AGENDA
CITY OF CHARLEVOIX CITY COUNCIL MEETING

Monday, June 17, 2013 - 7:00 p.m.
210 State St, City Hall, Second Floor City Council Chambers, Charlevoix, MI

I. Invocation or Pledge of Allegiance

II. Roll Call of Members Present

III. Inquiry Regarding Possible Conflicts of Interest

IV. Consent Agenda

A.	City Council Meeting Minutes – June 3, 2013 Regular Meeting	
B.	Accounts Payable Check Register	**PG 1-10**
C.	Payroll Check Register	**PG 11-14**
D.	Downtown Development Authority Board Resignation – Gina Whitley	**PG 15**

V. Public Hearings

VI. Reports

VII. Requests, Petitions and Communications and Actions Thereon

A.	Presentation Regarding Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program Ordinance	**PG 16-33**
B.	Discussion Regarding Grand Traverse Band of Ottawa & Chippewa Indians Grant Applications	**PG 34**
C.	Consideration of Contract with Charlevoix City Band	**PG 35-37**
D.	Consideration to Approve Resolution Adopting Final Wastewater Treatment Plant Improvement Project Plan	**PG 38-39**
E.	Consideration to Approve Proposal for Fire Hydrant Painting	**PG 40-42**
F.	Consideration to Approve Purchase of a One Ton Vehicle	**PG 43-44**
G.	Cost of Service Studies – Electric, Sewer & Water	**PG 45-51**
H.	Consideration to Terminate Dock Lease with Sunset Watersports, Inc.	**PG 52-58**
I.	Status Report Regarding Fundraising Efforts for Costs Associated with Fireplace	**PG 59-61**
J.	Discussion Regarding Donation Acceptance Policy	**PG 62-66**
K.	Consideration to Approve a Bid and Contract Documents for Apron Rehabilitation Project	**PG 67-81**

VIII. Introduction and Initial Actions Relating to Ordinances or to Resolutions That Require Publication or Hearings Prior to Final or Further Action

A.	Introduction of Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program Ordinance	**PG 27-33**
B.	Introduction of Draft 2013 Zoning Ordinance/Request to Set Public Hearing	

IX. Resolutions

A.	Consideration to Approve Resolution Adopting Final Wastewater Treatment Plant Improvement Project Plan	**PG 39**

X. Ordinances

XI. Miscellaneous Business

XII. Audience – Non-Agenda Input (written requests take precedent)

XIII. Adjourn

The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one weeks notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids or services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250.

Posted June 13, 2013 4:00 p.m.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Presentation Regarding Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program Ordinance

DATE: June 17, 2013

PRESENTED BY: Jeff Gates, TJ Acquisitions

ATTACHMENTS:

1. March 4, 2013 Meeting Minutes
2. Memo from TJ Acquisitions dated October 10, 2012
3. Property Tax Analysis May 23, 2013
4. Draft PILOT Ordinance

BACKGROUND INFORMATION: On March 4, 2013 Jeff Gates, TJ Acquisitions, made a presentation to the City Council regarding a proposed Payment in Lieu of Taxes (PILOT) program for Lake Harbor Apartments. At that meeting City Council was generally supportive of the affordable housing initiative and directed Staff to develop documents to be considered at a future meeting. See attached copy of meeting minutes.

PILOT programs are a common mechanism for municipalities to support low to moderate income housing options with minimal impacts to a community's finances. Tenants would need to make no more than 60% of the Charlevoix County median income. The 2013 HUD median household income for Charlevoix County is $60,600. HUD translates the 60% limit to household size which is as follows:

1. 1 person household: $25,500
2. 2 person household: $29,100
3. 3 person household: $32,760
4. 4 person household: $36,360

According to Mr. Gates, Lake Harbor Apartments are presently 100% occupied and the annual incomes of the residents range from $2,400 to $22,849, the average is $10,450. As you can see this is well below the 60% limit and is in fact closer to 20-25% of the median income, demonstrating that they serve a very low income population.

The program also creates an incentive for upgrades to an aging facility through low income tax credits. Mr. Gates estimates that between $800,000 to $1,000,000 will be invested in Lake Harbor Apartments.

The City has approved another PILOT program for May Street Apartments at 4.5% of the Annual Shelter Rents for 35 years. The proposed percentage for Lake Harbor Apartments was originally proposed at 10% of Annual Shelter Rents for 18 years. Because of declining tax and state revenues, and to lessen the financial impact to Charlevoix taxing entities, the City Manager has requested a larger percentage of PILOT fees be dedicated through the new ordinance. To this end, the proposed PILOT percentage is at 11.18% of Annual Shelter Rents. Mr. Gates has also agreed to an annual 2% escalator which is depicted in the chart under Section 6, #1.

Other revisions that Staff has recommended and Mr. Gates has agreed to include:

Section 6, #1 *"The PILOT ordinance shall commence for the next calendar year following the commencement of renovations. Until such time the property shall continue to pay ad valorem taxes."* Staff feels the payments in lieu of taxes should not commence with passage of ordinance but with commencement of renovations.

Section 10, C Added language for non-payment of fees in lieu of taxes allowing the City to lien the property if payment is not made to City.

On March 11, 2013, City Staff sent out eleven letters to all organizations affected by PILOT program describing the program and financial impact. We have received no feedback from these agencies.

The City Attorney has fully reviewed the PILOT ordinance.

RECOMENDATION: Discussion with input from Council and public. A Public Hearing needs to be set for July 1, 2013 for PILOT Ordinance for Lake Harbor Apartments. Absent any issues or changes from Council, the ordinance is ready to be passed on July 1, 2013

CITY OF CHARLEVOIX
REGULAR CITY COUNCIL MEETING MINUTES
Monday, March 4, 2013 – 7:00 p.m.
210 State Street, City Hall, Council Chambers, Charlevoix, MI

The meeting was called to order at 7:00 p.m. by Mayor Norman L. Carlson, Jr.

I. Pledge of Allegiance

II. Roll Call of Members Present

Mayor:	Norman L. Carlson, Jr.
City Attorney:	Bryan Graham
City Manager:	Rob Straebel
City Clerk:	Carol A. Ochs
Members Present:	Council members Bryan Vollmer, Shane Cole, Lyle Gennett, Dennis Kusina, Jill Picha, Greg Stevens
Absent:	None

III. Inquiry Regarding Possible Conflicts of Interest
None.

IV. Consent Agenda
The following items were approved and filed:
A. Approval of Minutes – February 18, 2013 Regular Meeting Minutes
B. Accounts Payable Check Register – February 22, 2013
C. Accounts Payable Check Register – March 5, 2013
D. Accounts Payable Check Register (State Banke) – February 22, 2013
E. Tax Disbursement – March 5, 2013
F. ACH Payments – February 19, 2013 – March 1, 2013
G. Payroll Check Register – March 1, 2013
H. Payroll Transmittal – March 1, 2013

V. Public Hearings
None.

VI. Reports
The City Manager proposed scheduling a meeting regarding the construction of the fireplace with the City Council, the DDA, and the Planning Commission. Council generally agreed that Monday or Thursday would be the best day. The Manager will see when Mark Buday is available.

The Manager invited Council to the Winterfest event at Mt. McSauba on Sunday, March 10.

Councilmember Greg Stevens asked for an update on interviews for the Recreation Director position. The Manager is waiting to hear back from an offer made earlier today. There had been great candidates for the position. The Manager will get a memo out to Council as soon as something is finalized.

VII. Requests, Petitions and Communications and Actions Thereon
A. Presentation Regarding Lake Harbor Apartments Payment in Lieu of Taxes (PILOT) Program
Jeff Gates, representing TJ Acquisitions, one of the owners of Lake Harbor Apartments, was available to review the program and answer questions for Council. Lake Harbor Apartments is a 24-unit apartment complex built in the eighties under a Department of Agriculture (USDA) rural development program called the Farmers Home Administration Program. It's an affordable housing development restricted to persons who make 60% or less of the median income in Charlevoix County. Current residents are a mixture of senior citizens, persons with disabilities, families, and single-parent households. TJ Acquisitions purchased managing general partner interest in the property in 2012. TJ Acquisitions had been approached by some of the limited partners and the USDA to step in, take control of the property, and work to stabilize and renovate the property.

Mr. Gates is requesting the City help make those renovations happen by enacting a PILOT ordinance for the property. A PILOT (Payment in Lieu of Taxes) ordinance calculates the taxes on the income of the property rather than the millage rate and value of the property. The PILOT is needed for the owners to apply for low income tax credits on the property. Low income tax credits are the primary tool for creating and retaining affordable housing. The tax credits are administered by the Michigan State Housing Development Authority (MISHDA) through a competitive process. A PILOT gives applicants a competitive advantage in the process to win the credits. A PILOT can be enacted for a specific property or for all qualifying properties within a community.

Mr. Gates reviewed similar projects they have done in other communities. He also reviewed the proposed improvements for Lake Harbor. The housing is restricted to persons who make no more than 60% of the median income, and Lake Harbor residents will pay no more than 30% of their income towards rent. A rent subsidy makes up the difference between the actual rent and what tenants are able to pay. The rent includes heat and hot water; residents would pay their own electric, telephone, and tv. Property will be inspected and audited annually by the USDA and the MISHDA. Owners make a limited dividend off the property.

The PILOT does have an impact on the community. Presently, Lake Harbor pays about $16,000 a year in taxes. A 10% PILOT would reduce those by about $5,300 a year – about $1,200 is the City's portion; the rest is the other taxing entities'. Granting a PILOT does not impact the education dollars received from the State of Michigan.

Benefits of the PILOT would be that the renovations and improvements will cost between $800 thousand to $1 million dollars. A lot of that money will be spent with local contractors and suppliers. The community will end up with a good, stable, affordable housing complex that provides necessary housing for senior citizens, a lot of people who work in service industries, and persons with disabilities.

Mr. Gates is asking Council to consider establishing a PILOT ordinance at a rate of 10% for 18 years. They ask for 18 years, so that the tax credits that they are applying for have a 15 year compliance period. They like to have a three-year "cushion" in case they don't get the tax credits in the first round of application.

Mr. Gates and the City Manager answered various questions from Council. Current residents will not be displaced. Renovations are done around the residents with only a little inconvenience to the tenants. There is currently a PILOT in place specific for May Street Apartments. Costs for the project will be certified and audited. They will try to buy and hire local contractors and suppliers, though there are some contractors, such as HVAC, that they use from job to job.

The Mayor called for public comment.

Shirley Gibson asked if the PILOT amount was negotiable. The amount can be a percentage of revenues received from the rents or a fixed amount, which would be less variable. A revenue-based amount would fluctuate based on occupancy of the apartments; a fixed amount is less variable.

Ms. Gibson asked if the other local taxing entities know this is going to be a revenue leak for them. The Manager stated they would work to get the information to them and allow for them to give written comments or comment at a public hearing.

City Planner Mike Spencer asked about occupancy of the units. Current occupancy is 100%.

The Mayor closed the item to public comment.

The Manager reiterated that he would work to notify other local entities and get their input on the specific impact to them. He is hopeful that they would be supportive of the PILOT, as the annual figures are quite small. He thinks a wide array of affordable housing options in a community is important to cater to different demographics. He thinks the overall financial impact is well offset by the public benefit of the program.

Councilmember Greg Stevens stated that there is a need for this type of housing in the community.

Motion by Councilmember Jill Picha, seconded by Councilmember Bryan Vollmer, to direct Staff to develop program documents for a PILOT program for Lake Harbor Apartments for Council's future consideration.

Yeas: Vollmer, Cole, Gennett, Kusina, Picha, Stevens
Nays: None
Absent: None

B. Discussion Regarding Sea Scout Ship 11 Use of Marina Slip

John Young spoke on behalf Sea Scout Ship 11, a charter organization of the Charlevoix Kiwanis Club. They are requesting permission to use one of the City dock slips at the marina when it is available. This is the same arrangement they have had previously. If the marina is full, the Scouts will find alternative dockage or anchorage. The Manager stated that Harbormaster Hal Evans is fully supportive of the proposal.

The Mayor called for public comment. There were no comments. The Mayor closed public comment.

Motion by Councilmember Shane Cole, seconded by Councilmember Greg Stevens, that, contingent upon approval from the DNR Waterways Commission, the City of Charlevoix approves free dockage for the Sea Scouts for the 2013 Boating Season when the marina is not full.

Yeas: Vollmer, Cole, Gennett, Kusina, Picha, Stevens
Nays: None
Absent: None

C. Discussion on Planning Commission Resolution from 2006 Concerning Review of City Projects

City Planner Mike Spencer briefed Council of the history of this resolution. He has reviewed what other communities do in these types of situations. There was a resolution that the Planning Commission adopted and that Council accepted in 2006. This resolution was not brought to Mr. Spencer's attention until recently. The resolution stated that projects should get zoning approval, but there are no standards for any structures in this zoning district such as height requirements, set back requirements, or lot coverage requirements. According to John Hess, the intent of the resolution was in reaction to the Planning Commission not reviewing the entire East Park renovation project. Mr. Spencer is not sure if that resolution was intended to apply to specifics of features in existing parks. Mr. Spencer has researched several communities, such as Boyne City, Petoskey, Grand Haven and Holland, and he has not found any precedent among them for projects going to their planning commission for a review. Mr. Spencer indicated that projects could go through a review here if desired, but that the City would need to know what the purpose for such a review would be. Would it be because they are representative members of the public and it provides another opportunity for public comment on a proposal like this, or is it for the Planning Commission to weigh in on certain standards, which in this case don't exist? Even if it went to the Planning Commission, legally they couldn't really deny it. Mr. Spencer will follow whatever City policy Council chooses to adopt. Mr. Spencer's concerns are that staff know about it, which in this case they didn't [know about the resolution] and that the policy be clear for staff, the public, Planning Commission members and Council. The policy would need to be specific about what level of project would trigger that Planning Commission review. Mr. Spencer reviewed various projects, such as the historic district kiosks, the City kiosks, the flagpole at Michigan Beach, the Art in Public Places, all which could be considered structures in public parks, but did not go through a Planning Commission review. The Attorney has provided Council with some options for enacting a policy. Mr. Spencer does not think the City did anything illegal; the 2006 resolution was not officially adopted by Council with a resolution number at the top of it. The Planning Commission would really have no legal grounds to deny it. Maybe the intent was that members of the public or Council trust the Planning Commission to make informed decisions and recommendations to Council on projects. In Mr. Spencer's conversations with Planning Commissioners, he doesn't think they want to be in a position where, every time a brick is laid, a door is replaced, or a fire hydrant or a bench is installed, those types of project need to be taken to the Planning Commisson first. At this point, Mr. Spencer is looking for guidance from Council on what their wishes are.

Attorney Bryan Graham clarified that, in 2006, the issue before Council dealt with whether a City project was required to get zoning approval. That is an important distinction. Michigan law is very clear that when a municipality is proposing to do its own project for a governmental function, like a park, it is not required to comply with its own zoning ordinance. The thought process is that the governmental entity—the public body—has to approve those development plans, just like a normal developer would, in a public forum/meeting. There is no need to get the zoning approval because you're just going through a second public approval process. Michigan law is very clear you are not required to get zoning approval under your own zoning ordinance. You can elect to do that if you want to, but Michigan law doesn't mandate that. Council has been provided with three options on p. 37 of their packet. If Council is looking at zoning approval, development plans go to Planning for recommendation and final approval is done by Council. Mr. Graham sees this as redundant.

There are currently no zoning standards for the scenic/public reserve zoning districts for the Planning Commission to review.

T J ACQUISTIONS LLC
P.O. Box 313
Novi, MI 48376
Phone: (248) 921-8112
Fax: (248) 596-1750

October 10, 2012

Mr. Robert J. Straebel, City Manager
City of Charlevoix
210 State Street
Charlevoix, MI 49720

RE: Lake Harbor Apartments
637 Petoskey Avenue

Dear Mr. Straebel:

It was a pleasure to meet with you to discuss our plans for Lake Harbor Apartments. Although we shared with you our plans and how we became involved in Lake Harbor, I will reiterate the points I made in our meeting so that you can share this information with members of your staff.

Lake Harbor is a 24 unit affordable rental housing development located on Petoskey Avenue. It was built in the 1980's by the Teklin Corporation through the Section 515 Program administered by the Rural Development (RD) Agency of the U.S. Department of Agriculture (USDA). Lake Harbor primarily provides affordable housing for families, but it also serves single persons, couples, seniors and persons with disabilities. The average annual income of a typical resident of an RD property is about $11,700.

Earlier this year, my partner and I purchased a controlling interest in the partnership that owns Lake Harbor Apartments. Our purchase was motivated by the fact that we buy, re-develop, and then manage RD and other similar affordable housing developments. At present we have 37 similar properties around the State.

Our vision for the property was to purchase it; and then renovate the property by using the Low Income Housing Tax Credit Program. This is a federal program administered by the Michigan State Housing Development Authority (MSHDA). The low income housing tax credit program is the primary financing mechanism for creating and preserving affordable housing. Current economic and regulatory conditions are favorable for us to proceed with this strategy.

Our renovations to the property are focused on the following:

- Improvements that result in reduced maintenance
- Improvements that improve energy efficiency and reduce energy costs
- Improvements that enhance curb appeal and compliment the community
- Improvements that enhance tenant comfort and convenience
- Improvements that enhance marketability

To achieve these improvements we intend to spend nearly $1,000,000 to renovate the buildings, units and site. Lake Harbor is long overdue for renovations and the improvements address deferred maintenance issues that include the following:

Site Improvements & Repairs:

- Sidewalk and site concrete replacement. Provide ADA/barrier free access
- Rebuild parking lot and drive– Remove existing pavement, stabilize base and place 3" of new asphalt
- Replace site lighting with LED fixtures
- Provide landscaping maintenance and enhancements
- Replace dumpster enclosures with vinyl fencing
- Replace site signage
- Add office and community building
- Add playground equipment

Building Common Areas:

- Drywall patching as required prior to painting
- Paint all walls and ceilings
- Replace door frames and doors
- Implement Section 504 ADA improvements for barrier free access
- Replace door hardware with lever handled hardware
- Replace all flooring
- Replace laundry room countertops and laundry sinks
- Install new energy star light fixtures
- Replace boilers and water heaters with high efficiency units
- Augment attic insulation to R-49
- Provide re-cycling facilities

Building Exteriors:

- Install new vinyl siding (w/Tyvek or equal building wrap), trim, fascia and soffit
- Install new gutters and downspouts
- Replace windows and sliding glass doors with new vinyl, insulated, low-e units
- Replace building entry doors
- Rebuild balconies with composite decking and install new vinyl railings

Unit Interiors:

- Drywall patching as required prior to painting walls and ceilings
- Replace all interior doors and frames
- Replace vinyl flooring and carpet
- Replace door hardware with lever handled hardware
- Install new bath accessories and replace shelving
- Replace cabinets and countertops
- Install new refrigerator, range, under cabinet microwave, dishwasher, garbage disposal and range hood using energy star appliances where available.
- Install new kitchen sink and faucet, bath lavatory and faucet, tubs and surrounds, tub and shower valve, and toilet using low flow fixtures

- Replace electrical devices and install new energy star light fixtures
- Add smoke detectors
- Install new window treatments
- Replace hydronic baseboard
- Install thru-wall energy star air conditioning unit
- Add energy star ventilated range hoods
- Add energy star ventilated bath bans
- Update existing barrier free unit to current ADA standards
- Convert one additional unit to barrier free

To facilitate the renovations we will use two different sources of financing and funding. First, we will assume the existing mortgage with the current lender, USDA Rural Development. Second, we will raise equity for this project through the sale of the low income housing tax credits mentioned earlier. Both of the financing sources ensure that the property will continue to serve persons with incomes at 60% or less of the county median income.

The tax credits are the key element of this transaction and we must compete for those tax credits. Each year MSHDA conducts two funding rounds for the tax credits. Developers submit applications for their projects and the applications are competitively scored. Applications for the tax credits are about 3 times the amount of tax credits available, hence there are winners and losers.

To have any chance of winning a tax credit reservation, a project must have a PILOT ordinance in effect. A development with a PILOT ordinance has as much as a 15 point advantage over a development that doesn't. Furthermore, a PILOT is critical to maintaining affordable rents and a financially stable property. In affordable housing developments rents are restricted and expenses are regulated. PILOT's allow properties to maintain affordable rents and still operate the property in a financially stable manner.

The need for a PILOT for Lake Harbor is the reason we have met with you. Again, for the benefit of all I will explain a PILOT, which is the acronym for "Payment In Lieu Of Taxes". A PILOT is the payment of a service charge in lieu of ad valorem taxes. It is a statutory means of providing property tax relief for affordable housing projects. It is permitted under Act 346 of the Michigan Statutes and the purpose of the statute is to make affordable housing more affordable. Attachment #1 is the section of the statute that permits the property to be exempt from all ad valorem property taxes. Only properties that are specifically designated as affordable housing developments and meet specific criteria qualify for a PILOT. In fact, a PILOT ordinance can be project specific.

The PILOT is a fee based on annual shelter rents, which are defined as rental income less utilities paid by the landlord. PILOT's are calculated on a percentage basis that ranges from 0% to 10% of the annual shelter rents. The PILOT fee is then proportionally allocated to all of the various taxing units.

To understand the impact to the State, County, and City, I have prepared Attachment #2. This illustrates the effect of a 10% PILOT. Under a 10% PILOT, annual revenues to the City would be reduced by about $956 and revenue to the County and State would be reduced by about $4,424. Even though funding is reduced to the State, the PILOT would not have an adverse effect on the per pupil funds the school district receives back. The fees paid under a PILOT are transparent. The finances of the property are audited annually and a copy of the audit is included with the PILOT calculations and payment.

The PILOT can run for any number of years, however in order to achieve the maximum amount of points it must run for more than 15 years. Typically we like to see the PILOT run for an 18 year term. The PILOT ordinance itself is a standard, boilerplate document because many of the conditions in it are required by the statute. PILOT's are in place in hundreds of communities around the state.

The PILOT ordinance can be conditioned on the start and completion of the renovations. This serves as a safeguard to the City in the event we are not successful in securing a tax credit reservation so that we can complete the proposed renovations.

It is imperative to understand that the purpose of granting a PILOT is not to put money into our pockets. As the owners of this property we have the potential to earn a very limited annual return of only $2,800. The real beneficiaries are the residents in that their rents are maintained at affordable levels; the project in that expenses can be maintained at a level to keep the property in good condition; and the community in that it has revitalized affordable housing.

We are seeking the joint cooperation and participation of the City to assist us in revitalizing and preserving Lake Harbor as an affordable housing development. With the PILOT and the tax credits, we will be able to offer totally renovated 1 and 2 bedroom apartments and because of federal rental assistance, no resident will pay more than 30% of their income towards the rent. Hot water and heat is included in our rents so the resident only pays for electricity.

