this subsection and the specific basis for the same.
- (7) Nothing herein shall prohibit the City from requiring a separate ROW access permit for work that will unreasonably affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.
- (8) As a condition of the issuance of a permit, the applicant shall obtain and maintain a bond, in the amount of \$1,000.00 per small cell wireless facility, in a form reasonably satisfactory to the City, for the small cell wireless facilities as applicable to similarly situated users of the ROW for one or more of the following purposes:
- (A) 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.
  - (B) To repair the ROW as provided under the Act.
  - (C) 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.
- (9) It is a condition of any permit issued under this section that:

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- (A) A wireless provider, with respect to a small cell wireless facility, a wireless support structure, or a utility pole, shall defend, indemnify, and hold harmless the City 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 the City, or the officers, agents, or employees of the City or governing body against any liabilities or losses due to or caused by the sole negligence of the City or its officers, agents, or employees.
- (B) A wireless provider, with respect to a small cell wireless facility, a wireless support structure, or a utility pole, shall obtain insurance, in an amount and of a type reasonably satisfactory to the City naming the City 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 City'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 subsection. To the extent a wireless provider elects to self-insure, the wireless provider shall provide 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.

It is the policy of the City to encourage the co-location of small cell wireless facilities first, outside of public rights-of-way and, secondarily, within the public rights-of-way. The co-location of uses shall be a condition of approval of any permit granted for a new wireless support structure or utility pole in the public right-of-way; provided, however, that the co-location requirement may be waived if the pole or support structure is disguised or stealthed so as to blend with the immediate environment (e.g., streetlights, power poles, etc.).

- (e) *METRO Act permit.* No person shall install or operate "telecommunications facilities," as defined in the Metropolitan Extension Telecommunications Rights-Of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended (the "act") without first obtaining a permit in accordance with that act from the City, including any part of a small cell wireless facility, utility pole, or wireless support structure constituting telecommunication facilities.
- (f) *Design parameters.* The following minimal design parameters shall apply to small cell wireless facilities, utility poles and wireless support structures in the City's public rights-of-way:
- (1) A wireless provider may, as a permitted use not subject to zoning review or approval, but still subject to approval by the City under this section, co-locate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the ROW consistent with the following:
- (A) A utility pole in the ROW installed or modified on or after the effective date of the Act shall not exceed 40 feet above ground level, unless a taller height is agreed to by the City consistent with all applicable laws.
- (B) A small cell wireless facility in the ROW installed or modified after the effective date of the Act shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is co-located.
- (2) 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 City's ROW or uses of the ROW by other utilities and communications service providers.



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- (3) A wireless provider may co-locate a small cell wireless facility or install, construct, maintain, modify, operate, or replace a utility pole that exceeds the height limits under subsection (1), or a wireless support structure, in, along, across, upon, and under the ROW only upon issuance of a permit in accordance with this Section and upon receiving zoning approvals required by the City.
- (4) The following design and concealment measures shall apply to the co-location of any small cell wireless facility or utility pole in an historic, residential, or downtown district:
- (A) Equipment on a supporting structure may not exceed an aggregate width of four feet (centered on pole) and shall be secured a minimum of ten feet from the ground surface or 18 feet where equipment may overhang the back of curb line. Ground level equipment or shelters are not permitted.
  - (B) Small cell wireless facilities shall be located no closer than 18 inches from an existing sidewalk/face of curb or 18 inches from a proposed future sidewalk/face of curb location.
  - (C) Small cell wireless facilities shall be located no closer than ten feet from any driveway.
  - (D) Small cell wireless facilities shall be located in line with a side lot line and not in front of a residence.
  - (E) Unless otherwise required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or applicable codes poles shall either maintain a galvanized silver, gray or concrete finish or, subject to any applicable standards of the FAA, FCC or such codes, be painted a neutral color so as to reduce visual obtrusiveness.
  - (F) At all pole sites related equipment shall use materials, colors, textures, screening, and landscaping that will blend the facilities to the natural setting and environment to the extent reasonably practical.
  - (G) All poles shall be of monopole design and construction unless the City approves an alternate design. Disguising or stealthing poles is encouraged.

Any such requirements shall not have the effect of prohibiting any wireless provider's technology.

- (5) In the event that the wireless provider's application includes facilities intended to be installed in an area that otherwise is designated solely for underground or buried cable and utility facilities, this provision shall apply. A wireless provider shall comply with any City requirements 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 each of the following apply:
- (A) The City has required all cable and utility facilities, other than City poles if any, 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 wireless provider's application.
  - (B) The City does not prohibit the replacement of poles owned by the City by a wireless provider in the designated area.
- (g) *Modification of design parameters.* Upon the written request of an applicant for a permit, the Downtown Development Authority and/or the City may modify or waive the design parameters of subsection (f)(4) and (f)(5) in its discretion following a hearing and based on its review of factors affecting the public health, safety and welfare including, but not limited to, the following: the presence of existing poles or other structures or equipment in the immediate vicinity; the ability to reasonably comply with the design parameters set forth in subsection (f)(4) and (f)(5); the visual and aesthetic

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impact of the proposed pole, antenna or facilities on the adjacent area; the existing and planned character of the adjacent area; public comment; the scale and scope of the poles, antennas or facilities relative to the existing character of the area; whether granting the modification will adversely impact public safety; and the recommendations of City department heads (if any). Following its review, the Downtown Development Authority and/or the City may grant, deny or grant with conditions a request to modify or waive the design parameters and shall provide its decision and the basis for the same to the applicant in writing. All applications for a waiver or modification of the design parameters as set forth herein shall be addressed in a uniform and nondiscriminatory manner. The applicant shall be responsible to pay all costs of the City associated with the request to modify or waive the design parameters.

- (h) *Repair of ROW.* As a condition to the issuance of a permit under this section, a wireless provider is required to repair all damage to the ROW directly caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and to return the ROW to its functional equivalent before the damage. If the wireless provider fails to make the repairs required by the City within 60 days after written notice, the City may make those repairs and charge the wireless provider the reasonable, documented cost of the repairs.
- (i) *Discontinuance of Use.* Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify the City 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 City may impose reasonable and nondiscriminatory requirements and specifications for the wireless provider to 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 City 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.
- (j) *Revocation of Permit.* 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 subsection (d)(3).
- (k) *Compliance with applicable law.* The permittee shall be responsible to comply with all applicable legal requirements and to obtain any permits or approvals otherwise required by law relative to the installation or operation of small cell wireless facilities in the City's public rights-of-way (e.g., electrical permits). The City, in reviewing and authorizing a permit under the act and/or a permit referred to in this section, and the permittee, in the establishment and operation of any small cell wireless facilities, shall comply with all applicable federal and state laws.
- (l) *Fees.* Fees for the permits as authorized under the Act shall be as provided for in the Act or those documents and as periodically authorized by resolution of the City Commission, provided, however, that for installations of utility poles designed to support small cell wireless facilities or co-locations of small cell wireless facilities installed and operational in the ROW before the effective date of the 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.

( ord. no. 2019-19, adopt. Aug. 5, 2019)