By working together there is a unique opportunity for a win-win-win situation for the City, for the current and future residents of Lake Harbor Apartments, and for us that can result in:

- Preserving and revitalizing quality affordable housing.
- Improving the physical condition and appearance of Lake Harbor Apartments.
- Attracting new and retaining existing quality residents.
- Economic development that results in jobs, employment and local business.
- A financially feasible, long-term investment.

As we discussed the sensitivity of this proposal requires that we move deliberately and do a thorough job of educating those individuals who will make the recommendations and decisions. The next tax credit funding round is February 15, 2013 so our goal is to have this ordinance in place by January. Please let me know when you would like to meet again so that we can have further dialogue on the issue and answer any questions.

In the meantime, should you have any questions or require any additional information, please contact me at (248) 921-8112. We look forward to working with you.

Sincerely,

Jeffrey F. Gates

Enclosures as noted:
1. Attachment #1 – State Housing Development Authority Act 346 of 1966
2. Attachment #2 – Property Tax Analysis

Lake Harbor Apartments (Charlevoix, MI)
Property Tax Analysis
May 23, 2013

	2012	2013
Taxable value:	$ 323,300	$ 326,500
SEV:	$ 323,300	$ 326,500
Assessed Value:	$ 323,300	$ 326,500
PILOT (11.18%)	$ 12,572	

AD VALOREM / PILOT ALLOCATIONS

Description	Millage	Ad Valorem Taxes	PILOT	Reduction
State & County				
State Education Tax	6.00000	$ 1,939.80	$ 1,466.54	$ (473.26)
County Allocation	4.70000	$ 1,519.51	$ 1,148.79	$ (370.72)
School Operating	18.00000	$ 5,819.40	$ 4,399.61	$ (1,419.79)
School Debt	1.90000	$ 614.27	$ 464.40	$ (149.87)
School Debt 08	0.95000	$ 307.14	$ 232.20	$ (74.93)
School Debt 2008	0.06500	$ 21.01	$ 15.89	$ (5.13)
Char EM Alloc	0.20000	$ 64.66	$ 48.88	$ (15.78)
Special Ed 64	0.67130	$ 217.03	$ 164.08	$ (52.95)
Special Ed 08	1.16000	$ 375.03	$ 283.53	$ (91.50)
Vocational Al Ed	0.75000	$ 242.48	$ 183.32	$ (59.16)
Chx Lib Op 97	0.44400	$ 143.55	$ 108.52	$ (35.02)
Chx Lib Op 04	0.63390	$ 204.94	$ 154.94	$ (50.00)
Chx Lib	0.74000	$ 239.24	$ 180.87	$ (58.37)
County Transit	0.25000	$ 80.83	$ 61.11	$ (19.72)
County Recycling	0.15000	$ 48.50	$ 36.66	$ (11.83)
Co. Sr Citizen	0.40000	$ 129.32	$ 97.77	$ (31.55)
Grandvue Oper	0.75000	$ 242.48	$ 183.32	$ (59.16)
Grandvue Bond	0.18000	$ 58.19	$ 44.00	$ (14.20)
County Roads	1.00000	$ 323.30	$ 244.42	$ (78.88)
Recreational	0.33000	$ 106.69	$ 80.66	$ (26.03)
Admin Fee		$ 19.88	$ 15.03	$ (4.85)
City				
City Operation	9.05000	$ 2,925.87	$ 2,212.03	$ (713.84)
Infrastructure	2.05930	$ 665.77	$ 503.34	$ (162.43)
Refuse	0.90000	$ 290.97	$ 219.98	$ (70.99)
Admin Fee		$ 29.26	$ 22.12	$ (7.14)

RE-CAP/SUMMARY

	City	County/State	Total
PILOT	$ 2,957.47	$ 9,614.53	$ 12,572.00
Sub-Total	**$ 2,957.47**	**$ 9,614.53**	**$ 12,572.00**
		LESS: PRIOR AD VALOREM	**$ 16,629.09**
		TOTAL REDUCTION	**$ (4,057.09)**

Lake Harbor Apartments (Charlevoix, MI)

PILOT Calculation

RENTAL INCOME			
Gross Rental Income - Residential		$143,712	
Other Income - Residential		$2,460	
Interest Income		$0	
Less Vacancy	8%	($11,497)	
NET RENTAL INCOME			**$134,675**
OPERATING EXPENSES			
Administration			
Accounting		$5,775	
Advertising		$465	
Legal		$975	
Management Fee		$11,126	
Management Salaries & Payroll Taxes		$4,613	
Office Supplies/Postage		$820	
Telephone		$912	
Other		$456	
Total Administrative Costs		**$25,142**	
Operating			
Electricity		$2,190	
Water/Sewer		$6,150	
Gas		$11,395	
Trash Removal		$1,423	
Other (Describe)		$0	
Total Operating Expenses		**$21,158**	
Maintenance			
Extermination		$180	
Grounds		$520	
Repairs		$2,170	
Maintenance Salaries/Payroll Taxes		$10,684	
Snow Removal		$3,500	
Maintenance Supplies		$3,075	
Decorating		$975	
Other (Describe):		$0	
Total Maintenance Expenses		**$21,104**	
Fixed			
Real Estate Taxes		$0	
Payment in Lieu of Taxes (PILOT)		$12,572	
Insurance		$3,000	
Other		$1,023	
Total Fixed Expenses		**$16,595**	
TOTAL OPERATING EXPENSES			**$83,999**

Lake Harbor Apartments (Charlevoix, MI)

PILOT Calculation

REPLACEMENT RESERVE		
Replacement Reserve	$7,200	
Total Replacement Reserve		**$7,200**
DEBT SERVICE		
Mortagage Principle & Interest	$37,772	
Total Debt Service		**$37,772**
RETURN TO OWNER		
Return to Owner (Maximum)	$2,760	
Total Debt Service		**$2,760**
OPERATING CASH FLOW (LOSS)		**$2,944**

PILOT CALCULATION

Gross Rental Income	$143,712	
Less Vacancy Loss	($11,497)	
Less Owner-Paid Utilities:		
Electricity	($2,190)	
Water/Sewer	($6,150)	
Gas	($11,395)	
Net Annual Shelter Rents		$112,480
PILOT Service Charge Rate	X	11.18%
PILOT Charge		**$12,572**

CITY OF CHARLEVOIX

COUNTY OF CHARLEVOIX, MICHIGAN

Minutes of a regular meeting of the City Council of the City of Charlevoix, County of Charlevoix, Michigan, held in the City Office located at 210 State Street, Charlevoix, Michigan, on the _____ day of _____, 2013, at 7:00 p.m. Local Time.

PRESENT: Members: _____

ABSENT: Members: _____

The following preamble and ordinance were offered by Member _____ and supported by Member _____:

ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE THE PAYMENT OF AN ANNUAL SERVICE CHARGE IN LIEU OF TAXES FOR RESIDENTIAL UNITS SERVING LOW INCOME OR MODERATE INCOME PERSONS IN ACCORDANCE WITH THE STATE HOUSING DEVELOPMENT AUTHORITY, ACT 346 OF THE PUBLIC ACTS OF MICHIGAN OF 1966, AS AMENDED, AND MATTERS RELATED THERETO

THE CITY OF CHARLEVOIX ORDAINS:

Section 1. Purpose. This Ordinance authorizes and approves an annual service charge in lieu of taxes for residential housing developments that: (a) serve Low Income or Moderate Income Persons (as defined in the State Housing Development Authority Act, Act 346 of the Public Acts of Michigan of 1966, as amended, and this Ordinance); (b) are financed or assisted by USDA-RD or the Authority in accordance with Act 346; (c) are located within the City of Charlevoix; and (d) comply with this Ordinance.

Section 2. Title. This Ordinance shall be known and cited as the "City of Charlevoix Tax Exemption Ordinance."

Section 3. Preamble. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for low income citizens and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with Act 346. The City is authorized by Act 346 and this Ordinance to establish or change the annual service charge to be paid in lieu of taxes by any and all classes of housing exempt from taxation under Act 346 at any amount it chooses not to exceed the taxes that would be paid but for Act 346. It is further acknowledged that housing for low income persons and families is a public necessity, and as the City will be benefitted and improved by such housing, the encouragement of the same by providing certain real-estate tax exemptions for

such housing is a valid public purpose; further, that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of housing developments which are constructed and financed in reliance on such tax exemption.

The City acknowledges that T J Lake Harbor Limited Dividend Housing Association Limited Partnership (the "Sponsor" as defined in Section 4 of this Ordinance) has committed to rehabilitate, own and operate a housing development identified as "Lake Harbor Apartments" on certain property located on 637 Petoskey Avenue, Charlevoix, Michigan, which is legally described in Section 4.G. of this Ordinance, to serve Low Income or Moderate Income Persons, and that the Sponsor has offered to pay and will pay to the City, on account of the Housing Development, an annual service charge for public services in lieu of all taxes.

Section 4. Definitions. The terms used within this Ordinance shall have the following meanings:

A. "Act" means the State Housing Development Authority Act, being Act 346 of the Public Acts of Michigan of 1966, as amended.

B. "Annual Shelter Rents" means the total actual collections during each calendar year from all occupants of a housing development representing rents or occupancy charges, which rental amounts shall be exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants.

C. "Authority" means the Michigan State Housing Development Authority.

D. "Class" means the Housing Development known as Lake Harbor Apartments for Low Income or Moderate Income Persons.

E. "Contract Rents" are as defined by the U. S. Department of Housing and Urban Development in regulations promulgated pursuant to the U. S. Housing Act of 1937, as amended.

F. "Federally-Aided Mortgage" means any of the following:

(i) A below market interest rate mortgage insured, purchased, or held by the Secretary of the Department of Housing and Urban Development ("HUD") or United States Department of Agriculture – Rural Development ("USDA-RD");

(ii) A mortgage receiving interest reduction payments provided by the HUD or USDA – RD;

(iii) A Housing Development to which the Authority allocates low income housing tax credits under Section 22b of the Act; or

(iv) A mortgage receiving special benefits under other federal law designated specifically to develop low and moderate-income housing, consistent with the Act.

G. "Housing Development" means a development which contains a significant element of housing for persons of low income and such elements of other housing, commercial, recreational, industrial, communal, and educational facilities as the Authority determines to improve the quality of the development as it relates to housing for persons of low income. For the purposes of this Ordinance, "Housing Development" means Lake Harbor Apartments located on the property legally described as:

> Land located in the City of Charlevoix, County of Charlevoix, and State of Michigan, described as: Commencing at a 1 inch iron bar (set by Robinson) at the East quarter of Section 23, Town 34 North, Range 8 West; thence on a bearing of West along the East and West quarter line of said section, as monumented, 1320.32 feet to a nail on the East eighth line of said section, as monumented; thence South 0°12'44" West along said eighth line, 297-34 feet (recorded as 297.0 feet) to a concrete monument, being the Point of Beginning of this description; thence continuing along said eighth line, as monumented, South 0°58'24" West 33.20 feet to a concrete monument recorded as being 1321.0 feet West and 330.0 feet South of the quarter corner between Sections 23 and 24, Town 34 North, Range 8 West; thence North 89°46'01" West 161.20 feet (recorded as 161.62 feet) to a concrete monument; thence South 0°34'28" East along the Easterly line of the former A. D. Cruickshank property 320.75 feet (recorded as 321.38 feet) to a concrete monument on the Northwesterly line of Highway U.S. 31; thence North 69°40'46" East along said highway line, 340.27 feet recorded as 339.37 feet) to a l/2 inch rod on the Westerly line of "CHEZ CHARLEVOIX" Condominium as recorded in Liber 232, Page 955, Charlevoix County Records; thence North 0°04'56" West along said Westerly condominium line 295.21 feet (recorded as 294.99 feet) to a 1/2 inch rod; thence South 69°25'38" West 171.03 feet (recorded as 169.73 feet) to the point of beginning; being a part of the West Half of the Southeast Quarter of Section 23, Town 34 North, Range 8 West.

H. "Low Income or Moderate Income Persons" shall be as defined in the Act, as amended.

I. "Sponsor" means person(s) or entities which have applied to the Authority for the Tax Credits to finance a Housing Development. For the purposes of this Ordinance, the Sponsor is T J Lake Harbor Limited Dividend Housing Association Limited Partnership.

J. "Tax Credits" means the low income housing tax credits made available by the Authority to the Sponsor for rehabilitation of the Housing Development by the Sponsor in accordance with the Low Income Housing Tax Credit Program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.

K. "USDA-RD" means the United States Department of Agriculture, Rural Services Division.

L. "Utilities" means fuel, water, sanitary sewer service and/or electrical service, which are paid by the Housing Development.

Section 5. Class of Housing Development. This Ordinance shall apply only to the Housing Development to the extent that the Housing Development provides housing for Low Income and Moderate Income Persons and is financed or assisted by USDA-RD or the Authority pursuant to the Act.

Section 6. Establishment of Annual Service Charge.

A. The City acknowledges that the Sponsor and USDA-RD and/or the Authority have established the economic feasibility of the Housing Development in reliance upon the enactment and continuing effect of this Ordinance and the qualification of the Housing Development for exemption from all property taxes and payment of an annual service charge in lieu of taxes in an amount established in accordance with this Section. In consideration of the Sponsor's offer to rehabilitate, own and operate the Housing Development, the City agrees to accept payment of an annual service charge for public services in lieu of all ad valorem property taxes that would otherwise be assessed to the Housing Development under Michigan law.

(1) Effective upon the adoption of this ordinance and subject to the receipt by the City of the "Notification of Exemption" (or such other similar notification) by the Sponsor and/or the Authority, the annual service charge shall be the greater of eleven point one eight percent (11.18%) percent of Annual Shelter Rents; or $12,572 increased at the rate of 2% per year (as detailed in the schedule below). The property shall not benefit from this ordinance until the property has transferred to the Sponsor and the planned renovations have commenced. The PILOT ordinance shall commence for the next calendar year following the commencement of renovations. Until such time the property shall continue to pay ad valorem taxes.

Year of Agreement	Calendar Year	Annual Charge	2% Annual Increase	Year of Agreement	Calendar Year	Annual Charge	2% Annual Increase
1	2014	$ 12,572.00	$ -	10	2023	$ 15,025.20	$ 294.70
2	2015	$ 12,823.50	$ 251.50	11	2024	$ 15,325.80	$ 300.60
3	2016	$ 13,080.00	$ 256.50	12	2025	$ 15,632.40	$ 306.60
4	2017	$ 13,341.60	$ 261.60	13	2026	$ 15,945.10	$ 312.70
5	2018	$ 13,608.50	$ 266.90	14	2027	$ 16,264.10	$ 319.00
6	2019	$ 13,880.70	$ 272.20	15	2028	$ 16,589.40	$ 325.30
7	2020	$ 14,158.40	$ 277.70	16	2029	$ 16,921.20	$ 331.80
8	2021	$ 14,441.60	$ 283.20	17	2030	$ 17,259.70	$ 338.50
9	2022	$ 14,730.50	$ 288.90	18	2031	$ 17,604.90	$ 345.20

B. The Housing Development, and the property on which it is constructed, shall be exempt from all property taxes from and after the commencement of rehabilitation of the Housing Development by the Sponsor under the terms of this Ordinance.

Section 7. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 6, if any portion of the Housing Development is occupied by other than Low Income and Moderate Income Persons, the full amount of the taxes that would be paid on those units of the Housing Development if the Housing Development were not tax exempt shall be added to the service charge in lieu of taxes.

Section 8. Contractual Effect of Ordinance. Notwithstanding the provisions of Section 15(a)(5) of the Act to the contrary, and subject to the terms of this Ordinance including, but not limited to Section 11 herein, this Ordinance constitutes a contract between the City and the Sponsor to provide an exemption from ad valorem property taxes and to accept the payment of an annual service charge in lieu of such taxes, as previously described in this Ordinance. It is expressly recognized that the Authority and USDA-RD are third party beneficiaries to this Ordinance. By accepting a service charge in lieu of taxes, the Sponsor and its successors in interest in the property shall be deemed to have agreed, as a matter of contract, to all of the provisions of this ordinance.

Section 9. Payment of Service Charge. The service charge in lieu of taxes shall be payable to the City in the same manner as ad valorem property taxes are payable, except that the annual payment shall be paid on or before May 1 of each year for the previous calendar year.

Section 10. Duration/Failure to Pay.

A. Subject to subsection B, below, this Ordinance shall remain in effect and shall not terminate for a maximum term of 18 years and so long as the Housing Development remains subject to a Federally Aided Mortgage and so long as the housing development submits the required annual notification of exemption pursuant to M.C.L. 125.1415a(1), as amended. The term of this Ordinance shall commence upon the issuance of the Notification to Local Assessor of Exemption as issued by the Authority.

B. This Ordinance may be terminated if rehabilitation of the Housing Development does not commence within two (2) years from the effective date of this Ordinance; or if the renovations are not completed within one year from the start of rehabilitation.

C. Notwithstanding anything contained herein to the contrary, if the Sponsor fails to pay the final adjusted service charge in lieu of taxes granted hereunder, or fails to provide the verification of the calculations used to make the payment, and such failure continues after thirty (30) days of written notice of such failure to the Sponsor, the service charge in lieu of taxes granted by this Ordinance will automatically be terminated. Written notice shall be sent to:

T J Lake Harbor LDHA LP
605 S. Capitol Avenue
Lansing, MI 48933

and

MSHDA
Attn: Director of Legal Affairs
735 East Michigan Avenue
Lansing, MI 48909

If the Sponsor or its successors do not correct the failure or failures as provided in the written notice, the effective date of termination shall be thirty (30) days from the date of mailing of the written notice. The City shall file a Notice of Termination to the Sponsor of the Housing Development and the Authority, by certified mail. If the service charge in lieu of taxes is terminated, then, in addition to the termination of the service charge, the City in its discretion shall have the right to either (a) prospectively impose upon the property all taxes which would have been applicable to the property if the service charge in lieu of taxes had not been granted or (b) place a lien on the property for all unpaid service charges and record a notice of the lien with the Register of Deeds. The lien may be enforced as if the amount of the lien were a mortgage and shall include the right to foreclose by advertisement. The amount of the unpaid service shall accrue interest at the maximum interest rate authorized by law for an unsecured debt with interest beginning on the effective date of termination. Nothing in this ordinance shall restrict the rights of the City to exercise other remedies authorized by law for the collection of unpaid monies authorized by law for breach of contract. Regardless of the remedy chosen by the City, all costs, including attorney fees, incurred by the City after the effective date of termination, which relate to the exercise of its rights under this ordinance or as otherwise provided by law, shall be added to the lien amount or any court judgment.

Section 11. Filing of Annual Audit. The Sponsor, or its successor, shall file a copy of any and all annual audits required to be provided to the federal government, the State of Michigan, and/or the Authority simultaneously with the City. The audit shall include detail with respect to occupancy of the Housing Development, Annual Shelter Rents received from the Housing Development, and the cost for utilities during the audit period.

Section 12. Publication; Effective Date. This Ordinance shall become effective the day following its publication or the day following publication of a summary of its provisions in a newspaper of general circulation in the City.

Section 13. Repeal. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

AYES: Members: _____

NAYS: Members: _____

Passed and adopted by the City of Charlevoix on _____, 2013.

_____
_____, Mayor

_____
_____, City Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF CHARLEVOIX)

I, the undersigned, the duly qualified and acting Clerk of the City of Charlevoix, Charlevoix County, Michigan, do hereby certify that the foregoing Ordinance was adopted by City of Charlevoix at a regular City Council meeting duly held on the ___ day of _____, 2013, and that the meeting was held in compliance with notice provisions and all other requirements of Act 267 of the Public Acts of 1976, as amended. I hereby certify that I published the Ordinance in the _____ on the ____ day of _____, 2013.

_____
_____, City Clerk

CHARLEVOIX CITY COUNCIL
AGENDA ITEM

AGENDA ITEM TITLE: Discussion Regarding Grand Traverse Band of Ottawa and Chippewa Indians Grant Applications

DATE: June 17, 2013

PRESENTED BY: Bart Rypstra, Circle of Arts1
Kathleen Dvoracek, St. Mary School

ATTACHMENTS: None

BACKGROUND INFORMATION: Over the past 6-7 years the City has submitted numerous grant applications to the Grand Traverse Band of Ottawa and Chippewa Indians. In the past, the City has been successful in receiving grant dollars through this organization. The grant applications are due late June. All grant applications must go through local governments for their sponsorship.

The City has received two grant applications for Council's consideration:

Circle of Arts	Scholarships and tuition assistance for art classes and Circle Camp	$12,500.00
St. Mary School	Purchase of 25 iPads and accessories; 3 Apple TV's, PowerSync Cart, and an IMAC computer	$21,656.95

RECOMMENDATION: Both proposed grants have a benefit to the community. If Council is supportive, a motion could be made to submit grant applications to the Grand Traverse Band of Ottawa and Chippewa Indians for the Circle of Arts and St. Mary School.

CHARLEVOIX CITY COUNCIL
AGENDA ITEM

AGENDA ITEM TITLE: Consideration of Contract with Charlevoix City Band

DATE: June 17, 2013

PRESENTED BY: Charlevoix City Band Members

ATTACHMENTS: Letter from Charlevoix City Band
Draft Contract

BACKGROUND INFORMATION:

Residents of the City of Charlevoix have been entertained by the Charlevoix City Band for generations. The Charlevoix City Band entertains residents in East Park on Tuesday evenings during the summer. Charlevoix City Band shall use the above money to help defray the costs of providing its musical programs to Charlevoix residents and visitors.

The 2013-14 budget has $4,000 allocated for the Charlevoix City Band.

RECOMMENDATION:

Staff requests the City Council to make a motion directing the Mayor to sign the proposed contract.

RECEIVED
MAY 16 2013
CITY OF CHARLEVOIX

April 23, 2013

Office of the City Manager

City of Charlevoix

This letter constitutes the request for funding for the 2013 season of the Charlevoix City Band.

Evelyn Wujcik, President

Ron Winchester Vice President

CONTRACT

THIS CONTRACT is effective on the _____ day of _____, 2013 between the City of Charlevoix, a Michigan home rule city, whose address is 210 State Street, Charlevoix, Michigan 49720 (City) and the Charlevoix City Band, a Michigan nonprofit corporation, whose address is 06685 M-66, Lot #108, Charlevoix, Michigan 49720.

Recitals

A. Pursuant to MCLA 117.3(j); MSA 5.2073(j) and Article I, Section 1.6 of the City Charter the City is authorized to provide for the peace and health and for the safety of persons and property within the City and to expend funds for that purpose.

B. Charlevoix City Band provides music in the Clarence Odmark pavilion for the residents and visitors of the City of Charlevoix during the Summer season.

C. The parties desire to act cooperatively in providing the above musical services to citizens in the City.

Agreement

NOW, THEREFORE, in consideration of the mutual promises contained in this Contract, the parties hereby agree as follows:

1. The City shall pay to Charlevoix City Band the sum of Four Thousand and 00/100 Dollars ($4,000.00).

2. Charlevoix City Band shall provide not less than eight musical programs during the forthcoming summer season and shall use the above money to help defray the costs of providing those musical programs to Charlevoix residents and visitors.

CITY OF CHARLEVOIX

_____
Date

By: _____
Norman L. Carlson, Jr. Mayor

CHARLEVOIX CITY BAND

_____
Date

By: _____
Evelyn Wujcik, President

_____
Date

By: _____
Ron Winchester, Vice-President

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve a Resolution Adopting Final Wastewater Treatment Plant Improvement Project Plan

DATE: June 17, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS: Resolution

BACKGROUND INFORMATION: After holding a Public Hearing soliciting comments on the Project Plan for Wastewater Treatment Plant Improvements on June 3, 2013, City Council needs to make a motion to pass the attached resolution to formally adopt the Project Plan.

The City Manager will be designated the authorized representative.

RECOMMENDATION: Motion to Approve Resolution # _____, A Resolution Adopting a Final Project Plan for Wastewater Treatment Plant Improvements and Designating an Authorized Project Representative.

Motion by Councilmember ___, seconded by Councilmember ____, to approve Resolution 2013-06-xx as follows:

CITY OF CHARLEVOIX
RESOLUTION NO. 2013-06-xx
A RESOLUTION ADOPTING A FINAL PROJECT PLAN
FOR WASTEWATER TREATMENT PLANT IMPROVEMENTS AND
DESIGNATING AN AUTHORIZED PROJECT REPRESENTATIVE

WHEREAS, the City of Charlevoix recognizes the need to make improvements to its existing Wastewater Treatment Plant; and

WHEREAS, the City of Charlevoix authorized Prein&Newhof to prepare a Project Plan, which recommends: Construct basic plant upgrades in Headworks, Primary Settling, Aeration, Final Settling, Disinfection, Sludge Digesters, Sludge Thickening, Sludge Storage, Administrative Functions and SCADA, Odor Control, Site Lift Station Force Main, and Electrical and HVAC; Construct and implement an advanced wastewater treatment system including aeration tanks and air and piping systems that will enable the Wastewater Treatment Plant to meet the NPDES permit limits in accordance with the schedule of compliance; and

WHEREAS, said Project Plan was presented at a Public Hearing held on June 3, 2013, and all public comments have been considered and addressed;

NOW THEREFORE BE IT RESOLVED, that City of Charlevoix formally adopts said Project Plan and agrees to implement the selected alternative.

BE IT FURTHER RESOLVED, that the City Manager, a position currently held by Robert Straebel, is designated as the authorized representative for all activities associated with the project referenced above, including the submittal of said Project Plan as the first step in applying to the State of Michigan for a revolving fund loan to assist in the implementation of the selected alternative.

RESOLVED, this 3rd day of June, A.D 2013.

Yeas:
Nays:
Abstain:
Absent:

State of Michigan)
) ss
City of Charlevoix)

CERTIFICATION

I, the undersigned, the Clerk of the City of Charlevoix, Charlevoix County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Charlevoix, County of Charlevoix, State of Michigan, at a regular meeting held on June xx, 2013, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267 of the Michigan Public Acts of 1976.

Dated: 06/12/2013

_____
Carol A. Ochs, City Clerk

CHARLEVOIX CITY COUNCIL
AGENDA ITEM

AGENDA ITEM TITLE: Consideration to approve proposal for fire hydrant painting

DATE: June 17, 2013

PRESENTED BY: Patrick Elliott

ATTACHMENTS: 1. Bid Tabulation

BACKGROUND INFORMATION: In the approved 2013/14 budget staff included $18,000.00 to sandblast, prime and paint a portion (140) of the City owned fire hydrants. The reason for completing this work is for general aesthetics of our hydrants and the fact that there are numerous layers of paint, which in some cases has made it difficult to easily operate the hydrant nut (this is what opens or closes the valve) or to remove the caps to attach a fire hose.

Earlier this season we advertised for this service and on May 8, 2013 we opened five, sealed, bids (see attachment). As you can see from the wide range in prices there is a drastic difference in the approach to preparing and painting fire hydrants from company to company. The main difference in pricing is due to the means and methods the different companies use to contain the blasting material and contain the overspray while painting. The low bidder proposes to use a simple, small shroud with an opening on one side to access the hydrant during the blasting and the painting process. The higher bids are proposing a complex cover that is large enough for a person to work inside of while blasting and painting. By using this more complex, completely enclosed, structure there are additional air handling units to deal with the air being pumped in from the air compressor along with more complex air filtration devices due to a person actually working inside of this confined space. As you can see the addition of this complex equipment increases the cost considerably.

Due to the drastic difference in cost, I have spent an extra amount of time researching Giant Maintenance & Restoration, Inc., their references, and their means and methods of completing the work relative to any EPA or OSHO requirements for this type of work. After competing all of the aforementioned research it will be my recommendation that we accept the bid as provided.

In talking with a number of other communities that have hired Giant Maintenance and Restoration Inc., to complete similar work all of them have had very positive comments regarding communication, scheduling, site cleanliness, containment of overspray or blasting material and overall workmanship.

RECOMMENDATION: It is my recommendation that we accept the bid as provided by Giant Maintenance and Restoration, Inc., in the amount of $14,189.00 and schedule the first phase of our hydrant painting program.

Fire Hydrant Painting
Bid Opening
Clerk's Office/Main Floor

May 8, 2013

Bidder Name & Contact Info	Price Per Hydrant (140 Hydrants)	Total Bid
Giant Maintenance & Restoration, Inc. 300 N. Seymour Ave, Ste D Mundelein, IL 60060	101.35	14,189.00
Edward J. Painting 2900 Ravenswood Marysville, MI 48040	360.00	50,400.00
Davies Services/Ferguson Water Works 5350 N. Richmond St. Appleton, WI 54915	450.00	63,000.00
Environmental Management Specialists, Inc. 2409 Hunter St PO BOX 39 Huntertown, IN 46748	624.50	87,430.00
A&R Construction Justin Rogers 6159 Del Cano Dr. SE Grand Rapids, MI 49546	935.00	130,900.00

CHARLEVOIX CITY COUNCIL
AGENDA ITEM

AGENDA ITEM TITLE: Consideration to approve purchase of a one ton vehicle

DATE: June 17, 2013

PRESENTED BY: Patrick Elliott

ATTACHMENTS: Bid Tabulation

BACKGROUND INFORMATION: In the approved 2013/14 budget we allocated $33,200.00 to purchase a new, one ton, dump truck for the Electric Department. This truck is an all-purpose truck that is used by the crew to haul materials to and from job sites, transport topsoil, sand or gravel, and is also used to tow heavy equipment around like the new boring rig. The reason a one ton is required is due to the weight of material it will either haul or the weight of the trailer in combination with the piece of equipment it will tow. A smaller sized vehicle would either be under powered or illegal to tow the amount of weight this vehicle is required to tow.

The vehicle that is being replaced is a 1995 Ford, one ton dump. The 1995 vehicle will be handed down to either the Cemetery or the DPW and one of the older dump trucks will be retired.

In May we advertised for sealed bids and on May 30, 2013 we received and opened two sealed bids (see bid tabulation).

RECOMMENDATION: It is staff's recommendation that we accept the bid from Bob Mathers Ford in the amount of $32,857.80 and place our order for the vehicle

Electric Department Truck
Bid Opening
Clerk's Office/Main Floor

June 6, 2013

Bidder Name & Contact Info	Total Bid
Bob Mathers Ford 224 Water St. Boyne City, MI 49712	32,857.80
LaFontaine Motors 4000 W. Highland Rd Highland, MI 48357	33,129.70

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Cost of Service Studies – Electric, Sewer & Water

DATE: June 17, 2013

PRESENTED BY: Rick Brandi, City Treasurer RB

ATTACHMENTS: Proposals for Rate and Cost of Service Professional Studies for Electric, Sewer & Water Funds

BACKGROUND INFORMATION: The 2013-14 Budget included an update of the cost of service study for electric, sewer and water utilities (last done in 2008). The purpose of these studies is to insure that our rates reflect our costs appropriately for our customer utility rates and that our cash flows will provide appropriate funding for the future capital needs and our operational costs in each fund. The current study we are using is over 5 years old and needs to be updated. Costs to provide these services such as employee wage rates, equipment rental rates, fuel costs and employee benefit costs have all increased considerably since 2008.

The Wastewater (Sewer) portion (Charlevoix User Charge System) has already started due to the planned improvements to the Wastewater Plant with the ok from City Council for Prein Newhof's Engineering Proposal. The cost of the Sewer Study is rolled into the Engineering costs for Prein Newhof so that we can attempt to obtain S-2 grant monies for this portion of the design and financing of the Wastewater Plant Improvements. The other two proposals were budgeted for the current year and are within the budgeted amounts for the Cost of Service Studies.

RECOMMENDATION: The three proposals are to re-evaluate our cost of providing these services and are necessary to update our utility billing rates each year. We need to stay within the law governing rate setting and consider the long term capital improvements for each fund. City Council needs a motion to approve all three (3) of the proposals from Utility Financial Solutions totaling $29,900, with the $8,900 Sewer portion of the studies being already included in the contract with Prein Newhof.

Utility Financial Solutions

June 3, 2013

Mr. Richard Brandi
City of Charlevoix
210 State St.
Charlevoix, MI 49720

Dear Mr. Brandi,

It is a pleasure to submit this letter which outlines a scope of services to update the cost of service and rate design for the City of Charlevoix's electric utility. This letter includes a description of the services we will provide and the fees to complete the services.

Scope of Services

Electric Cost of Service Study

We will provide the City of Charlevoix with a cost to serve each class of customers.

A. ***Determination of utility revenue requirements*** - Revenue requirements will be based on actual 2013 expenditures adjusted for known changes in expenses.
B. ***Review and project sales and load information*** - kWh sales and revenue will be based on 2013 billing statistics adjusted for known changes and projected increases in sales.
C. ***Forecast purchased power costs*** - Purchased power costs will be projected based on 2013 system usage adjusted for changes identified in task B.
D. ***Determine appropriate rate of return on utility assets*** - We will discuss with management an appropriate rate of return on utility assets. We will provide management with cost of service impact at various rates of return.
E. ***Identify cost for providing services outside*** – We will review the rates for customers located outside the city limits.
F. ***Deliverables*** - Management will be provided a draft and final report on the cost of service study that will include discussion and analysis of the items listed above.
G. ***Presentation*** – We will present the cost of service results and proposed rate designs to the Board of Directors and management for approval. (Optional)
H. ***Rate Design*** - We will design rates to meet projected revenue requirements of 2014 based on projected sales. We will work with management and Board of Directors during the rate design process to meet objectives of utility.

Electric Unbundling Scope of Services

As part of the study we will update the unbundled electric rates for the City of Charlevoix in the following manner.

1) Power supply cost broken down between billing parameters.
2) Distribution related costs for substation, distribution system, transformer, services, and meter operation and maintenance.
3) Customer service costs for meter installation, meter reading, billing and collections, customer service and any direct cost for specific customer classes.
4) Peak system losses estimated on a seasonal basis.

Unbundled cost-based rates will be established for each class on the following potential billing basis:

a) Customer charge
b) Monthly kW billing demand
c) kWh's

Fees for Services

Update Cost of service and electric unbundling study	$12,000
Council Presentation (Optional)	500
(Optional Presentation– All Three Combined at the same time Electric, W and WW $1,000 total)	
Total Fees for Services	**$12,500**

Out of Pocket Expenses

Out of pocket expenses are included in the above stated amounts.

Thank you for this opportunity to serve you. If you are in agreement with the above stated scope of services and fees, please sign below and return. Please call with any questions or concerns.

Sincerely,

Utility Financial Solutions

Dawn Lund
Vice President

* *

Accepted By: _____

Utility Financial Solutions, LLC

January 31, 2013

Mr. Kevin Gritters
Prein&Newhof

RE: Charlevoix User Charge System

Dear Mr. Gritters;

It is a pleasure to submit this engagement letter to review the wastewater user charge system for the City of Charlevoix. As requested, this letter outlines the scope of services to complete these tasks. The scope of services is based on our discussions and our prior experience in working with the City of Charlevoix.

Scope of Services

We will update the Cost of Service Study, Financial Projections and Rate Design assuming issuance of debt for the costs upgrade the wastewater treatment plant. The updated cost of service and financial projection will incorporate the issuance of debt to fund the capital improvements.

A. ***Determination of utility revenue requirements*** - Revenue requirements will be projected and based on historical costs adjusted for anticipated changes and debt service
B. ***Review and project sales and load information*** - Sales and revenue will be based on current billing statistics adjusted for known changes and projected increases in sales
C. ***Forecast wastewater treatment costs*** – Wastewater treatment costs will be projected based on projected usages and costs
D. ***Capital Improvements*** – Capital improvements over the next five years in addition to the capital expenses for the plant improvements will be incorporated into the projection
E. ***Determine debt service payments and debt coverage ratios.*** We will project the debt service payments based on the anticipated interest rate and borrowings
F. ***Determine minimum cash reserve requirements.*** We will calculate the minimum amount of cash the utility should maintain in reserves
G. ***Funding of equipment replacement accounts-*** The funding of the equipment replacement accounts will be calculated and incorporated into the analysis
H. ***Deliverables*** - Management will be provided a summary report on the financial projection

User Charge System

We will work with management and MDEQ in developing the user charge system report and information required to complete the financing. The user charge system will include all the necessary rate components.

Fees for Services

Cost of Service Study	$ 3,500
Financial Projection Update	1,900
User Charge System for MDEQ	3,500
Total Fees for Cost of Service	**$ 8,900**

Thank you for this opportunity to serve you and please call with any questions or concerns.

Sincerely,

Utility Financial Solutions

Mark Beauchamp CPA, CMA, MBA

Utility Financial Solutions

June 3, 2013

Mr. Richard Brandi
City of Charlevoix
210 State St.
Charlevoix, MI 49720

Dear Mr. Brandi,

It is a pleasure to submit this letter which outlines a scope of services to perform a cost of service and rate design for the water utility of the City of Charlevoix. This letter includes a description of the services we will provide and the fees to complete the services.

Water Cost of Service Study – Scope of Services

We will provide the City of Charlevoix with a cost to provide customers with water services and determine the rates to charge to meet the utility's revenue requirements.

A. ***Determination of utility revenue requirements*** - Revenue requirements will be based on actual 2013 expenditures adjusted for known changes in expenses.
B. ***Review and project sales*** – Monthly historical sales information will be requested for the water utility. If necessary, the sales data will be normalized to adjust for known changes in billing quantities.
C. ***Develop allocation factors for each expense item*** – Each expense category will be analyzed to determine and appropriate allocation factor. We will develop the study using AWWA's approved methodology of Base/Extra Capacity for allocating costs to customer classes and identifying an appropriate rate structure.
D. ***Determine cost of service for customers*** – We will determine the cost-based rates for customer's class.
E. ***Five year financial projection*** – we will prepare a five-year financial projection that ties into the cost of service study in the test year. The projection will determine key financial targets such as: operating income, debt service ratio, recommended minimum cash reserves.
F. ***Capital Improvements*** – Capital additions and improvements will be incorporated in the five-year financial projection
G. ***Determine appropriate rate of return on utility assets*** – We will discuss with management an appropriate rate of return on utility assets. We will provide management with cost of service impact at various rates of returns.
H. ***Design rates and perform a proof of revenues*** – We will work with utility management and City Council in design of water rates. We will proof the revenues based on projected billing parameters to ensure the rates are sufficient to meet the utilities revenue requirements

I. ***Deliverables*** - Management will be provided a draft and final report on the cost of service study that will include discussion and analysis of the items listed above.
J. ***Presentation*** – We will present the cost of service results and proposed rate designs to the Board of Directors and management for approval. (Optional)

Fees for Services

Water Cost of Service	$8,000
Council Presentation (Optional)	500

(Optional Presentation– All Three Combined at the same time Electric, W and WW $1,000 total)

Total Fees for Water Services With Presentation $8,500

Out of Pocket Expenses

Out of pocket expenses are included in the above stated amounts.

Thank you for this opportunity to serve you. If you are in agreement with the above stated scope of services and fees, please sign below and return. Please call with any questions or concerns.

Sincerely,

Utility Financial Solutions

Dawn Lund
Vice President

* *

Accepted By: _____

Date: _____

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Terminate Dock Lease with Sunset Watersports, Inc.

DATE: June 17, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS:

1. Dock lease with Sunset Watersports, Inc.
2. June 7 letter from the City Manager
3. Termination Agreement

BACKGROUND INFORMATION: Brett Campbell, owner of Sunset Watersports, currently leases a commercial slip at the City Marina. The lease is in the second year of a three-year agreement set to expire at the end of the boating season in 2014. Mr. Campbell desires to not continue with his commercial charter service and wishes to terminate Boat Dockage Lease with the City.

Rent per season is $3,360 and is due June 1 of each year. To recruit another commercial charter service, the City would need to send out a Request for Proposal (RFP), evaluate the proposals, negotiate a contract and have Council approval. This would take several weeks with most of the tourist season over by the time we could approve a formal commercial lease agreement. Because of the loss in revenues, Mr. Campbell has agreed to pay the City $2,000 to nullify the dock lease for 2013 and 2014. Payment of this amount would offset some of the revenue losses but would also allow the City to rent the slip through the duration of the summer and fall. We think this is a good compromise that limits the financial impact to the City.

RECOMMENDATION: Motion to approve Termination of Boat Dockage Lease.

BOAT DOCKAGE LEASE

This Lease is between the City of Charlevoix, a Michigan municipal corporation, ("CITY") and Sunset Watersports, Inc., a Michigan corporation, along with its successors.

1. DESCRIPTION OF PREMISES - The dock site shall be designated by the CITY. The location shall be determined by the Harbormaster.

2. TERM - This Lease shall be deemed to have commenced on May 1, 2011, and shall terminate on September 30, 2014.

3. RENT –The annual rent for the dock for the 2011 – 2014 seasons, shall be Three Thousand Three Hundred Sixty & no/100's ($3,360.00) Dollars. Payment thereof shall be made by June 1st of each year.

4, USAGE - The dockage shall be for a commercial charter/cruise ship only. Any other use is prohibited. The dock space shall be used at least seventy-five (75) days a year. If a second boat is docked at the slip, rent shall double effective on the date on which the second boat use the dock site and the doubled rent shall continue for as long as the second boat uses the dock site.

5. SERVICES PROVIDED BY LESSEE - With prior approval of the CITY, the vessel at the dock may be serviced by electricity and water and such approval shall not be unreasonably withheld. However, Lessee shall be responsible for relocating all electrical and water plumbing and for all associated costs.

6. TERMINATION - Lessee acknowledges that the CITY has an interest in promoting public safety for those persons who will use Lessee's services since CITY docks are being used in connection with Lessee's business. Accordingly, the Lessee shall obtain all applicable state and federal licenses and continually comply with all local and state marine regulations which relate to Lessee's charter services. The vessel shall have a U.S. Coast Guard inspection certificate. During the term of this lease, if Lessee fails to maintain all required licenses and/or certificates or if Lessee violates any applicable marine regulation, then the CITY may declare that the Lessee has committed an incurable breech of this lease and may immediately terminate this lease. There shall be no refund of rent and rent shall continue until the effective date of lease termination.

7. UTILITIES - Lessee shall not be responsible to pay any utility charges for preexisting utilities that are provided by Lessor. This exemption from utility charges does not apply to additional utilities that may be installed by Lessee pursuant to paragraph 5 above.

8. ALTERATION OF PREMISES - Lessee shall also be responsible for welding any necessary cleats and/or bollards on the dock after obtaining prior approval of the CITY for installation of these items. Lessee may not make any alteration to the dock, including making improvements to the dock, without the prior written permission of the CITY.

9. WASTE AND NUISANCE PROHIBITED - Lessee shall comply with all applicable laws and shall not commit waste on or damage the premises nor create any nuisance by its use of the premises.

10. CITY'S RIGHT OF ENTRY - The CITY has the right to enter the dock site and any boat located at the dock site at reasonable times for inspection.

11. NOTICES - Notices required pursuant to this Lease may be given by personal service or sent by certified mail, e-mail or facsimile. Notice shall be deemed made on the date of personal service or on the date of mailing. For purposes of this provision, the CITY's address shall be 210 State Street, Charlevoix, MI 49720. Lessee's address shall be P. O. Box 1932, Traverse City, Michigan 49685. It should be the responsibility of each party to notify the other of any change of address.

12. INDEMNIFICATION - The Lessee agrees to indemnify and hold harmless the CITY and the State of Michigan, its departments, officers, agents and employees, from and against all claims for such loss, damage, injury or other casualty resulting from Lessee's negligence or willful misconduct or resulting from a breach by Lessee of its obligations hereunder.

13. THEFT/DAMAGE - The City is Charlevoix is not responsible for loss, damage, theft or pilferage related to any vessel or any other type of personal property of Lessee, employees of Lessee or any guest, invitee or customer of Lessee. The Lessee is responsible for properly securing its vessel.

14. MISCELLANEOUS - This Lease does not convey any interest in the property. The lease authorizes the use of the property by the Lessee only for the authorized activities, dockage of a commercial vessel and is subject to the conditions set forth by the

City of Charlevoix. Lessee shall be liable for damage to any City-owned property resulting from this commercial service. Damages resulting from the commercial service shall be repaired or replaced by the Lessee at his expense and to the satisfaction of the City of Charlevoix. The Lessee shall advise the City, in writing, of any additional repairs needed to the City Marina.

15. REMEDIES CUMULATIVE - In the event of a default under this Lease, the CITY shall have the right to exercise all remedies provided by law in addition to remedies provided in this Lease.

16. INSURANCE - Lessee shall maintain a public liability insurance which lists the CITY as a named insured. Lessee's policy of insurance must be for two million dollars ($2,000,000) for personal injury or death and two million dollars ($2,000,000) for property damage. The Lessee shall provide the CITY certificates of insurance on an annual basis and all policies of insurance shall require that the CITY be notified prior to a cancellation of the policy.

17. DEFAULT - If Lessee shall default in the performance of any covenant, except for rent, contained in the Lease and shall not cure such default within thirty (30) days after written notice from the CITY specifying the default complained of, then the CITY may terminate this Lease. If Lessee fails to make a timely rental payment, then the CITY shall give written notice to Lessee. If Lessee fails to cure the non-payment within five (5) days of the notice, then the CITY may terminate this Lease. Notice pursuant to this provision may be made as set forth in Paragraph 11.

18. DISPOSITION OF IMPROVEMENTS - Any improvements made to the premises shall remain the property of the CITY upon termination of this Lease.

19. SECTION CAPTIONS - All headings of this Lease are convenience only and are not actual terms of the Lease.

20. RESTRICTION ON ALCOHOLIC BEVERAGES - The Lessee will not allow the use, possession, sale or consumption of any alcoholic beverages on the leased premises.

21. NO WAIVER - One or more waivers of any covenant or condition by the CITY should not be construed as a waiver of a further breach of the same covenant or condition.

22. EFFECTIVE DATE - This Lease shall become effective upon the last of the parties to execute it.

IN WITNESS OF this Agreement, the parties have executed this document as set forth below.

WITNESSES:

Stephanie Brown

Linda Goddeke

THE CITY OF CHARLEVOIX

By: Robert J. Straebel

Robert J. Straebel, City Manager

SUNSET WATERSPORTS, INC.

By:

Brett Campbell

Charlevoix the Beautiful

CITY OF CHARLEVOIX
210 STATE ST. CHARLEVOIX, MICH. 49720

June 7, 2013

Brett Campbell, Sunset Watersports Inc.
P.O. Box 1932
Traverse City, MI 49685

Dear Mr. Campbell:

Your payment of $3,360 for a commercial dock slip for the 2013 boating season was due June 1, 2013 according to the attached contract. As you know, there is no early termination provision that gives the lessee the right to terminate the lease early. Therefore, you are officially in breach of the contract. There is also not a provision in the contract to pay $2,000 for a slip from July 15 to August 15 as you requested in a June 5 email.

However, any contract can be modified or terminated if all parties agree. If the lease is terminated early, the City will suffer lost rent until the end of the lease. Because of this I stated that I would recommend to City Council that you pay the City $2,000 for the 2013 boating season, I could endorse termination of the lease for this season and 2014. This covers the lost revenue for the City and also reduces your overall expense. I believe this is a reasonable compromise. This will need to be fully approved by our City Council.

Please contact me by end of the day June 11, 2013 as to which option you would like to pursue.

Sincerely,

Rob Straebel

Rob Straebel
City Manager

100% Recycled

TERMINATION OF BOAT DOCKAGE LEASE

The City of Charlevoix, a Michigan municipal corporation, ("CITY") and Sunset Watersports, Inc. (Sunset), a Michigan corporation, have an existing Boat Dockage Lease (the Lease), which expires on September 30, 2014. The parties have agreed to terminate the Lease pursuant to this document.

Accordingly, the parties agree as follows:

1. PAYMENT – Sunset shall immediately pay the CITY the sum of $2,000.00.

2. TERMINATION – Upon receipt of the CITY of the payment described above, the Lease shall be deemed terminated and all further rights and obligations of the parties shall be deemed released except as provided below.

3. PRESERVATION OF CLAIMS – All existing claims of the parties, if any, which currently exist for a breach of the Lease are preserved.

4. EFFECTIVE DATE - This document shall become effective upon the last of the parties to execute it.

IN WITNESS OF this Agreement, the parties have executed this document as set forth below.

WITNESSES:

THE CITY OF CHARLEVOIX

_____

By: _____
Robert J. Straebel, City Manager

SUNSET WATERSPORTS, INC.

_____

By: _____
Brett Campbell

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Status Report Regarding Fundraising Efforts for Costs Associated with Fireplace

DATE: June 17, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS: Email Dated June 10 from E.L Saenger, Jr.

BACKGROUND INFORMATION: As of June 13, 2013 the City has received four donations amounting to $5,270 for reimbursements for fireplace. We will be meeting with another prospective donor on Friday, June 14.

Attached with this agenda item is an email from resident E.L. Saenger, Jr. Upon review of the email, you will find various conditions placed on the donation. Most notable (and somewhat alarming?) is the condition that:

> *"the City either (i) takes action waiving the "Julee Roth $1,225.05 FOIA Fees" as a request 'considered as generally benefitting the public' or (ii)takes action adding said amount to the $20,000 + or – the city needs to recoup associated with the aborted Fireplace project (Approved Recoupment Amount),"*

With all due respect to Mr. Saenger, the City Manager strongly recommends <u>not</u> accepting his monetary donation. The City Council rightfully decided to pursue FOIA expenses from Ms. Roth through the Small Claims Court. Taking a monetary donation conditioned upon dropping a legal matter would set an extremely bad precedent, is unethical and just bad governance.

RECOMMEDATION: Discussion. The City Manager strongly recommends that the City decline Mr. Saenger's offer.

Linda Weller

From: gene6245@juno.com
Sent: Monday, June 10, 2013 4:35 PM
To: Linda Weller
Subject: Please pass this on to Mr. Straebel

Mr. Straebel:

I just read the 6/7/13 *Courier* and felt compelled to put the following in writing to you, as City Manager. Please inform Mayor Carlson, the City Attorneys, and the City Council (snail mail letter to follow):

Notwithstanding the unconscionable manner in which the City of Charlevoix has treated me since 1998 regarding entirely unrelated matters,

Provided [A] the City either (i) takes action waiving the "Julee Roth $1,225.05 FOIA fees" as a request 'considered as generally benefit ting the public' or, (ii) takes action adding said amount to the $20,000 + or - the city needs to recoup associated with the aborted Fireplace project (Approved Recoupment Amount) , [B] the donation referred to herein below can be structured so that it can be made on a Federal-tax deductible basis, and [C] upon receipt from all sources used to fund the Approved Recoupment Amount the City will officially consider that all costs expended by the City for which it is seeking 'offset' have been so offset, which action must occur before June 15, 2014, I hereby irrevocably pledge to contribute towards the Approved Recoupment Amount the lesser of (a) FIVE PERCENT (5%) of the total amount needed as determined by the City or (b) ONE THOUSAND TWO HUNDRED FIFTY DOLLARS ($1,250) without further condition or expectation on my part.

My word is my bond.

In other words, Mr. Straebel, this is a reasonably conditioned pledge up to 5% or $1,250 of the total amount the City needs, whichever amount is less, good for a little over one year, provided all the funds the City deems it needs to raise are raised. Thus, if the City, according to the *Courier*, has $170 already in hand, if you deem that and my pledge 'the end' I'll contribute $8.95. Similarly, if you raise, by example, $13,333.34, and the city "throws in 1/3 (the Terrill proposal I read about in the Courier, i.e., $6666.67), I'll contribute $1,052.63. You can either waive or add-in Julee Roth's FOIA costs, I don't care. I always intended to send her some money, but was too distracted.

Nonetheless, the purpose of this letter is to go on record: When, as a non-resident property owner, I attended one of the Council meetings last summer at which time Mr. Terrill suggested people would contribute to the City to offset the costs the City had already incurred on the 'Fireplace,' I raised my hand. I was "in" then and I'm "in" now. So, here is my pledge, in writing.

My word is my bond.

You can "bank" this pledge.

No fudging or wiggling on my part.

I'm sure your office will let me know what the next step should be. I'll be glad to tender a check "In Escrow" with Mr. Brandi, so long as there are no "Belvedere Avenue" mess-ups, if you get my drift.

I'll stick this in the mail tomorrow so you have a signed, written copy.

signed: E.L. Saenger, Jr. Note: The actual donor will be The Saenger Family Foundation

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussion Regarding Donation Acceptance Policy

DATE: June 17, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS: Donation Acceptance Policy

BACKGROUND INFORMATION: At the June 3, 2013 City Council meeting, City Council members discussed revising the attached Donation Acceptance Policy. Council members agreed to suggest names for a committee who would review and recommend revisions to the policy.

As there were no issues articulated in the meeting regarding specific policy provisions that Council would like to address, Council should also give specifics as to what issues the committee should address. Furthermore, to better understand the issues, it would be beneficial to appoint those Council members desiring changes to the policy to the committee.

The policy has not been implemented because we have not had any donations. Wouldn't it be better to review the effectiveness of policy after it has been put to use? The Fire Department will be bringing forth a boat donation for Council's consideration in the next few weeks. This might be an appropriate time to implement the policy and review its effectiveness after the discussion on the proposed boat donation.

RECOMMENDATION: Determination on whether Donation Acceptance Policy should be sent to a committee. If so, then we will need Council to discuss the following:

1. Input from Council on prospective members to be appointed to the committee;

2. Input from Council on specific issues or provisions that City Council would like to see addressed by the committee;

3. Appointment of committee members.

City of Charlevoix
Donation Acceptance Policy

1. Introduction

The City truly appreciates the generosity of donors who wish to make Charlevoix `a finer community for all. The residents of the City of Charlevoix have a proven track record in not only volunteering for many community initiatives and serving on various boards but also making generous donations. These efforts further enhance our quality of life and contribute to making "Charlevoix the Beautiful" a truly unique and special community. These invaluable efforts often make the difference between a good community and a great community. Examples of past donations include art work, vehicles, benches, trees and other items. The current list of donated amenities that have been partially or fully funded by the generosity of an individual, organization, or foundation is a long one. Charlevoix and its residents are very fortunate.

2. Purpose

The purpose of this policy is to establish guidelines, standards and procedures for the acceptance of personal property to the City, including the installation, long-term maintenance and operation of donated elements to the City. The City of Charlevoix (hereinafter the "City") desires to encourage donations while at the same time consider aesthetic impacts and on-going maintenance and operational costs. Any donated items become property of the City of Charlevoix.

Acceptance Guidelines and Standards established by this policy will apply to all donations made after the effective date of this policy, and shall also include the current proposal to construct a Community Fireplace in East Park.

3. Standards for New Donations

A. Definitions

Donation-an act or instance of presenting something as a gift or contribution either monetary or a physical element.

New Donations-New donations are those made after the adoption of this policy, but shall include the current proposal to construct a Community Fireplace in East Park.

B. Appearance and Aesthetics

The City and the community have an interest in ensuring the best appearance and aesthetic quality of their public lands and facilities. Donated elements and their associated acknowledgments should reflect the character of the park or facility. All

elements will be installed in such a manner that will not substantially change the character of a facility or its intended use.

C. Maintenance/Repair

Donated elements and their associated acknowledgement become City property. The community has an interest in ensuring that all elements remain in good repair. In addition, the community has an interest in ensuring that the short and long-term repair costs are reasonable and that repair parts and materials must be readily available. Donated elements must be of high quality to ensure a long life, be resistant to the elements, wear and tear, and to acts of vandalism.

D. Cost

The City has an interest in ensuring that the donor covers the full cost for the purchase, installation, and maintenance and operation during the expected life cycle of donated elements. Conversely, the City may determine that the value of a donated element far exceeds the maintenance and operational costs. Each donation is unique and should be evaluated on its own merits. Consequently, the City shall consider the following options when considering donations:

1. Require all estimated annual maintenance and operation costs be paid in advance by private donations or funding sources other than taxpayer dollars prior to use of the donated item;

2. At the time of the donation, the City must receive sufficient funds or financial commitments to cover anticipated on-going maintenance and operation costs of donated elements during their expected life expectancy.

3. The inherent value of the donation exceeds the annual maintenance and operational costs requiring no funds be contributed by the donator to the City.

4. Procedure for Making a Donation

The City Council shall have the authority to approve, deny or modify all donations. Prior to preparing a written proposal, the donor or donor's representative shall contact the City Manager's Office to discuss a proposed donation. A pre-application meeting may assist the potential donor in determining if a gift will meet the criteria contained in this policy. City Staff or City Council may request additional information such as but not limited, to scaled drawings, artist's rendition or other documents or submittals to better illustrate the exact nature of the donated elements. All submittal materials shall be paid by the donor or donor's representative. The City may choose to consult with other agencies or organizations in the review process. The City Council may also send any donation proposal to the appropriate board or committee for review and subsequent recommendation to the City Council.

If a gift appears to be in accordance with this policy, the donor or donor's representative will then submit a written proposal and meet with City Staff members to determine the specific nature of the donation, proposed location, and yearly maintenance and operational costs for review and processing. The written proposal, including a Staff report, will be sent to City Council for their decision.

5. Acceptance Guidelines, Acknowledgements/Memorial Plaques

A. Acceptance Guidelines

Based upon the City's best interests, the City may accept a donation element for a specific facility or location. When considering donations, the City Council shall consider the following criteria in its decision-making process:

1. Does the proposed donation substantially interfere with the intended current or future use of the land or facility where it is being proposed to be located;

2. Uniqueness of the proposal and its ability to attract visitors to the community;

3. Whether the donated element requires relocation or installation of other equipment or infrastructure to accommodate the donation;

4. A plan exists showing the available locations for donated elements;

5. Any substantial impacts on public health, safety or welfare.

6. Recommendation of the City Staff.

The City Council is not obligated to accept donations but will consider each donation based upon its own merits. Some City facilities may be fully developed and the opportunity for donations may not be available.

B. Acknowledgements/Memorial Plaques

Donation acknowledgments and memorial plaques shall be made of bronze and be of the highest quality, life and durability. In cases where bronze plaques are not feasible, other alternative types may be considered. Donation acknowledgements/memorial plaques and its text will be approved by the City Council with all acknowledgments being tasteful and subtle.

6. Installation

If the donated element, including donor acknowledgements/memorial plaques, requires any type of installation, the installation shall be completed by a licensed contractor and/or City Staff. The donor shall select and pay for the licensed contractor and the selection of the contractor shall be

approved by the City. The licensed contractor shall assume all responsibility for construction or placement of a donated element and shall hold the City harmless for any damages to property or buildings. If installation includes City Staff, the City may require reimbursement for personnel and equipment costs associated with installation of donated element. The installation will be scheduled at a time and date as determined by City Staff so as not to unnecessarily interfere with routine maintenance activities and in a manner that minimizes impacts to the community. City Staff shall oversee the installation process to ensure compliance with the proposal.

7. Removal and/or Relocation

This section applies to both existing and new donations. When it is in the City's best interest, the City reserves the right to restore, relocate, remove or relinquish donations that are no longer suited for their original purpose. Donations do not confer special privilege or rights for the donor or any other person or entity. Donations are graciously and unconditionally accepted without obligation.

8. Donations Impacting City Parks

If a donated physical element is being proposed for a City park, Council may hold a Public Hearing on the proposed donation. In determining whether a Public Hearing is appropriate, City Council shall consider whether there is a reasonable likelihood that the donated element would have one or more significant impacts on the park or the surrounding community. Significant impacts may included but are not limited to: impacts on viewsheds, size of the proposed element, noise generation, safety concerns or other impacts deemed appropriate by City Council. Purpose of the Public Hearing will be to solicit input from City residents on the proposed donation, the anticipated significant impacts and whether any adverse impacts can be lessened or eliminated.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve a Bid and Contract Documents for Apron Rehabilitation Project

DATE: June 17, 2013

PRESENTED BY: Scott Woody

ATTACHMENTS:

1. May 6, 2013 memo from MDOT
2. May 28, 2013 memo from MDOT regarding Apron Project Contract
3. Email from Kelly Bandra regarding requirement for lowest bidder

BACKGROUND INFORMATION: The Airport Terminal Steering Committee met on June 10, 2013 and voted 3-0 to postpone proceeding forward with the Airport Terminal Expansion and focus the City's efforts on a two-phase airport apron rehabilitation project.

Costs associated with the terminal expansion project amount to an estimated $711,000. The City costs on this project have escalated substantially since we first broached discussions with the FAA four years ago. Specifically, the local match doubled from 2.5% to 5% while eligibility for funding dropped from the 90% range to an estimated 58%. Additionally, the FAA has stated there will be no grant monies available to purchase Fresh Air Aviation's building and property because it is not located in runway protection zone (rpz). Fresh Air has stated that they expect the City to pay fair market value for their property and buildings if they were to move in to an expanded terminal. This would add substantial costs to the project.

Fortunately, the City has been working on a contingency plan and would like to complete major improvements to the apron. We have broken the apron project into two phases: 1. $200,000 apron project surrounding fuel farm for 2013; 2) $800,000 project for 2014. The local match has already been paid so no further funds will be needed for each phase.

The overall condition of the apron is substandard according to the State of Michigan's Pavement Report. Apron shows substantial cracking and needs to be addressed.

The City Attorney is currently reviewing said contract. $10,000 has been budgeted for the project with the City's local match of 5% less than budgeted amount. We have checked with MDOT regarding not accepting the lowest bid on the project. They are required to accept the lowest, qualified bid. If this were not a State bid, implementing the Local Bidder's Preference Policy would be an option for City Council.

RECOMMENDATION: A motion can be made as follows: "Contingent upon a legal review and approval of contract documents, City Council approves contract documents and awards bid to Hunt Brothers, Concrete Contractors in the amount of $179,168 for the first phase of apron rehabilitation project."

RECEIVED

MAY 23 2013

CITY OF CHARLEVOIX

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

May 6, 2013

Rob Strabel City Manager
Charlevoix Municipal Airport
210 State Street
Charlevoix, MI 49720

Dear Mr. Strabel:

Subject: Charlevoix Municipal Airport
Charlevoix, Michigan
Federal Project No.: 3-26-0017-1713
Contract ID: 15156-119654
Recommendation to Award

Bids were received on the subject contract on May 3, 2013. Attached for your records is one copy of the Recommendation to Award and the Bid Tabulations.

The contracts will be mailed to, who will be instructed to furnish this office with proper bonds and insurance certificates. Upon receipt of the signed contracts from the low bidder, we will forward the contracts to you for signature by the authorized local officials.

If you have any questions, please call me at (517) 335-9282.

Sincerely,

Kelly Badra

Kelly Badra, Construction Contracts Specialist
Airport Services Division

Attachment

cc: Paul Shapter, PE, QoE
Matt Bailey, Airport Manager
Kelly L. Crannell, PE, AERO Project Manager
file

BID TABULATION AND RECOMMENDATION FOR CONTRACT AWARD
MDOT-Airport Services Division

Charlevoix Municipal Airport
Charlevoix, Michigan

Federal Project No.: 3-26-0017-1713 **Federal Item No.:** AL **Contract ID:** 15156-119654

Description: Apron expansion and reconstruction – Phase I at Charlevoix Municipal Airport, Charlevoix, MI

Consultant: QoE Consulting
Paul Shapter, PE
4100 Capital City Boulevard, 2nd Floor
Lansing, MI 48906
Phone: 517-327-1980
Fax: 517-327-1982
Email: PShapter@QoEConsulting.com

Bids Submitted: Item No. 1305 054 - On Friday, May 3, 2013, at 10:30 a.m., LOCAL TIME, at the VANWAGONER BLDG, 1ST FLR ONE WEST CONF 425 W. OTTAWA ST., LANSING, MI 48933.

Engineer's Estimate-0% DBE ($163,850.00)

Bids Received: (Low Bid 9.35% above Engineer's Estimate)

Hunt Bros. Concrete Contractors	**$**	**179,168.00**
Rieth-Riley Construction Co., Inc.	$	180,838.00

Bids Opened By:)
Bids Recorded By:) Michigan Department of Transportation
Bids Read By:)

REMARKS: See attached Tabulation of Bids. The bids have been reviewed for bid improprieties according to the criteria in FAA's Order 5100.38. Notification of the Office of Inspector General will not be required.

Recommendation for Approval

1. As agent for the the Charlevoix Municipal Airport, MDOT-Airport Services Division recommends the award of Contract ID 15156-119654 as follows:

Hunt Bros. Concrete Contractors
5828 M-55
Whittemore, MI 48770-9467
P: 989-362-2457
F: 989-362-9467
Email: huntbros@tm.net

Amount: $179,168.00

2. Award of this contract shall not be effective until the awardee is notified in writing.

Recommended for Approval Date: May 6, 2013

Rick Hammond, Administrator
Airport Services Division
MICHIGAN DEPARTMENT OF TRANSPORTATION

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

May 28, 2013

Mr. Rob Straebel, City Manager
210 State Street
Charlevoix, MI 49720

Dear Mr. Straebel:

Subject: Charlevoix Municipal Airport
Charlevoix, Michigan
Project No.: 3-26-0017-1713
Contract ID: 15156-119654
Construction Contract

Enclosed for your review and approval are three (3) copies of Construction Contract No. FM 15-01-C56 (Hunt Brothers Concrete Contractors) for apron expansion and reconstruction – Phase I, at Charlevoix Municipal Airport, City of Charlevoix, Charlevoix County.

Please arrange for the authorized local official to sign each copy of the construction contract; however, do not date them at this time. Return all three copies to this office for further processing. MDOT-Aeronautics will forward dated copies for your records upon formal contract award by the State.

Be advised that no construction work shall commence until the official "Notice to Proceed" is issued by this office.

If you have any questions or concerns, please call me at (517) 335-9282.

Sincerely,

Kelly Badra, Construction Contract Specialist
Airport Services Division

Enclosures

cc: Kelly L. Crannell, PE, AERO Project Manager
file

MICHIGAN DEPARTMENT OF TRANSPORTATION

In accordance with Act 327 of 1945

MICHIGAN AERONAUTICS COMMISSION

AIRPORT PROGRAM

CONTRACT

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract Payment Express website (www.cpexpress.state.mi.us).

CONTRACT ID:	FM 15156-119654A	Item No.:
15156-119654	Federal Project No.: 3-26-0017-1713	1305 054
	Federal Item No.: AL	

Apron expansion and reconstruction - Phase I, at Charlevoix Municipal Airport, city of Charlevoix, Charlevoix County.

This AGREEMENT, Made this 17th day of May A.D., 20 13 by and between the City of Charlevoix, party of the first part, and Hunt Bros. Concrete Contractors, Inc., a Michigan Corporation, 5828 M 55, of Whittemore, MI 48770-9467, party of the second part.

WITNESSETH, That the party of the second part, for and in consideration of the payment or payments hereinafter specified, hereby agrees to furnish all necessary machinery, tools, apparatus and other means of construction, do all the work, furnish all the materials except as herein otherwise specified, and to complete, in strict accordance with the plans, specifications and proposal therefore, and to the satisfaction of the said party of the first part, the work described herein, it being understood and agreed that said plans, specifications and proposal and all addenda thereto are to be considered as a part hereof.

Said party of the first part further agrees to pay the said party of the second part for such extra work as may be ordered by the party of the first part or his authorized representative, prices for which are not included in the above items, the price or on the basis agreed upon before such extra work is begun.

It is further understood and agreed that time is of the essence of this contract, and that the work shall be so conducted and supervised by the party of the second part as to insure its completion in accordance with the following schedule, each item of work to be completed on or before the date named thereafter:

Start work within ten (10) days of the date specified in the written notice to proceed.

The entire contract shall be completed in/by twenty-one (21) calendar days.

Liquidated damages will be assessed at the rate of $500.00 per calendar day for failure to complete the contract within the specified time limits.

Neither the contractor nor his subcontractors shall discriminate against any employee or applicant for employment to be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of his age, except where based on a bona fide occupational qualification, or his race, color, religion, national origin, sex, height, weight, marital status, or disability; and they will require a similar covenant on the part of any Contractor or subcontractor employed in the performance of this contract. The parties further covenant that they will comply with the Civil Rights Act of 1964, being P. L. 88-352, 78 Stat.241 as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d. and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act and will require a similar covenant on the part of any Contractor or subcontractor employed in the performance of this contract.

IN WITNESS WHEREOF, The parties hereto have set their hands the day and year first above written.

City of Charlevoix

By: _____

_____

Item: 1305 054

Hunt Bros. Concrete Contractors, Inc.

Contractor Corporation

By: _____

Shawn Hunt

Secretary /Treasurer

This Contract shall not be valid, effective or binding until fully executed by both the Contractor and the Sponsor.

This information required by
Act 327 of 1945 in order
to obtain surety guarantee.

1383 (07/08)

MICHIGAN DEPARTMENT OF TRANSPORTATION

MICHIGAN AERONAUTICS COMMISSION

AIRPORT PROGRAM

BONDS

ITEM # **1305 054**

15156-119654 Charlevoix Municipal Airport

(State Contract ID) (Airport Name)

Bond No. 601058527

LIEN BOND

KNOW ALL MEN BY THESE PRESENTS, That We, Hunt Bros. Concrete Contractors, Inc., a Michigan Corporation as Principal, and The Ohio Casualty Insurance Company, an OH Corp, as Surety, are held and firmly bound unto the State of Michigan, Michigan Department of Transportation, Aeronautics Commission, and City of Charlevoix, Michigan, as obligee, in the sum of

One Hundred Seventy Nine Thousand One Hundred Sixty Eight Dollars And No Cents

="dollars, lawful money of the United States, to be paid to the said State of Michigan, Michigan Department of Transportation, Aeronautics Commission, or to its assigns, or to any person, firm or corporation who may furnish labor, materials, supplies for equipment, for camp or construction, and equipment on a rental basis, on account of and actually used in the performance of the contract hereinafter mentioned, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, and each and every one of them firmly by these presents.

Sealed with our seals and dated this 20th day of May, A.D. 20 13.

The condition of this obligation is such that if there shall be paid, as the same may become due and payable, all indebtedness which may arise from said principal to a sub-contractor or to any person, firm or corporation on account of any labor, material, supplies for equipment, for camp or construction, and rental of equipment, furnished and actually used in the performance of the contract to which this bond is attached, including extensions of time, (notice of which is hereby waived by the surety), then this obligation is to be void, otherwise to remain in full force and effect."

Hunt Bros. Concrete Contractors, Inc.

Corporation Principal

By Shawn Hunt, Secretary/Treasurer

By

By

The Ohio Casualty Insurance Company

Surety

By Robert G Chapman, attorney-in-fact

15156-119654 Charlevoix Municipal Airport

(State Contract ID) (Airport Name)

ENDORSEMENT

The provisions of the foregoing lien bond shall also apply to indebtedness described therein in the case of a subcontractor in which notice of the reliance of the security of the bond is not furnished within the time period provided in Act 213 of 1963, as amended, provided such notice is furnished within 60 days after final acceptance of the above described project by the owner or its authorized representative. Nothing in this endorsement shall be construed so as to limit the coverage provided for in said lien bond.

Hunt Bros. Concrete Contractors, Inc.

Corporation Principal

By Shaun Hunt, Secretary/Treasurer

By

By

The Ohio Casualty Insurance Company

Surety

By

Robert G Chapman, attorney-in-fact

Principal: Hunt Bros Concrete Contractors inc

POWER OF ATTORNEY

THE OHIO CASUALTY INSURANCE COMPANY

Agency Name: David Chapman Agency, Inc.

Obligee: MI DOT

Bond Number: 601058527

Know All Men by These Presents: That THE OHIO CASUALTY INSURANCE COMPANY, a New Hampshire Corporation, pursuant to the authority granted by Article IV, Section 12 of the Code of Regulations and By-Laws of The Ohio Casualty Insurance Company, do hereby nominate, constitute and appoint: David G. Chapman, Robert G. Chapman, Cloyd W. Barnes, Marcia J Miller, Nathan G. Chapman **of** Lansing, Michigan its true and lawful agent(s) and attorney(ies)-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed **any and all** BONDS, UNDERTAKINGS, and RECOGNIZANCES, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of said Company at their administrative offices in Keene, NH, in their own proper persons. The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(ies)-in-fact.

In WITNESS WHEREOF, the undersigned officer of the said The Ohio Casualty Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of said Company this 1st day of December, 2012.

THE OHIO CASUALTY INSURANCE COMPANY INCORPORATED 1919 NEW HAMPSHIRE

Gregory W. Davenport Assistant Secretary

STATE OF WASHINGTON
COUNTY OF KING

On this 1st day of December, 2012 before the subscriber, a Notary Public of the State of Washington, in and for the County of King, duly commissioned and qualified, came Gregory W. Davenport, Assistant Secretary of The Ohio Casualty Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposes and says that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Seattle, State of Washington, the day and year first above written.

K D RILEY COMM. EXP. NOTARY PUBLIC 12-09-2013 STATE OF WASHINGTON

Notary Public in and for County of King, State of Washington
My Commission expires December 9, 2013

This power of attorney is granted under and by authority of Article IV, Section 12 of the By-Laws of The Ohio Casualty Insurance Company, extracts from which read:

ARTICLE IV - Officers: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bond, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary.

Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of The Ohio Casualty Insurance Company effective on the 15th day of February, 2011.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

CERTIFICATE

I, the undersigned Assistant Secretary of The Ohio Casualty Insurance Company, do hereby certify that the foregoing power of attorney, the referenced By-Laws of the Company and the above resolution of their Board of Directors are true and correct copies and are in full force and effect on this date.
IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 20th day of May 2013.

THE OHIO CASUALTY INSURANCE COMPANY INCORPORATED 1919 NEW HAMPSHIRE

David M. Carey Assistant Secretary

15156-119654 Charlevoix Municipal Airport

(State Contract ID) (Airport Name)

Bond No. 601058527

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That We, Hunt Bros. Concrete Contractors, Inc., a Michigan Corporation, as Principal and The Ohio Casualty Insurance Company, an OH Corp as Surety, are held and firmly bound unto the City of Charlevoix and the State of Michigan, Michigan Department of Transportation, Aeronautics Commission, as agent in the penal sum of

One Hundred Seventy Nine Thousand One Hundred Sixty Eight Dollars And No Cents

dollars, lawful money of the United States, to be paid to the said City of Charlevoix and the State of Michigan, Michigan Department of Transportation, Aeronautics Commission, for the agent or to their certain attorney or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of May, A.D. 20 13.

The condition of this obligation is such that if the above named principal shall and will, well and faithfully, and fully, do, execute and perform the contract to which this bond is attached, according to the terms and conditions thereof, including extensions of time, (notice of which is hereby waived by the surety), then this obligation is to be void, otherwise to remain in full force and effect.

Hunt Bros. Concrete Contractors, Inc.

Corporation Principal

By Shawn Hunt, Secretary/Treasurer

By

By

The Ohio Casualty Insurance Company

Surety

By Robert G Chapman, attorney-in-fact

NOTE: If the principal is a co-partnership, each member must sign these bonds. If the principal is a corporation, evidence of the authority of officer signing must be attached or be on file with the Michigan Department of Transportion. The Surety Company shall attach a valid Power of Attorney of person or persons executing bond for the company.

Commission Received by: David Chapman Agency Inc

CONTRACT UNIT PRICES

LETTING: 130503
CALL : 054

CONTRACT	PROJECT(S)	CONTROL SECTION	FEDERAL PROJECT
15156-119654	119654A	15156	3-26-0017-1713

IN CONSIDERATION WHEREOF, SAID PARTY OF THE FIRST PART AGREES TO PAY TO SAID PARTY OF THE SECOND PART FOR ALL WORK DONE, THE FOLLOWING UNIT PRICES:

LINE NO	ITEM DESCRIPTION	ITEM CODE	QUANTITY	UNIT PRICE
	SECTION 0001			
0010	Mobilization and General Conditions	1000400	1.000 LS	32400.0000
0020	Safety and Security	1000410	1.000 LS	5975.0000
0030	Permits	1000535	500.000 Dlr	1.0000
0040	Electrical Handhole, With Cover, as Specified	1090550	2.000 Ea	4100.0000
0050	Misc. Underground Electtrical Duct, 3 Bank 2", Direct Burial	1107001	210.000 Lft	20.0000
0060	Unclassified Excavation	1520410	550.000 Cyd	18.0000
0070	Removal and Disposal of Concrete Pavement	1520472	90.000 Syd	2.7500
0080	Aggregate Base Course, Series 22AX, Compacted in Place 90% crushed	2080540	78.000 Cyd	33.0000
0090	Fine Grade & Compact Aggregate Base Course/Pulverized Bituminous Pavement	2080550	2240.000 Syd	2.0000
0100	Erosion Control, Silt Fence	2080625	30.000 Lft	2.8000
0110	Sawing Bituminous Pavement, Specified Dimensions	4000515	450.000 Lft	1.0000
0120	Pulverize Bituminous Pavement, Less Than 6" Thickness	4000541	1630.000 Syd	2.2500
0130	Bituminous Aggregate Surface Course, 20AAAX Composition	4110631	110.000 Ton	85.0000
0140	Portland Cement Concrete Pavement, 8" Non-Reinforced	5010512	1825.000 Syd	52.0000
0150	Misc. Turfing with Mixture and Rate, as specified	9017011	1600.000 Syd	0.7000
0160	Misc. Mulch Blanket, as specified	9087011	1600.000 Syd	0.7000

Linda Weller

From: Badra, Kelly (MDOT) [BadraK@michigan.gov]
Sent: Thursday, June 13, 2013 2:35 PM
To: Linda Weller
Subject: Airport Project

Rob,

I checked with Carol and she found the text below in the FAA AIP handbook. She also called Alex Erskine at the FAA to make sure that there are not any exceptions to the rule.

The FAA AIP Handbook states that:

"**903. COMPETITION IN PROCUREMENTS.** Title 49 CFR, Part 18.36(c) states "all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Part 18.36".

a. Practices considered to be restrictive of competition include but are not limited to:

(1) Unreasonable requirements on firms in order for them to qualify to do business;

(2) Noncompetitive pricing practices between firms;

(3) Organizational conflicts of interest;

(4) Unnecessary experience and bonding requirements;

(5) Unnecessary product or "brand name" specifications; and

(6) Preference to in-state or local bidders. "

Please let me know if I can be of further assistance.

Kelly Badra

Construction Contract Specialist
MDOT – Aeronautics – Airport Services Division
2700 Port Lansing Road
Lansing, MI 48906
P: 517-335-9282
F: 517-335-9764

MDOT wants to deliver outstanding customer service for Michigan's citizens.
Please take a minute to tell us how we are doing. Go to www.michigan.gov/mdot and click on 'How is MDOT Doing? Customer Satisfaction Survey'. Your opinion is very important to us.
Thank you.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE:	Introduction of Draft 2013 Zoning Ordinance/ Request to set public hearing.
DATE:	June 17, 2013
PRESENTED BY:	Mike Spencer, City Planner
ATTACHMENTS:	Ordinance No____ of 20013
	2013 Draft Zoning Ordinance

BACKGROUND INFORMATION:

The purpose of this agenda item is to introduce the new 2013 Draft Zoning Ordinance to City Council after nearly two years of meetings, discussions, research, public meetings, and four public hearings. The Draft Zoning Ordinance was first introduced to the Planning Commission in August of 2012. The Planning Commission has spent considerable time working through changes since last summer based on public comments, legal changes, and other amendments that the Planning Commission felt were in the best interests of the City. This zoning ordinance will repeal the existing zoning originally adopted in 1978, essentially replacing the entire ordinance.

This is a very important and lengthy document that will guide future development in the City. We understand due to the length of this draft you may want additional time for review, but please be aware that there are numerous projects that are awaiting adoption of this zoning ordinance so we have been under some pressure to complete this process. City Council can hold additional public meetings and hearings if you feel this is necessary.

Electronic copies of the draft are available on the City website. With the electronic copy, users can click on any section in the table of contents and it will jump to that section automatically. You can also click on the section and that will jump you back to the table of contents. Also please keep in mind that definitions are **bolded** throughout the ordinance so readers can refer back the term for clarification. The article number can be found on the top of each page.

SUMMARY OF MAJOR CHANGES:

- The Draft Zoning Ordinance is intended to carry out the goals and objectives of the 2011 Land Use Master Plan. The Zoning Ordinance is intended to guide responsible future growth and development, protect public health and safety, provide for efficient transportation, preserve and protect neighborhood character, prevent over-congestion

of structures, protect water quality, and encourage redevelopment of existing outdated structures.

- The Draft Zoning Ordinance is better organized and has much clearer language complemented by graphics to better define specific requirements.
- The Zoning Ordinance is compliant with all State of Michigan laws pertaining to planning and zoning, specifically the Zoning Enabling Act. (PA 110 if 2006)
- The Zoning Ordinance addresses unclear or missing language that has been discovered in administering specific requirements in the past.
- Numerous re-zonings are proposed at various locations throughout the City. These are proposed to accommodate changes in land use that have occurred since 1978, address economic changes, guide future development toward appropriate locations, encourage mixed-use developments, and promote higher density in appropriate locations. There is logic and specific rationale behind all proposed zone changes.
- Reduction in the number of zoning districts.
- Less restrictive setback requirements in residential and commercial zoning districts.
- Regulations to address solar panels and wind energy systems.
- Changes to type, number, and size of accessory structures allowed.
- Clear regulations on boathouses.
- New regulations for mineral extraction.
- New regulations for cell towers.
- Clear language on temporary buildings, uses, and special events.
- Changes to landscaping requirements for commercial and industrial zoned properties.
- Changes to parking requirements. Less restrictive parking requirements and the ability to do shared parking lots.
- Minor changes to sign regulations.
- Streamlined development plan review procedures.
- Changes to Special Land Use Review Procedures.
- New Planned Unit Development (PUD) review procedures and standards allowing for flexibility in zoning if specific community benefits can be achieved.
- New language on non-conforming lots, uses and structures.
- New regulations on sexually oriented businesses.
- Changes to Zoning Board of Appeals review procedures and standards.

AMENDMENTS BASED ON LEGAL REVIEW:

Jim Young has completed the initial legal review of the Zoning Ordinance on behalf of the City. The Planning Commission has made many amendments to the draft based on these legal concerns. Jim has had the opportunity to review the planning commission's proposed changes and there are still some legal concerns that need to be addressed. Staff will be working with Jim to create a memo summarizing recommended legal changes for the public and City Council to consider. We will have that memo available at the next meeting on July 1 that will explain the recommended legal changes.

AMENDMENTS TO THE R-4 ZONING-PLANNED HIGH DENSITY RESIDENTIAL:

One issue with the current draft that came up after the Planning Commission finalized their recommendation was the specific setback, lot coverage, and separation requirements for the R-4 Zone, which is intended for higher densities than what is typically found in single family residential areas. Traditionally developments in the R-4 zone in Charlevoix have been in the form of condominiums where buildings contain multiple units that are built up vertically. The Edgewater, La Croft, and Foster Boat Works are some examples of this. There is a nationwide demand for what are called clustered housing units (small separate single family homes) and townhome developments where there are common shared walls. We are seeing examples of this type of development being built in Traverse City, Petoskey and Harbor Springs. These structures are clustered together with smaller footprints and in many cases there are reduced setbacks. These developments have a number of advantages including helping to reduce urban sprawl in rural areas, promoting infill development in cities, and increasing the number of utility users where we have existing infrastructure. The City's Master Plan encourages higher density in the City, which is also a component of "smart growth" and "sustainable development." Each City has the ability to define what they consider high density and what type of development they want to encourage through zoning.

The current setbacks in the R-4 zoning were intended for condominium style developments and we would like to propose amendments to the setbacks that would promote higher density to accommodate townhomes and clustered housing developments. I will present these amendments to you at the July 1st meeting. Below are some examples of this type of development.

RECOMMENDATION:

Recommendation to hold a public meeting on July 1, to discuss recommended legal changes and modification of the R-4 section. Motion to set a public hearing for July 15, 2013 at 7PM in Council Chambers.

ATTACHMENT

CITY OF CHARLEVOIX

Ordinance No. _____ of 2013

AN ORDINANCE TO REPEAL THE CURRENT CHAPTER 51 OF TITLE V OF THE CHARLEVOIX CITY CODE AND ADOPT A NEW CHAPTER 51 WHICH WILL BE THE CITY'S NEW ZONING ORDINANCE AND TO CONTINUE THE APPOINTEES TO THE PLANNING COMMISSION AND ZONING BOARD OF APPEALS.

THE CITY OF CHARLEVOIX ORDAINS:

SECTION 1. Repeal of Existing Chapter 51.

Chapter 51 of Title V is hereby repealed in its entirety.

SECTION 2. Adoption of New Chapter 51.

A new Chapter 51 entitled City of Charlevoix Zoning Ordinance and which is attached is hereby adopted.

SECTION 3. Continuation of Appointments.

The persons currently serving on the Planning Commission and Zoning Board of Appeals shall continue to serve for the remainder of the term of his or her last appointment.

SECTION 4. Severability.

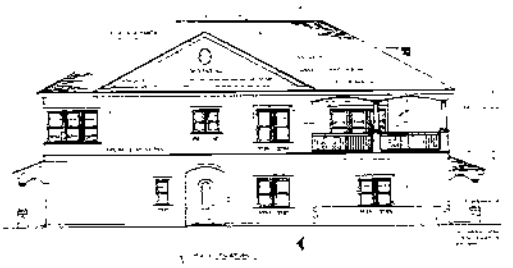
If any part, parts, section, sections, provision, provisions, clause or portion of this ordinance shall be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall neither affect the validity of this ordinance as a whole nor of any other part, section, clause, provision or portion of this ordinance.

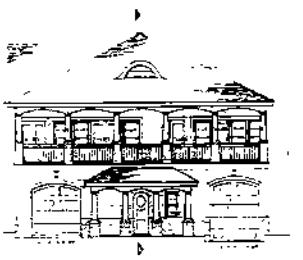
SECTION 5. Effective Date.

This Ordinance shall become effective thirty (30) days after its enactment.

CITY OF CHARLEVOIX ZONING ORDINANCE

Title V:	Planning and Zoning
Chapter 51:	Zoning





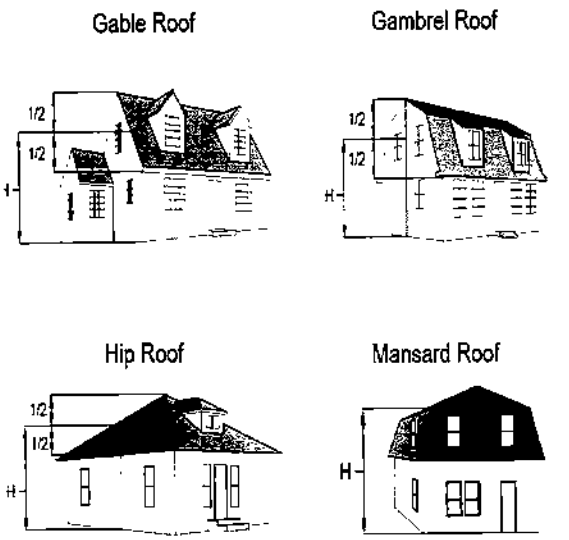


TABLE OF CONTENTS

PART I: INTRODUCTION

Article 1	**Purpose and Title**		**1-2**
	5.1.	Title	1
	5.2.	Short Title	1
	5.3.	Purpose	1
	5.4.	Scope	2
Article 2	**Definitions**		**3-19**
	5.5.	Construction of Language	3
	5.6.	Definitions A – B	3
	5.7.	Definitions C – D	5
	5.8.	Definitions E – F	8
	5.9.	Definitions G – H	10
	5.10.	Definitions I – J – K	11
	5.11.	Definitions L – M	11
	5.12.	Definitions N – O	13
	5.13.	Definitions P – Q	14
	5.14.	Definitions R – S	14
	5.15.	Definitions T – U – V	16
	5.16.	Definitions W – X – Y – Z	17

PART II: ZONING DISTRICTS

Article 3	**Mapped Districts**		**21-22**
	5.20.	City of Charlevoix Zoning Map	21
	5.21.	Zoning of Vacated Areas	22
	5.22.	Zoning of Annexed Areas	22
Article 4	**Residential Districts**		**23-27**
	5.25.	Intent	23
	5.26.	Schedule of Uses	23
	5.27.	Area, Height and Placement Requirements	25
Article 5	**Nonresidential and Mixed Use Districts**		**28-33**
	5.30.	Intent	28
	5.31.	Schedule of Uses	29
	5.32.	Area, Height and Placement Requirements	33
	5.33.	Additional SR, Scenic Reserve, District Requirements	33

Article 6 **Overlay Districts** **34-36**
5.40. Intent and Scope 34
5.41. Central Business District Overlay District 34
5.42. West Garfield Avenue General Commercial Overlay District 35
5.43. West Carpenter/State Street Industrial Overlay District 35
5.44. North Side Professional Office Overlay District 36
Article 7 **Use Requirements** **37-74**
5.45. Specific Use Requirements 37
5.46. Accessory Buildings and Uses 37
5.47. Residential Uses 49
5.48. Lodging, Dining and Entertainment Uses 55
5.49. Recreation and Open Space Uses 60
5.50. Retail Use - Leasable Area Greater Than 20,000 Square Feet 60
5.51. Office and Service Uses 61
5.52. Medical Marijuana Related Uses 62
5.53. Vehicle Related Uses 66
5.54. Industrial and Storage Uses 68
5.55. Other Uses 69

PART III: PROVISIONS GENERALLY APPLICABLE TO ALL DISTRICTS

Article 8 **General Provisions** **75-82**
5.60. Access 75
5.61. Building Regulations 75
5.62. Corner Clearance (Clear Vision Triangle) 76
5.63. Essential Services 76
5.64. Grading 76
5.65. Fences and Walls 76
5.66. Structure Height Calculations and Height Limits 78
5.67. Illegal Dwellings 78
5.68. Keeping of Animals 78
5.69. Projections into Required Yards 79
5.70. Site Excavation 79
5.71. Setback Requirements 79
5.72. Lot Coverage Requirements 80
5.73. Outdoor Storage 81
5.74. Temporary Buildings, Structures, Uses, Special Events 81

	5.75.	Through Lots	81
	5.76.	Voting Place	82
	5.77.	Water Supply and Sewage Disposal Facilities	82
	5.78.	Renting of Residential Properties	82
Article 9	**General Site Development Requirements**		**83-95**
	5.80.	Building Appearance	83
	5.81.	Landscaping	84
	5.82.	Lighting	91
	5.83.	Trash Receptacles	94
	5.84.	Mechanical Equipment	94
Article 10	**Off-Street Parking, Loading, Access and Circulation**		**96-104**
	5.90.	Description and Purpose	96
	5.91.	Applicability	96
	5.92.	Parking Requirements and Limitations	96
	5.93.	Parking Alternatives	100
	5.94.	Off-Street Parking Facility Design	102
	5.95.	Off-Street Loading Requirements	104
Article 11	**Signs**		**105-116**
	5.100.	Purpose	105
	5.101.	Sign-Related Definitions	105
	5.102.	Prohibited Signs	107
	5.103.	Signs Excluded From Permits	108
	5.104.	Certain Temporary Signs – Permit Exemptions and Additional Exemptions	109
	5.105.	Sign Standards for All Signs	110
	5.106.	Standards for Portable Signs	112
	5.107.	Sign Standards for Specific Uses	112
	5.108.	Table of Use Districts	113
	5.109.	Nonconforming Signs	114
	5.110.	Permit Required for Signs	114
	5.111.	Unsafe Signs	115
	5.112.	Abatement of Dangerous Signs	116

PART IV: APPROVAL PROCEDURES

Article 12	**Site Plan Review**		**117-124**
	5.115.	Intent	117
	5.116.	Applicability	117

	5.117.	Exemptions	118
	5.118.	Site Plan Review Procedures	118
	5.119.	Submittal Requirements	119
	5.120.	Standards for Site Plan Approval	122
	5.121.	Conditions of Site Plan Approval	123
	5.122.	Performance Guarantee	123
	5.123.	Amendment to Approved Plans	123
	5.124.	Expiration	124
Article 13	**Special Land Use Review**		**125-127**
	5.130.	Intent	125
	5.131.	Procedures	125
	5.132.	Conditions of Approval	126
	5.133.	Review Standards	126
	5.134.	Expiration of Permit	127
	5.135.	Revocation of an Approved Special Land Use	127
	5.136.	Appeals	127
	5.137.	Restrictions on Resubmittal of a Special Land Use Request	127
Article 14	**Planned Unit Developments (PUDs)**		**128-138**
	5.140.	Intent	128
	5.141.	Qualifying Conditions	128
	5.142.	PUD Requirements	129
	5.143.	General Provisions	132
	5.144.	PUD Review Procedures	132
	5.145.	Review Standards	136
	5.146.	Development Agreement	137
	5.147.	Deviations from Approved Final PUD Site Plan	137
	5.148.	Appeals and Variances	138
Article 15	**Nonconformities**		**139-143**
	5.150.	Intent	139
	5.151.	Nonconforming Lots of Record	139
	5.152.	Nonconforming Uses	140
	5.153.	Nonconforming Buildings or Structures	141
	5.154.	Unlawful Nonconformities	142

PART V: ADMINISTRATIVE PROVISIONS

Article 16	**Administration and Enforcement**		**143-146**
	5.160.	Administrative Officer	143
	5.161	Zoning Permits	143
	5.162	Project Staking and Inspection	143
	5.163	Enforcement	144
	5.164	Fees and Escrow	145
Article 17	**Zoning Board of Appeals (ZBA)**		**147-155**
	5.175.	Creation and Membership	147
	5.176.	Officers	147
	5.177.	Rules of Procedure	147
	5.178.	Powers and Duties	148
	5.179.	Procedure	154
	5.180.	Decision of the Board	155
	5.181.	Stay of Proceedings	155
	5.182.	Hearings	155
Article 18	**Amendments to Ordinance**		**156-162**
	5.190.	Initiation of Rezoning and Zoning Ordinance Text Amendments	156
	5.191.	Application Procedure	156
	5.192.	Rezoning and Zoning Ordinance Text Amendment Procedure	157
	5.193.	Criteria for Amendment of the Offical Zoning Map (Rezoning)	157
	5.194.	Amendments Required to Conform to Court Decree	158
Article 19	**Enactment Provisions**		**163**
	5.200.	Validity	163
	5.201.	Repeal	163
	5.202.	Effective Date	163

PART I: INTRODUCTION

Article 1 **Purpose and Title**
Article 2 **Definitions**

ARTICLE 1 PURPOSE AND TITLE

5.1. Title

An ordinance to regulate and restrict the use of land and structures; to meet the needs for food, fiber, energy and other natural resources, places of residence, recreation, industry, trade, service and other uses of land; to ensure that uses of the land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding of land and congestion of population, transportation systems and other public facilities; to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation and other public service and facility needs; and to promote public health, safety and welfare; and for those purposes to divide the city into districts; to prescribe penalties for the violation thereof; and to repeal conflicting ordinances.

5.2. Short Title

This ordinance shall be known as "The Zoning Ordinance" and may be cited as such.

5.3. Purpose

As they are interpreted and applied, the provisions of this ordinance shall be the minimum requirements adopted to promote public health, safety and general welfare.

The provisions of this title are intended, among other things, to:

(1) Protect the lands, water and other natural resources of the community by encouraging uses that are best suited to the capabilities and characteristics of those resources and limiting their improper use;

(2) Promote orderly development in accordance with the city's master plan, as amended; to facilitate economical municipal water and sewer services, adequate traffic capacity, recreational areas, schools and other public requirements;

(3) Provide adequate light, air and healthful conditions in residential, commercial and industrial areas;

(4) Promote convenient and safe access;

(5) Protect against fire and other dangers;

(6) Avoid undue concentrations of people by regulating the height and bulk of buildings;

(7) Establish and require adequate yards, courts and other open spaces;

(8) Regulate and restrict the location of all uses, trades, industries and buildings in relation to safe traffic and pedestrian movement;

(9) Achieve stability in the expenditure of funds for public improvements and services;

(10) Promote mixed use developments in appropriate locations;

(11) Promote higher density in appropriate locations;

(12) Protect and enhance neighborhood character.

5.4. Scope

This ordinance does not repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this ordinance, or of any private restrictions placed upon property by covenant, deed or other private agreement. Where this ordinance imposes greater restrictions than are imposed or required by existing laws or ordinances, or by rules, regulations, or permits, or by private restrictions, the provisions of this ordinance shall control.

ARTICLE 2 DEFINITIONS

5.5. Construction of Language

(1) The following words, terms and phrases, when used in this ordinance, shall have the meanings assigned to them in this Article, except where the context clearly indicates a different meaning.

(2) The following rules of construction apply to this Article:

(a) The particular shall control the general and the use of a general term shall not be taken to have the same meaning as another specific term. For example, a "dry cleaning retail establishment" shall not be interpreted to be the same as a "retail business supplying commodities on the premises" if each term is listed as a separate and distinct use.

(b) In case of any difference of meaning or implication between the text of this Article and any caption or illustration, the text shall control.

(c) A building or structure includes any and all of its parts.

(d) The phrase "used for" includes, but is not limited to, "arranged for," "designed for," "intended for," "maintained for" and "occupied for."

(e) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

(f) The word "person" includes any individual, corporation, partnership, incorporated association, limited liability company or any other similar entity.

(g) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunctions "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

1. "And" indicates that all of the connected items, conditions, provisions or events apply.

2. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

3. "Either . . . or" indicates that the connected items, conditions, provisions or events may apply singly but not in combination.

(h) Terms not defined in this Article shall have the meaning customarily assigned to them.

(3) Definitions appearing throughout this ordinance are **bolded** for reference.

5.6. Definitions A – B

Abutting. See *Adjoining*.

Abutting Lot, Parcel or Right-of-Way. A lot, parcel, or public or private street right-of-way that shares a common property line with the subject lot or parcel.

Accessory Building. An attached or detached building on the same lot with and of a customarily incidental nature that is subordinate to the principal use or building. (See *Section 5.46*)

Accessory Structure. An attached or detached structure on the same lot with and of a customarily incidental nature that is subordinate to the principal use or building/structure. (See *Section 5.46*)

Accessory Use. A use located on the same lot that is customarily found in connection with, but clearly incidental to the principal use to which it is related. (See *Section 5.46*)

Addition. An extension or increase in floor area or height of a building or structure.

Adjacent. See *Adjoining.*

Adjoining. Touching or bounding at a point or line; bordering; contiguous.

Adult. A person at the legal age of adulthood, as defined by the laws of the state of Michigan.

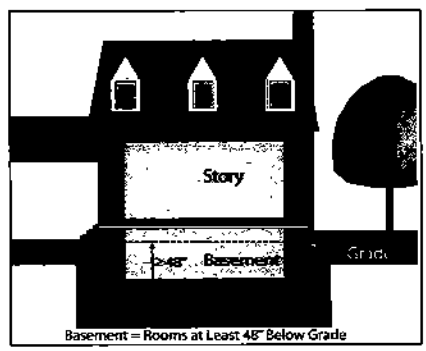
Adult Day Care Home. A private residence with the approved capacity to receive six (6) or fewer adults, to be provided with foster care for periods of less than twenty-four (24) hours per day, five (5) or more days per week and for two (2) or more consecutive weeks, as licensed and regulated under the Adult Foster Care Facility Licensing Act, Act 218 of the Public Acts of 1979, MCL 400.701 *et seq.*, as amended.

Adult Foster Care. See *Foster Care.*

Alley. A public or private right-of-way that provides a secondary means of access to an abutting property, usually an improved surface providing access to the rear of the lot.

Alteration. A change, addition or modification in construction or type of occupancy; any change in a building, such as walls, partitions, columns or joists; any change in the dimensions or configuration of the roof, exterior walls or foundation; or any change which may be referred to as altered or reconstructed.

Amusement Park, Small Scale. An outdoor recreation area in a park-like setting which, along with required parking and landscaping, is comprised of limited participatory amusement facilities and activities.



Assisted Living. See *Senior Housing.*

Athletic Court. An improved surface designed or intended for sports activities including, but not limited to, basketball, tennis, badminton, pickle ball or shuffleboard. (See *Section 5.55*)

Basement. The part of a building between a floor and ceiling, which is partially below and partially above ground level, but with a vertical distance from grade to the floor below that is greater than the vertical distance from grade to the ceiling. A basement is not counted as a story.

Bed and Breakfast. A building or structure, or portion thereof, where two or more individual rooms are rented separately to transients for compensation. (See *Section 5.46(3)*)

Berm. An earth mound covered with grasses, trees and/or other plants; designed to provide visual interest, screen undesirable views and impacts, and help separate incompatible uses.

Boarding/Rooming House. A building, structure, or portion thereof, where individual rooms are rented to separate parties, such as transitional homes, hostels or similar uses.

Boat, Commercial. Any vessel, such as, but not limited to, a tugboat or freighter, used for commercial purposes without regard to the carrying capacity.

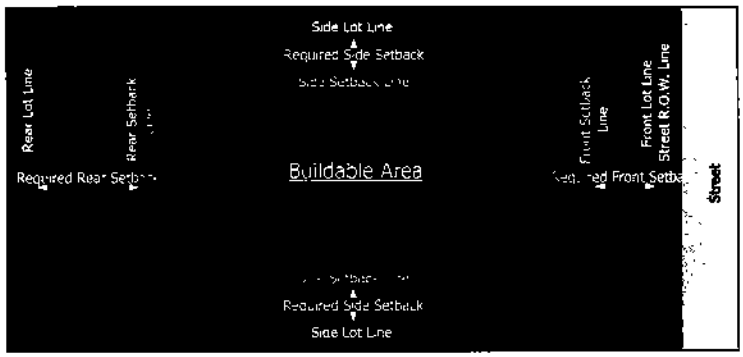
Boat Docking Space. The space along a dock, pier or similar structure where a boat may be moored.

Boathouse. A building or enclosed structure used for the docking and/or storage of boats, marine equipment and associated uses. (See *Section 5.46(4)*)

Boat, Recreational. Any vessel used primarily for noncommercial use, or leased, rented or chartered to another for the latter's noncommercial use.

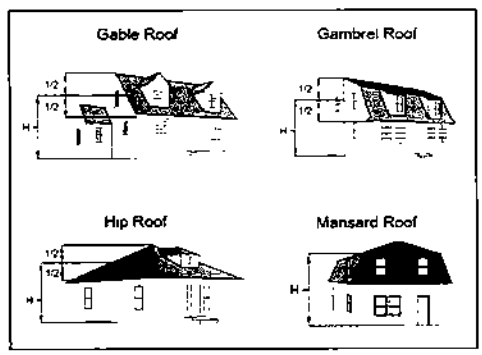
Brewpub. A facility where beer is produced, stored and sold for consumption on or off the premises that meets the requirements of the Michigan Liquor Control Commission, where no more than five thousand (5,000) barrels of beer are produced per year.

Buffer. An undeveloped, open area that does not contain structures, parking, pavement or buildings, but which may include landscaping, a screen wall or berm - used to physically separate and screen one land use or property from another.



Buildable Area. The portion of a lot or site, exclusive of required setbacks, landscaping or open space, within which buildings may be built.

Building. A temporary or permanent independent structure with a roof supported by columns, walls or other supports that is used to house people, animals, possessions or conduct business activities or other uses. A building may or may not have a permanent location on the ground.



Building Height. The vertical distance measured from finished grade to the highest point of a flat roof; to the deck line of a mansard roof; and to the average height between the eaves and ridge for a gable, hip and gambrel roof, or to an equivalent point on any other roof. For a building located on a sloping site, height shall be measured from the average finished grade. (See *Section 5.66*)

Building Official or Building Inspector. The Charlevoix County Department of Building Safety.

Building Roof. A structure that covers or forms the top of a building. Roof styles include, but are not limited to, gable, gambrel, hip, mansard and flat.

5.7. Definitions C – D

Campground. A property with two or more campsites that is established or maintained for commercial occupancy as temporary living quarters for recreation, education or vacation purposes.

Carport. A partially open structure providing shelter for one or more vehicles.

Carry-Out Service. A service that is ancillary to a permitted use involving the sale of pre-ordered and ready-to-consume food or beverages, which are packaged and intended for consumption off the premises. These items are delivered to a customer who is either waiting in the premises or in a motor vehicle parked in a space designated and used for carry-out service.

Certificate of Occupancy. A document issued by the Charlevoix County Department of Building Safety certifying that a structure or use has been constructed and will be used in compliance with all applicable regulations and, therefore, occupancy or use of the building can occur.

Change of Use. Any use of a building, structure or property different from the previous use in the way it is classified in this ordinance or in the State Building Code, as amended.

Child Care Center. See *Day Care Facility*.

Church. A building, structure or other facility used for public worship where organized services are held by persons of similar beliefs.

Clinic. An establishment that admits patients on an outpatient basis for examination and treatment by physicians, dentists or similar professionals. Clinic does not include a marijuana collective, cooperative or dispensary, or the business of a primary caregiver or other business or use involved in the medical use of marijuana.

Club/Lodge. An organization of persons for special purposes or for the promulgation of sports, arts, sciences, literature, politics or the like, but not typically operated for profit.

Collector Streets. Streets that serve as a link between local and arterial streets. Examples include West Carpenter, May Street and Park Avenue.

Commission. The City of Charlevoix Planning Commission.

Composting Facility. A facility where organic matter is delivered, degraded and then transported elsewhere.

Conditional Rezoning. A rezoning that is conditioned by a specific use and approved site plan voluntarily proposed by the applicant.

Condominium, Site.

(1) *Building Envelope.* The area of a condominium unit within which the principal building or structure may be constructed, together with any accessory structures, as described in the master site condominium deed.

(2) *Condominium Act.* Public Act 59 of 1978, as amended.

(3) *Condominium Unit.* That portion of the condominium project designed and intended for separate ownership and use, as described in the master deed of the condominium project, within which a building or other improvements may be constructed by the condominium unit owner. A site condominium unit is considered a lot by this ordinance.

(4) *Condominium Project.* A plan or project consisting of not less than two condominium units, established in conformance with the Condominium Act.

(5) *Limited Common Element.* An area that is appurtenant to a site condominium unit and that is reserved in the master deed for the site condominium development for the exclusive use of the owner(s) of the site condominium unit.

(6) *Master Deed.* The condominium document recording the condominium project which is attached as exhibits and incorporated by reference the approved by-laws for the project and the approved condominium subdivision plan for the project.

(7) *Site Condominium.* A condominium development in which each condominium unit consists of an area of vacant land and a volume of vacant air space, within which a building or other improvements may be constructed.

(8) *Site Condominium Development.* A development consisting of not less than two site condominium units, established in compliance with the Condominium Act.

(9) *Site Condominium Development Plan.* The plans, drawings and information prepared for a site condominium development, as required by Section 66 of the Condominium Act and this ordinance, for review by the planning commission and the city council.

Convalescent Home or Nursing Home. A facility licensed as a "nursing home" by the State Department of Public Health under Article 17 of the Public Health Code, Act No. 368 of the Public Acts of Michigan of 1978 (MCL 333.2010 *et seq.*, MSA 14.15 (20101) *et seq.*), as amended, where residents generally require 24-hour care and monitoring to meet their health and security needs. A "nursing home" shall include an extended care facility, hospice and convalescent home.

Council. The Charlevoix City Council.

Cul-De-Sac. The vehicle turn-around area constituting the terminus of a street that has only one outlet to another street. A cul-de-sac lot has frontage on such a turn-around area.

Day Care Facility. A facility licensed under the Child Care Organizations Act, Public Act 116 of 1973. Day Care Facilities include the following.

(1) *Day Care Center or Nursery.* A facility other than a private residence in which one (1) or more preschool or school age children are given care, and where the parents or guardians are not immediately available to the child. A child care center or day care center includes a facility that provides care for not less than two (2) consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, before- or after-school program or drop-in center.

(2) *Family Day Care Home.* A private home in which one (1) or more, but fewer than seven (7), minor children are received for care, unattended by a parent or legal guardian, excluding children related to an adult member of the family by blood, marriage or adoption. Family day care homes include a home in which care is given to an unrelated minor child for more than four (4) weeks during a calendar year.

(3) *Group Day Care Home.* A private home in which more than six (6), but not more than twelve (12) minor children are given care and supervision, unattended by a parent or legal guardian, excluding children related to an adult member of the family by blood, marriage or adoption. A group day care home includes a home in which care is given to an unrelated minor child for more than four (4) weeks during a calendar year.

Deck. A structure, which may be directly attached to a dwelling, without a roof or walls, except for railings, that is constructed on piers or an above-grade foundation wall and used as an outdoor living area.

Density, Net. The number of dwelling units per net acre of land. Net acreage is calculated by subtracting the land area in rights-of-way or private easements for streets and roads from the total gross acreage, unless otherwise specified in this ordinance.

Drive-Through Facility. A facility designed to serve patrons of a business while in their motor vehicles, either exclusively or in addition to service within a building or structure.

Driveway. A privately controlled and maintained easement, right-of-way or other interest in land providing vehicular access from a public or private street to a lot.

Dwelling Unit. A building or portion of a building, designed for use and occupancy by individuals, or one family, for living and sleeping purposes and with housekeeping facilities. A recreational vehicle, vehicle chassis or tent is not considered a dwelling.

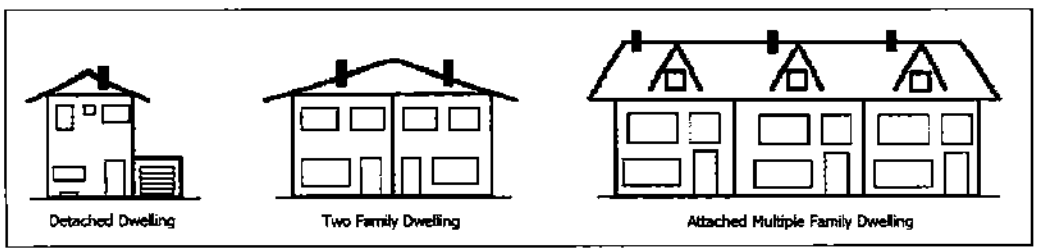
(1) *Dwelling, Multiple Family.* A building containing three (3) or more dwelling units where each unit may have access to a common hallway, stairs or elevator, or where each unit may have individual access to a street or common courtyard.

(2) *Dwelling, Single Family.*

Detached. A single family dwelling unit that is separate and distinct from any other dwelling. A single family dwelling that does not share a party wall with any other dwelling is a detached single family dwelling.

Attached. A dwelling designed for occupancy by one (1) family in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another, and each unit is separated from any other unit by one or more vertical common fire-resistant walls (also known as a townhouse or rowhouse).

(3) *Dwelling, Two Family.* A single family dwelling unit attached to one (1) other single family dwelling by a common wall (also known as a "duplex").



5.8. Definitions E – F

Easement. A grant of one or more rights over, across or under land which benefits and/or burdens other land or which grants rights to the public, a utility, or third party.

Essential Services. The erection, construction, alteration or maintenance by a public utility or municipal department of underground, surface or overhead gas, communication, telephone, electrical, steam, fuel or water, transmission, distribution collection, supply or disposal systems. This includes related poles, wires, pipes, conduit, cables, public safety alarm and communication equipment, traffic signals, hydrants and similar accessories that are necessary to furnish adequate service addressing general public health, safety, convenience or welfare. These do not include wireless telecommunication towers (unless located on public property and used as part of a municipal emergency communications network), wind energy conversion systems, office buildings, substations or structures that are enclosures or shelters for service equipment, or maintenance depots.

Excavation. The process of altering natural grade by cutting or filling earth, or any activity by which soil or rock is cut, dug, quarried, uncovered, removed, displaced or relocated.

Family. Either of the following defines a family:

(1) An individual or group of two (2) or more persons related by blood, marriage or adoption, together with foster children and servants of the principal occupants who are domiciled together as a single, domestic, housekeeping unit in a dwelling unit; or

(2) A collective number of individuals, domiciled together in one (1) dwelling unit whose relationship is of a continuing, non-transient domestic character, and who cook and live as

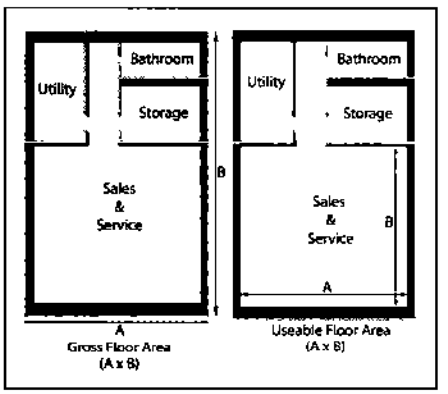
a single nonprofit housekeeping unit. This does not include a society, club, fraternity, sorority, association, halfway house, lodge, organization, group of students or other individuals whose domestic relationship is of a transitory or seasonal nature, such as a school term, a period of rehabilitation or treatment, or is otherwise not intended to be of a permanent nature.

Fence. A permanent outdoor partition, structure or gate erected as a barrier or enclosure.

Filling. Depositing or dumping any matter into or onto the ground.

Floor Area, Gross. The sum of the horizontal area of all building floors, measured from the interior faces of exterior walls, excluding porches, patios, terraces, breezeways, carport garages, unfinished attic areas and basements.

Floor Area, Usable. The sum of the total horizontal area of all building floors that are used or intended to be used for the sale of merchandise or to serve clients or customers, and all areas devoted to employee work space. Floor area is measured from the interior faces of exterior walls. Excluded from usable floor area are those parts of a building principally used or intended to be used to store or process merchandise, and hallways, elevators, stairs, bulkheads, or utility or sanitary facilities.



Foster Care.

(1) *Adult Foster Care Facility*. A facility defined by the Adult Foster Care Facility Licensing Act (PA 218 of 1979) as an establishment providing foster care to adults. Included are foster care facilities and family homes for adults that are aged, mentally ill, developmentally disabled or physically disabled, and that require supervision on an ongoing basis, but do not require continuous nursing care.

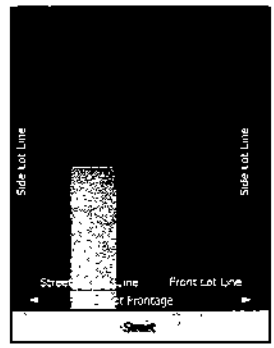
(a) Adult Foster Care Family Home. A private residence with an approved capacity of six (6) or fewer adults, where foster care is provided twenty-four (24) hours per day, five (5) or more days per week, and for two (2) or more consecutive weeks. It is licensed and regulated under the Adult Foster Care Facility Licensing Act, Act 218 of the Public Acts of 1979, MCL 400.701 *et seq.*, as amended. The person issued the adult foster care family home license is a member of the household and an occupant of the residence.

(b) Adult Foster Care Group Home. A private residence where adults are provided with foster care twenty-four (24) hours a day, five (5) or more days per week, and for two (2) or more consecutive weeks. A foster care group home with an approved capacity of at least seven (7), but not more than twelve (12) adults is a "small group home." A group home with an approved capacity of at least thirteen (13), but not more than twenty (20) adults is a "large group home." An adult foster care facility is licensed under the Adult Foster Care Facility Licensing Act, Act 218 of the Public Acts of 1979, MCL 400.701 *et seq.*, as amended, and the person issued the adult foster care group home license is a member of the household and an occupant of the residence.

(3) *Foster Family Home*. A private home, licensed under Act 116 of the Public Acts of 1973, in which at least one (1), but not more than four (4) minor children, who are not related to an adult member of the house by blood or marriage, or who are not placed in the household

pursuant to the Adoption Code (Act 288 of the Public Acts of 1939, as amended), are given care and supervision twenty-four (24) hours per day, four (4) or more days per week for two (2) or more consecutive weeks, unattended by a parent or guardian. The person issued the license is a permanent resident of the home.

(4) *Foster Family Group Home*. A private home, licensed under Act 116 of the Public Acts of 1973, in which more than four (4), but fewer than seven (7) minor children, who are not related to an adult member of the house by blood or marriage, or who are not placed in the household pursuant to the Adoption Code (Act 288 of the Public Acts of 1939, as amended), are given care and supervision twenty-four (24) hours per day, four (4) or more days per week for two (2) or more consecutive weeks, unattended by a parent or guardian. The person issued the license is a permanent resident of the home.



Frontage. The linear distance where a property line coincides with a street right-of-way line.

5.9. Definitions G – H

Garage, Private. An accessory building or portion of a principal building designed for the parking or storage of automobiles, boats, house trailers or similar vehicles owned and used by the occupants of the building to which it is accessory.

Garage, Public. Any garage that is not private.

Grade. The elevation of the ground adjacent to a structure; existing or natural grade is the elevation that exists or existed prior to manmade alterations. Finished grade is the elevation established after filling or excavation. For a sloping site, finished grade is the average between the highest and lowest elevation of the ground adjacent to each face of a building, wall or other structure being measured. (See *Section 5.64*)

Greenbelt. A strip of land providing visual relief between properties reserved for landscaping, berms, walls or fencing; often between abutting uses of differing intensities.

Home Occupation (Minor). A vocational activity conducted as an accessory use in a dwelling unit by a member or members of the resident family, which is accessory and incidental to the principal residential use of the dwelling. Minor home occupations have two (2) or less employees who also reside at the same location, have no exterior signage, and conduct business in a manner not known to the general public.

Home Occupation (Major). A vocational activity conducted as an accessory use in a dwelling, which is accessory and incidental to the principal residential use of the dwelling. Major home occupations are vocational activities that do not meet the definition of minor home occupations.

Hospital. A building, structure or institution in which sick or injured persons are given medical or surgical treatment, operating under license by the health department and the State of Michigan, and which is used primarily for inpatient services, including related facilities such as laboratories, outpatient departments, central service facilities and staff offices.

Household. A house, apartment, group of rooms or a single room occupied as separate living quarters, that includes a bathroom(s), sleeping quarters, and area to prepare food.

Hotel. See *Motel/Hotel*.

5.10. Definitions I – J – K

Impervious Surface. Any material that substantially reduces or prevents the infiltration of stormwater into the earth.

Inoperable Vehicle. An unlicensed, uninsured motor vehicle that is incapable of being operated under its own power.

Junk. Including, but not limited to, inoperable vehicles; solid waste; motor vehicles, machinery, appliances, products or merchandise with missing parts; scrap metals or materials that are damaged or deteriorated; or vehicles or machines in a condition preventing them from being used as manufactured.

Junk Yard or Salvage Yard. An area used for any of the following: collection, storage, dismantling, dumping, display, resale, exchange, baling, cleaning or handling of secondhand, salvaged or used waste materials, machinery, vehicles, trailers, equipment or furnishings; but excluding vehicle, boat, truck or trailer sales areas.

Kennel. A lot or facility on which four (4) or more dogs, cats or other household pets, three (3) months of age or older, are either permanently or temporarily kept for sale, boarding, breeding, training, competition or showing, whether for commercial or non-commercial purposes.

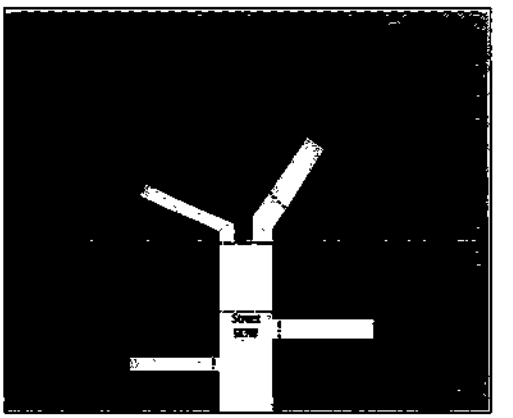
5.11. Definitions L – M

Loading Space. An off-street space on the same lot as a building or group of buildings, used to temporarily park a commercial vehicle while loading and unloading merchandise or materials.

Local Streets. Streets that primarily access individual properties and homes.

Lot. A parcel of land intended for individual ownership and use, separately described on a deed or other instrument recorded in the office of the Register of Deeds, whether by metes and bounds, as part of a platted subdivision or a site condominium.

(1) *Lot, Corner.* A lot with at least two (2) contiguous sides abutting two intersecting streets, and where the interior angle of the intersecting streets is less than 135 degrees. Also, a lot located on a curved street or streets if tangents of the curve, at the points of beginning with the lot or the points of intersection of the side lot lines with the street line, intersect at an interior angle of less than 135 degrees.



(2) *Lot, Cul-De-Sac.* A lot having more than one-half (1/2) of its required lot frontage on a cul-de-sac. The cul-de-sac shall be determined to begin at the intersection of the radius of the cul-de-sac with the right-of-way or easement line.

(3) *Lot, Double-Frontage.* An interior lot having frontage on two (2) more or less parallel streets (also known as a *Through Lot*).

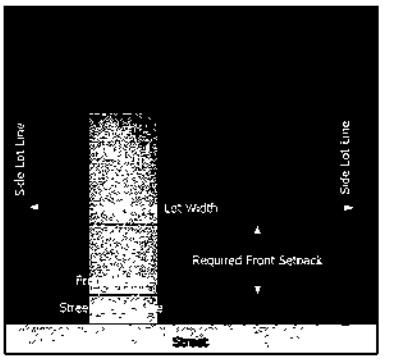
(4) *Lot, Interior.* A lot other than a corner or through lot.

Lot Area. The area of land included within a lot as defined by property lines, but excluding any public or private rights-of-way.

Lot Coverage. The lot area, stated as a percentage of the total, covered by all buildings and impervious surfaces such as asphalt or concrete driveways, stone patios, and sidewalks.

Lot Frontage. The length of the front lot line measured at the road right-of-way.

Lot Width. The horizontal distance between side lot lines measured at the two points where the required front setback intersects the side lot lines.



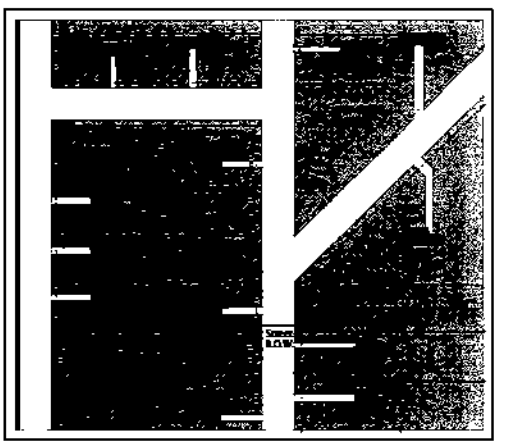
Lot Lines.

(1) *Front Lot Line*. In the case of an interior lot, the line separating the lot from the street right-of-way or road easement. For a corner lot, the front lot line shall be the shortest of the two lot lines tangent to the street right-of-way or road easement. In the case of a through lot, the front lot line shall be determined by the zoning administrator based on the dominant orientation of abutting and facing lots.

(2) *Rear Lot Line*. The lot line opposite and most distant from the front lot line. In the case of an irregular, triangular or flared lot, the rear lot line shall be a line at least ten (10) feet in length entirely within the lot, parallel to and at the maximum distance from the front lot line. An undeveloped through lot does not have a rear lot line.

(3) *Side Lot Line*. A lot line that is neither a front lot line, nor a rear lot line.

(4) *Street Side Lot Line*. A side lot line abutting a street on a corner lot.



Lot of Record. A parcel of land separately described on a plat, condominium document or metes and bounds description recorded in the office of the Charlevoix County Register of Deeds. When an owner has combined two or more lots into a single building site, or combined two (2) or more lots contained in any recorded plat, the combination of lots shall be deemed to be a single lot of record.

Manufactured Home. A factory-built, single family structure that is manufactured under the National Manufactured Home Construction and Safety Standards Act. It is transportable in one (1) or more sections, built on a permanent chassis or foundation and used as a dwelling. It is not constructed with a permanent hitch or other device allowing its transport, other than for its delivery to a permanent site and does not have wheels or axles permanently attached to its body or frame.

Manufactured Home Community. A property that has been planned, designed, improved and maintained for the placement of manufactured homes and permitted accessory uses.

Manufactured Home Site. A property within a manufactured home community designed to accommodate a single manufactured home.

Master Plan. A physical plan adopted by the planning commission and/or the city council, including graphic and written proposals indicating the general location for streets, parks, schools, public

buildings and existing and future land use within the city, including any unit or part of the plan, and any amendment to the plan or parts thereof.

Minor Arterials. Streets whose primary function is to move traffic between principal arterials and local streets and between major parts of the city such as neighborhoods, employment and shopping. These provide important roadway links into the city and to major activity areas and are considered secondary gateways. Examples include Ferry and Belvedere Avenues, State Street and Division.

Mobile Home. A single family dwelling designed for permanent year-round living that is transportable in one (1) or more sections and built on a chassis, designed to be used as a dwelling with or without permanent foundation. The term "mobile home" shall not include motor homes, campers, recreational vehicles (whether licensed or not as motor vehicles) or other transportable structures designed for temporary use and which are not designed primarily for permanent residence and connection to sanitary sewage, electrical power and potable water utilities.

Motel/Hotel. A building or group of buildings on the same lot, containing sleeping or dwelling units in which lodging is provided for compensation on a transient basis. The term includes tourist cabins, motor courts, motor lodges and similar facilities.

Motor Home. See *Recreational Vehicle*.

5.12. Definitions N – O

Nonconforming Structure. A building or any of its parts lawfully existing on the effective date of this ordinance or its subsequent amendment that does not conform to the current provisions of the district in which it is located.

Nonconforming Lot. A lot lawfully existing on the effective date of this ordinance or its subsequent amendment that does not meet the current area and/or dimensional requirements of the zoning district in which it is located.

Nonconforming Use. A use or activity lawfully existing on the effective date of this ordinance or its subsequent amendment that does not conform to the current use provisions of the zoning ordinance.

Nursery School. See *Day Care Facility*.

Nursing Home. See *Convalescent Home* or *Nursing Home*

Office, Professional. A room, suite of rooms or building in which a person transacts the affairs of a business, profession, service, industry or government.

Open Space. A parcel or area of land or water that may or may not be improved and that is reserved for public or private use.

Ordinary High Water Mark. The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is common or recurrent so that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the soil and the vegetation. On an inland lake which has had a level established by law, it means the high established level. On a river or stream, the ordinary high water mark shall be the ten year flood limit line. The ordinary high water mark shall be at elevation 581.5 feet (International Great Lake Datum, IGLD-1985) for Lake Michigan, the Pine River Channel, Round Lake and Lake Charlevoix.

Outdoor Display, Sales. The outdoor placement, storage or keeping, for display purposes, of equipment, vehicles, trailers and other similar goods for sale on a premises.

Outdoor Storage. The outdoor placement of goods such as building or construction materials, equipment, vehicles, trailers and other supplies for future use, production, assembly, preservation or disposal.

5.13. Definitions P – Q

Parcel. See *Lot*.

Parking Lot. A facility providing parking spaces, along with adequate drives, aisles and maneuvering space, to allow unrestricted ingress and egress to at least two (2) vehicles.

Parking Space. A space used to park one (1) motor vehicle.

Patio. An uncovered at-grade courtyard or outdoor platform.

Personal Trailer. A wheeled vehicle that is not self-propelled, but capable of transporting contents. It is designed to be towed by a motor vehicle, but not designed or intended to be used as a living quarters.

Planning Commission. The City of Charlevoix Planning Commission.

Plants.

(1) *Ground Cover*. Low-growing plants such as perennial flowers, grasses and vines. Chipped wood, bark mulch, concrete, gravel and similar materials, or artificial plants, are not considered ground cover.

(2) *Shrubs*. Woody plants with several stems arising from the base.

Plat. A map of a subdivision of land, recorded with the Register of Deeds pursuant to the Subdivision Control Act, PA 288 of 1967, Land Division Act, PA 591 of 1996 (MCL 560.101 *et seq.*), as amended.

Principal Arterials. Roads that generally carry long distance, through-travel. They also provide access to important traffic generators, such as employment centers and shopping areas. These are important routes through the city and are also primary entrances or gateways from outlying areas. (Examples include US 31 and M-66.)

Principal Building. The building in which a principal use is located.

Principal Use. The primary use to which a premises is devoted.

5.14. Definitions R – S

Recreation Facility, Indoor. A facility that is not publicly owned, open either to the general public or to members and their guests, located in an enclosed building that is designed to accommodate sports, recreational activities, training or related enterprises such as racquet clubs, fitness clubs, skating rinks and the like. Also included are accessory uses that are clearly in support of the primary use, such as sporting goods shops, food service and party/banquet facilities serving patrons of the indoor recreation use, spectator accommodations, changing/locker rooms and employee offices.

Recreation Facility, Outdoor. A recreation facility that is not publicly owned and is operated primarily for outdoor recreation uses, as well as related buildings and structures that are accessory to the primary outdoor nature of the activities. Included are golf courses and related support facilities, court games, field sports, shooting ranges, winter sports, swim clubs, campgrounds and resorts, or a combination of such uses.

Recreational Vehicle. A travel, camping or tent trailer, motor home or pickup camper intended for mounting on a truck or similar vehicle designed primarily as temporary living quarters for recreational,

camping or travel use, not including a manufactured home; or a boat, snowmobile, all-terrain vehicle or similar vehicle designed for recreational use, including any trailer and equipment used to transport the vehicle.

Residence. The act of living in a given place for a period of time.

Residential Districts. The R1, R2, R2A, R4 and PC zoning districts.

Retaining Wall. A permanent structure used to secure dirt, sand, rock or other materials to prevent downslope movement or erosion.

Sanitary Landfill. Land designed, developed and operated for the disposal of solid waste in a manner consistent with criteria established by Act 641 of the Michigan Public Acts of 1978, as amended, and any related rules and regulations.

Screening or Buffering. A way of visually shielding or obscuring an abutting or nearby structure or use from another, using a fence, wall, berm and/or vegetation.

Screen Wall. A solid wall or fence erected to shield, buffer and/or screen incompatible uses.

Self-Storage Facility. A building or a group of buildings in a controlled-access compound where individual compartments, stalls or lockers are rented out to tenants to store goods.

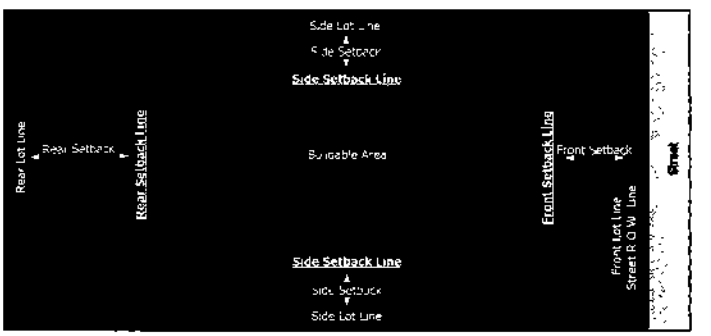
Senior Housing. See also *Convalescent Home* or *Nursing Home.*

(1) *Independent Living.* A housing development consisting of attached or detached single family, two family or multiple family dwellings designed for and generally limited to housing of persons over sixty-two (62) years of age who maintain a degree of physical independence, and thus shared medical services and congregate meals are generally not provided.

(2) *Assisted Living.* A housing development consisting of attached or detached single family, two family or multiple family dwellings designed for and generally limited to housing of persons over sixty-two (62) years of age, who because of physical or other limitations, need access within the development to medical and other services and where congregate meals are provided; however, 24-hour care and monitoring is not necessary.

Service Area. An outdoor area related to a nonresidential use that is used for loading and unloading operations and to receive and temporarily store goods, materials and equipment.

Setback. The minimum required horizontal distance, measured from the lot lines to a building or structure as designated for a zoning district.



(1) *Front Setback Line.* The line marking the required setback from the front lot line, which establishes the required front yard setback.

(2) *Rear Setback Line.* The line marking the required setback distance from the rear lot line, which establishes the required rear yard.

(3) *Side Setback Line.* The lines marking the required setback distance from the side lot lines, which establishes the required side yards.

Sign. A device, structure, fixture or placard, which may or may not use graphics, symbols and/or written copy designed specifically to advertise or identify an establishment, product, service or activity. (See *Article 11* for detailed definitions.)

Single Ownership. A parcel of land in separate and distinct ownership from adjacent parcels.

Site Plan. A plan of a proposed project that shows all relevant features necessary to determine if it meets the requirements of this ordinance.

Story. The part of a building, except a mezzanine level, that is between the surface of one floor and the surface of the next floor. If there is no floor above then a story is the space between the floor and the above ceiling. See also *Basement*.

Story, Half. The uppermost habitable story under a sloped roof with a usable floor area that does not exceed seventy-five (75) percent of the floor area of the story immediately below.

Street. A public or private thoroughfare, used or intended to be used for passage or travel by motor vehicles. "Street" also includes the term "Road."

(1) *Street, Private.* A privately owned and maintained street serving three (3) or more lots, parcels, buildings or dwellings, and constructed on a privately owned easement.

(2) *Street, Public.* An easement, right-of-way or other interest that has been conveyed to and accepted by a governmental body for the purpose of providing access to abutting land.

Structure. Anything constructed or erected requiring a permanent location in or on the ground, or that must be attached to something having such a permanent location. Structures include, but are not limited to: houses, buildings, accessory structures or buildings, fences, signs, decks, parking lots, access drives, and swimming pools.

Swimming Pool. A basin or structure designed to hold water for aquatic recreation; not including temporary, portable pools located upon the ground, and holding less than three hundred (300) gallons of water, or decorative pools less than two (2) feet deep.

5.15. Definitions T – U – V

Telecommunication Tower. A freestanding structure or one that is attached to another structure, supporting one (1) or more antennas for telephone, radio or other communication.

Trailers. See *Recreational Vehicle*.

Transient Housing. An apartment, condominium, single family home or similar dwelling unit rented out to individuals or groups. (See *Section 5.78*)

Tree.

(1) *Canopy Tree.* A deciduous shade tree.

(2) *Evergreen Tree.* A tree with foliage that persists and remains green throughout the year.

(3) *Ornamental Tree.* A small deciduous tree grown for its foliage and/or flowers.

Truck Stop. A facility intended to provide services to the trucking industry including, but not limited to, the following activities: dispensing of fuel, repair shops, automated washes, restaurants and motels all as part of the facility.

Use. Any purpose for which land or a structure is designed, arranged, intended, used, maintained or occupied.

(1) *Accessory Use.* A use customarily incidental and subordinate to the principal use of the structure or premises.

(2) *Use Permitted by Right.* A principal or accessory use that, because of its nature, is allowed as regulated within a specified zoning district.

(3) *Principal Use.* The primary purpose for which land or a structure may be used.

(4) *Temporary Use.* A use or activity that may be permitted for a limited time.

Variance. An allowed modification to the requirements of this ordinance, as authorized by the Zoning Board of Appeals under the provisions of this ordinance and Act 207 of the Public Acts of 1921, as amended.

Vehicle Service Station. An establishment where motor vehicle fuel is sold and/or where charging services are provided for electric vehicles. Minor vehicle repair services may be offered, including the sale of related vehicle products and accessories. The facility may also sell convenience retail items, including such items as snacks, food, beverages and small household items.

Vehicle Repair.

(1) *Major.* The repair, rebuilding or reconditioning of motor vehicles or parts thereof, including powertrain and suspension repair or rebuilding, body work, frame alignment, undercoating, painting, tire recapping, engine rebuilding, dismantling upholstery, auto glass work and other vehicle repair work creating noise, glare, fumes or smoke, but not including vehicle wrecking, junking or salvaging.

(2) *Minor.* The services related to general routine maintenance of motor vehicles, including the sale and installation of oil and other fluids (other than fuel), tires, batteries, belts, windshield wipers, mufflers and exhaust systems, brakes and shock absorbers, air conditioners and wheel alignment and balancing.

Vehicle Sales. The use of a building, property or other premises for the display and sale of vehicles, trucks, boats, trailers, farm equipment or other similar mobile equipment in operable condition, whether new or used. It may also include vehicle preparation, washing or minor repair conducted in association with the sale of vehicles.

Vehicle Wash Establishment. All or part of a building, premises or property regularly used for washing vehicles. (Also referred to as a "Car Wash.")

Veterinary Clinic. A veterinary establishment that admits animals on an outpatient basis for examination and treatment and that does not usually lodge animals overnight.

Veterinary Hospital. A place where animals are given medical care and their boarding is limited to short-term care incidental to the hospital use.

5.16. Definitions W – X – Y – Z

Warehouse. A building primarily used to store goods, materials and commodities including associated driveway, vehicle circulation and parking areas and also a self-storage warehouse where customers deliver and store goods and remove them when storage is terminated. A warehouse may include goods, materials and commodities stored on a wholesale basis before being distributed for retail sale.

Wind Energy Conversion System (WECS).

(1) A wind energy conversion system is a combination of:

(a) A surface area (typically a blade, rotor or similar device), either variable or fixed, for utilizing the wind for electrical power; and

(b) A shaft, gearing, belt or coupling utilized to convert the rotation of the surface area into a form suitable for driving a generator, alternator or other electricity-producing device; and

(c) The generator, alternator or other device to convert the mechanical energy of the surface area into electrical energy, generally housed in a nacelle; and

(d) The tower, pylon, building mount or other structure upon which any, all or some combination of the above are mounted.

(e) Other components not listed above, but that are associated with the normal construction, operation and maintenance of a WECS.

(f) A WECS may have a horizontal axis with a rotor that spins perpendicular to the ground, or a vertical axis with a rotor that spins parallel to the ground.

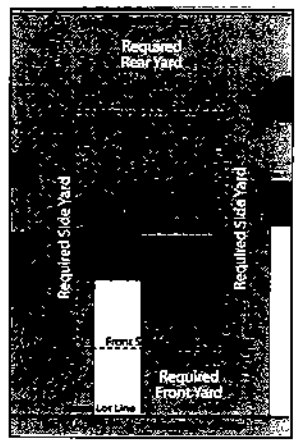
(2) *WECS Height*. The distance measured between the ground (at normal grade) and the highest point of a WECS (for a horizontal axis WECS, the measurement shall be to the tip of the rotor blade when the blade is in the full vertical position). The height of a building mounted WECS shall be measured from the grade of the building upon which it is attached.

(3) *Single Accessory WECS*. A single WECS placed upon a lot or parcel with the primary intent to service the energy needs of only the structures and uses on the same lot or parcel.

Wine Tasting Room. The retail premises of a winemaker or winemaker licensee, as defined by the Michigan Liquor Control Commission, where wine is not produced but is offered for tasting and for sale, including the retail sale of wine-related items and pre-packaged and prepared food items.

Yard. The open spaces on a lot located between a building and a lot line. The term "required yard" refers to the portion of the yard lying between the lot lines and required setback lines.

(1) *Yard, Front*. The space extending the full width of the lot, the depth of which is the furthest horizontal distance between the front lot line and the building line of the principal building.



(2) Yard, Rear. The space extending the full width of the lot, the depth of which is the furthest horizontal distance between the rear lot line and the building line of the principal building. A through lot is not considered to have a rear yard.

(3) *Yard, Side*. The space between a principal building and the side lot line, extending from the front yard to the rear yard, the width of which is the furthest horizontal distance from the side lot line to the nearest building line of the principal building.

(4) *Yard, Street Side*. A side yard located between a principal building and a street side lot line on a corner lot.

(5) *Yard, Required.* The area within the required setback, on all sides of a building.

Zoning Act. The Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

Zoning Administrator. The person designated by the city manager to administer this zoning ordinance.

Zoning Board of Appeals (ZBA). The City of Charlevoix Zoning Board of Appeals.

Zoning District (Zone). A portion of the city within which certain uses of land or buildings are permitted and within which certain regulations and requirements apply under the provisions of this ordinance.

Zoning Permit. A standard form issued by the zoning administrator upon application and declaration by the owner or his duly authorized agent regarding proposed construction and use of land and buildings and structures thereon granting approval for the construction or use applied for.

PART II: ZONING DISTRICTS

Article 3	**Mapped Districts**
Article 4	**Residential Districts**
Article 5	**Nonresidential and Mixed Use Districts**
Article 6	**Overlay Districts**
Article 7	**Use Requirements**

ARTICLE 3 MAPPED DISTRICTS

5.20. City of Charlevoix Zoning Map

(1) The City is hereby divided into the following Zoning Districts as shown on the Official Zoning Map[1]:

(a) Residential Districts

1. R1 - Low Density Single Family Residential
2. R2 - Medium Density Single Family Residential
3. R2A - Two Family Residential
4. R4 - Planned High Density Residential
5. PC - Private Club Residential

(b) Non-Residential Districts and Mixed-Use Districts

1. GC - General Commercial
2. CBD - Central Business District
3. CM - Commercial Mixed Use
4. MC - Marine Commercial
5. CH - Commercial Hospitality
6. PO - Professional Office
7. SR - Scenic Reserve
8. I - Industrial
9. P - Public Facilities

(2) For the purposes of this Ordinance the **zoning districts** as provided in this Ordinance are bounded and defined as shown on a map entitled "Official Zoning Map of the City of Charlevoix," a copy of which accompanies this Ordinance and is incorporated into and made a part of this Ordinance by reference.

(3) Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the Charlevoix City Hall, shall be the final authority as to the current zoning status of any land, **parcel**, **lot**, **zoning district**, **use**, **building** or **structure** in the city.

(4) Where uncertainty exists as to the boundaries of Land Use Districts as shown on the Official Zoning Map, the following rules of interpretation shall apply:

(a) A boundary indicated as approximately following the centerline of a highway, **street**, **alley** or **easement** shall be interpreted as following such line.

[1] The City of Charlevoix Zoning Map is intended to be viewed in color and must be printed on a large format printer in order to be legible. Large copies of the zoning map are available at City Hall and the Charlevoix Public Library. Property owners may view the zoning map online and zoom in on specific areas of the City. Go to www.cityofcharlevoix.org and click on Zoning Amendment Updates to review the map.

(b) A boundary indicated as approximately following a recorded parcel line or a property line shall be interpreted as following such line.

(c) A boundary indicated as approximately following the corporate boundary line of the city shall be interpreted as following such line.

(d) A boundary indicated as following a railroad line shall be interpreted as being the centerline of the railroad right of way.

(e) A boundary indicated as following a shoreline shall be interpreted as following such shoreline, and in the event of change in a shoreline shall be interpreted as following the actual shoreline.

(f) A boundary indicated as following the centerline of a water body shall be interpreted as following such centerline at the time of interpretation.

(g) A boundary indicated as parallel to, or an extension of, a feature indicated in subsections (a) through (f) above shall be interpreted as such.

(h) A distance not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

5.21. Zoning of Vacated Areas

Whenever all or part of a **street**, **alley** or other public way is vacated, it shall automatically become a part of the **zoning district** to which it attaches. If a vacated area is bordered by two (2) different **zoning districts**, the area is divided along a line halfway between them, according to the **adjacent zone**, unless the **city council** shall designate otherwise.

5.22. Zoning of Annexed Areas

Where land is annexed into the city, it shall be automatically zoned R1, Residential upon annexation, unless or until the **city council** initiates action to classify it as another **zoning district** in accordance with the procedures specified in *Section 5.192* of this Ordinance.

ARTICLE 4 RESIDENTIAL DISTRICTS

5.25. Intent

(1) *R1, Low Density Single Family Residential District.* This district is intended to provide stable, low density neighborhoods of predominantly **single family dwellings**. This district also permits non-residential **uses** that contribute to the culture and well-being of single family neighborhoods, such as parks, schools and **churches**.

(2) *R2, Medium Density Single Family Residential District.* The R2 District has the same intent as the R1 District, but allows a slightly higher residential **density** by permitting smaller minimum **lot areas**.

(3) *R2A, Two Family Residential District.* The R2A District allows for both **single family and two family (duplex) dwellings** in order to allow higher densities in appropriate locations and to provide expanded housing choices. This district also recognizes the existence of older residential areas in the city, where single family homes have been or can be converted to two family residences, in order to extend the economic life of these **structures** and allow the owners to justify the expenditures, repairs and modernization.

(4) *R4, Planned High Density Residential.* This district allows for higher density developments such as **condominiums**, apartment buildings, **site condominiums**, townhouses, and clustered housing units.

(5) *PC, Private Club Residential District.* This district is intended to accommodate established single family residential developments that are generally seasonal in nature, governed by a private club association, and in which the homes are privately owned but the land is in common ownership. In addition, the district may include facilities for the common use and benefit of the members such as clubhouses, **boathouses** and other recreation related **uses** such as **athletic courts**, trail systems and beach cabanas.

5.26. Schedule of Uses

Uses permitted in the R1, R2, R2A, R4 and PC districts are listed in *Table 5.26.* Additional requirements related to a specific **use**, if any, are referenced in the "Specific Requirements" column.

Table 5.26 Allowed Uses: Residential Zones

P = Permitted Use by Right S = Special Land Use		R1	R2	R2A	R4	PC	Specific Requirements
Accessory							
Accessory uses, buildings and **structures**		P	P	P	P	P	Section 5.46(1)
Bed and breakfast establishment		S	S	-	-	-	Section 5.46(3)
Boathouses		S	-	-	-	S	Section 5.46(4)
Day care	Family day care home	S	S	-	-	-	
	Group day care home	S	S	-	-	-	Section 5.46(5)
Foster care	Adult foster care family home	S	S	-	-	-	
	Foster family home and foster family group home	S	S	-	-	-	
Major home occupation		S	S	S	S	-	Section 5.46(7)
Minor home occupation		P	P	P	P	P	Section 5.46(7)
Solar panels		P	P	P	P	P	Section 5.46(9)
Wind energy conversion systems, single accessory		P	P	P	P	P	Section 5.46(10)

Table 5.26 Allowed Uses: Residential Zones							
P = Permitted Use by Right S = Special Land Use		R1	R2	R2A	R4	PC	Specific Requirements
Residential							
Adult foster care large group home		-	-	-	S	-	
Adult foster care small group home		S	S	-	-	-	
Convalescent and nursing homes		-	-	-	S	-	
Dwellings	Single family, detached	P	P	P	P	P	Section 5.47(1)
	Single family, attached	-	-	P	P	P	Section 5.47(1)
	Two family	-	-	P	P	P	
	Multiple family	-	-	-	P	P	
Senior housing: Independent living, assisted living and similar facilities		-	-	-	S	-	Section 5.47(2)
Transient housing		P	P	P	P	P	Section 5.78
Boarding/Rooming House		S	S	-	-	-	
Offices and Services							
Day care center/nursery		S	S	-	-	-	Section 5.51(1)
Recreation and Open Space							
Public parks/playgrounds		P	P	P	P	-	
Athletic courts		P	P	-	P	P	Section 5.55(1)
Public/Institutional							
Churches and customary related **uses**		P	P	P	P	P	
Colleges and universities		-	-	-	S	-	
Community centers		-	-	-	S	-	
Other Uses							
Essential service, publicly owned		P	P	P	P	P	
Site condominium		P	P	P	P	P	Section 5.47(3)

5.27. Area, Height and Placement Requirements

(1) *Lot and Width Requirements*. All **lots** in the **residential districts** shall conform to the requirements of *Table 5.27(1)*:

Table 5.27(1) Lot and Width Requirements: Residential Districts

Zoning District	Minimum Lot Area (sq. ft.)	Minimum Lot Width (ft.)
R1	9,000	70
R2	6,000	50
R2A	9,000[1]	80 (new construction) 70 (conversion of existing homes)
R4	15,000	80
PC[2]	NA	NA

(2) *Dimensional Requirements, Single Family and Two Family Districts*. **Building height, setbacks, lot coverage** and minimum **floor area** for development of a principal **structure** in the R1, R2, R2A, R4, and PC districts shall conform to the requirements of *Table 5.27(2)*.

Table 5.27(2) Dimensional Requirements: Single Family- Two Family - Private Club Residential

Zoning District	Max. Building Height (ft.)	Minimum Yard Setbacks (ft.)				Lot Coverage (%)	Min. Floor Area (sq. ft.)	
		Front[3]	Side		Rear		1 story	2 stories
			Interior	Street Side				
R1	26	15[4]	10	15	25	40[5]	1,040	1,600
R2	26	15	8	15	25	40[6]	800	1,200
R2A	26	20	10	20	30	40	800	1,200
PC	26	0	See[7]		0	0	0	0

[1] This minimum square footage applies to two family dwellings; for a single family dwelling the minimum allowable area of the R2 zone, seven thousand (7,000) square feet, shall apply.
[2] No minimum lot size or width is required, provided the land is in common ownership. If the land is subdivided, the requirements of the R1 District shall apply.
[3] The zoning administrator may determine that front yards may be the opposite of the yard fronting a public street or right of way on lots with sloping topography, or facing water bodies.
[4] Setbacks within the C&O Club Development shall be thirty-five (35) feet for front yard, fifteen (15) side yard, and twenty-five (25) for the rear yard.
[5] Maximum lot coverage shall be fifty (50) percent for lots less than seven thousand (7,000) square feet.
[6] Maximum lot coverage shall be fifty (50) percent for lots less than six thousand (6,000) square feet.
[7] A minimum of twenty (20) feet shall be provided between the sides of adjacent single family buildings and/or accessory structures.

(3) *Dimensional Requirements, R4 District.* **Building height**, **setbacks**, **lot coverage** and minimum **floor area** for development in the R4 District shall conform to the requirements of *Table 5.27(3)*.

Table 5.27(3) Dimensional Requirements: R4 Planned High Density Residential District

Max. Building Height (ft.)	Minimum Yard Setbacks (ft.)				Lot Coverage (%)	Min. Floor Area (sq. ft.), based on number of bedrooms[1]		
	Yard Adjacent to:	Front	Side	Rear		1 bedroom/ efficiency	2 bedrooms	3 bedrooms
35[2]	R1, R2 or R2A	40	30	40	50	660	780	900
	All others	40	30	40				

(4) *R4 District Additional Requirements.*

(a) Development Standards. The general plan for a multiple family complex shall include evidence and facts showing that it has considered and made provisions for, and the development shall be executed in accordance with, the following essential conditions:

1. The proposed development shall be constructed in accordance with an overall plan and shall be designed as the unified architectural unit (each **building**, excluding **accessory structures**, shall have consistent roof lines, roof pitch, architectural features, and building materials) with appropriate landscaping meeting the requirements of *Section 5.81*.

2. If the development of the R4 **zone** is to be carried out in stages, each stage shall be so planned that the foregoing requirements and the intent of this Article shall be fully complied with at the completion of any stage and the development of each stage shall take place in sequential order as designated by the plan.

(b) Development Requirements.

1. Distance Between **Buildings**: The horizontal distance measured between **buildings**, forming courts and courtyards, shall not be less than forty (40) feet.

2. Parking: A parking area shall be placed so that it does not interfere with any recreation or **service area** and shall be set back at least twenty (20) feet from property lines.

3. Paving: All areas provided for use by vehicles and all pedestrian walks shall be surfaced with bituminous asphalt, concrete or similar materials and be properly drained.

4. Service: Areas for loading and unloading delivery trucks and other vehicles and for the servicing of refuse collection, fuel and other services shall be provided,shall be adequate in size and shall be so arranged that they may

[1] For one or two family units the floor area requirements of the R2A district shall apply.
[2] Single family homes, clustered housing units and townhomes shall be allowed a maximum of 26 feet in height in R4 zones.

be used without interference with the use of access ways or parking facilities.

5. Access: Provision shall be made for safe and efficient ingress and egress to the **public streets** and highways servicing the R4 **zone** without undue congestion to, or interference with, normal traffic flow.

6. Utilities: All **buildings** within the R4 **zone** shall be serviced by a public sanitary sewer disposal system and public water supply system. All utility lines within the subject property including, but not limited to, power, water, sewer, and telephone shall be placed underground by the developer for new developments.[1] Each unit will be considered as a separate **dwelling** for the purpose of utility connections.

7. Open Space: The developer shall be required where possible to preserve or incorporate natural features such as wooded areas, streams and **open space** areas, which add to the overall cohesive development of the R4 **zone** and overall community development. However, all conditions deemed hazardous by the **planning commission** including natural features are to be eliminated or all precautions, deemed appropriate by the city to reduce the hazard, are to be provided by the developer.

[1] City council may waive this requirement for the expansion of existing developments.

ARTICLE 5 NONRESIDENTIAL AND MIXED USE DISTRICTS

5.30. Intent

(1) *GC, General Commercial District.* This district accommodates retail and service establishments within the city, particularly along major corridors leading into and out of the city. The **uses** permitted in the GC District are intended to provide convenient and attractive retail, **professional office** and service establishments for the community and its rural trade area. This district is intended to accommodate larger scale commercial development and associated **uses**, due to larger lot sizes and consistency with the existing built commercial environment.

(2) *CBD, Central Business District.* This **zone** regulates land within the area traditionally considered to be Downtown Charlevoix. Its purpose is to support the central activity area of the city by accommodating a mix of retail, **office**, service, entertainment and residential **uses** in a walkable, pedestrian-friendly environment. Business **uses** which are inconsistent with this purpose or which detract from the convenience of this district are not permitted.

(3) *CM, Commercial Mixed Use.* This **zone** is intended to provide a transitional area between the GC and CBD districts on the south side and the CBD and R1 districts north of the Bridge. This area south of the CBD includes a mix of residential and homes that have been converted to **offices** or mixed use **buildings**. Due to smaller lot sizes and **structures** with residential appearances, the area is intended for **professional offices**, mixed use **buildings**, retail and service establishments. This **zone** is intended to restrict larger scale commercial development, better suited for the outer north and south ends of the city.

(4) *MC, Marine Commercial District.* The MC District is established at locations in the community with water **frontage** to protect and promote the historic and unique heritage of Charlevoix. The historic marine **use** of the waterfront is a keystone to the ambiance of the "fishing village" feeling of Charlevoix. This district is intended to accommodate a mix of land **uses** including single family, **condominiums**, marine related commercial and **professional offices**.

(5) *CH, Commercial Hospitality District.* The CH District provides for overnight lodging and complementary facilities and services, such as gift shops and restaurants. By precluding larger scale retail and other relatively intense commercial **uses**, it is intended to be limited to lodging and associated **uses** to complement Charlevoix as a vacation and wedding destination area.

(6) *PO, Professional Office.* This district is intended to accommodate **uses** that are administrative and/or professional in nature in appropriate areas, without adverse impacts to **adjacent** residential land **uses**.

(7) *SR, Scenic Reserve District.* The purpose of this district is to protect the scenic attributes of certain properties along the shores of the city's **abutting** lakes where development has not occurred and views to and from the water remain relatively unspoiled. The visual connection to the water and the views from the lakes are considered essential elements of the city's character that bring economic health and vitality to the community. Scenic reserve areas may also be forested lands or natural areas intended to be protected from future development because of their community or environmental value. Any **uses** permitted within this district must be undertaken in a manner that will respect the

environment and the scenic or visual value of the designated areas. The SR District includes both public and private lands that are also highly valued for recreational activities.

(8) *I, Industrial District.* This **zone** is intended to accommodate the industrial needs of the entire community in such a manner that unreasonable noise, dust, vibration or any other like nuisance shall not affect **adjoining** properties.

(9) *P, Public Facilities.* This **zone** is intended to accommodate municipal, county and federal government related **buildings** and **uses**. Public Facilities also include schools, public **parking lots** and the Charlevoix Public Library.

5.31. Schedule of Uses

Uses permitted in non-residential/mixed use districts are listed in *Table 5.31*. Additional requirements related to a specific **use**, if any, are referenced in the "Specific Requirements" column. The requirements in footnotes are an integral part of this article and shall apply in all instances.

Table 5.31 Allowed Uses: Non-Residential and Mixed Use Zones

P = Permitted Use by Right S = Special Land Use	PO	GC	CBD	CH	MC	SR	I	P	CM	Specific Requirements
Accessory										
Accessory uses, buildings and structures	P	P	P	P	P	P	P	P	P	Section 5.46(1)
Boathouses	-	-	-	-	P	S	-	-	-	Section 5.46(4)
Dock, boat launch; accessory	-	-	-	-	P	P	-	-	-	
Drive-through facility, except those serving a restaurant	-	P	P	-	-	-	-	-	P	Section 5.46(6)
Outdoor display and sales	-	P	P	-	S	-	P	-	P	Section 5.46(8)
Outdoor seating area for restaurants, taverns and similar **uses** serving food and beverages	-	P	P	P	P	P	-	-	P	
Recreation and meeting facilities accessory to a **motel/ hotel**	-	P	P	P	-	-	-	-	-	
Restaurant or retail store accessory to a **motel/hotel**	-	P	P	P	-	-	-	-	P	
Solar panels	P	P	P	P	P	-	P	P	P	Section 5.46(9)
Wind energy conversion system, single accessory	S	S	S	S	S	-	S	P	P	Section 5.46(10)
Residential										
Adult foster care group home	-	S[1]	-	-	-	-	-	-	-	
Dwelling above the first floor	P[2]	P[3]	P	-	P	-	-	-	P	

[1] Subject to any use restrictions and the area, height and setback requirements of the GC District.
[2] Mixed use developments where a dwelling unit is proposed above professional offices shall comply with the area, height and placement requirements of the PO District.
[3] Mixed use developments where a dwelling unit is proposed above GC structure shall comply with the area, height and placement requirements of the GC District.

Table 5.31 Allowed Uses: Non-Residential and Mixed Use Zones											
P = Permitted Use by Right S = Special Land Use		PO	GC	CBD	CH	MC	SR	I	P	CM	Specific Requirements
Convalescent and nursing homes		-	P	-	-	-	-	-	-	-	
Dwellings	Multiple family	-	P	P	P	P[1]	-	-	-	P	
	Single family, attached	-	-	-	-	P	-	-	-	P	Section 5.47(1)
	Single family, detached	-	-	-	-	P	-	-	-	P	Section 5.47(1)
Offices and Services											
Bank/financial institution		P	P	P	-	-	-	-	-	P	
Barber shop or beauty salon		-	P	P	P	P	-	-	-	P	
Contractor's shop, indoor only		-	P	-	-	-	-	P	-	-	
Day care center/nursery		-	P	-	-	-	-	-	-	P	Section 5.51(1)
Dry cleaning pick up/delivery		-	P	-	-	-	-	-	-	P	
Kennel, commercial		-	-	-	-	-	-	P	-	-	Section 5.51(2)
Laundry, self-service		-	P	-	-	-	-	-	-	P	
Office	Professional	P	P	P	-	P	-	-	-	P	
	Medical and dental	P	P	P	-	P	-	-	-	P	
Photography studio		P	P	P	-	P	-	-	-	P	
Veterinary clinic or hospital		-	S	-	-	-	-	S	-	-	Section 5.51(3)
Recreation and Open Space											
Dock, boat launch, public		-	-	P	-	P	P	-	-	-	
Dock, private noncommercial		-	-	P	-	P	P	-	-	-	
Health club and fitness center		-	P	P	P	-	-	P	-	P	
Marina, public or private		-	-	-	-	P	-	-	-	-	
Park, playground, beach; private		-	-	P	P	P	P	-	-	-	
Park, playground, beach; public		-	P	P	P	P	P	P	P	P	
Recreation facility	Indoor	-	P	P	-	-	-	P	-	-	
	Outdoor	-	-	-	-	-	P	S	-	P	Section 5.49(1)
Lodging, Dining and Entertainment											
Bakery and baked goods		-	P	P	P	P	-	-	-	P	
Bed and breakfast		-	-	P	P	P	-	-	-	S	Section 5.46(3)
Billiards, pool hall		-	P	-	-	-	-	-	-	-	
Bowling alley		-	P	-	-	-	-	-	-	-	
Brewpub		-	P	P	-	P	-	-	-	P	
Fishing charter service		-	-	P	-	P	P	-	-	-	
Lodges and private **clubs**		-	P	P	-	P	-	-	-	P	
Motel or **hotel**		-	P	P	P	-	-	-	-	P	
Restaurant with drive-through		-	P	-	-	-	-	-	-	-	Section 5.48(2)
Restaurant without drive-through		-	P	P	P	P	-	P	-	P	
Wine tasting room		-	P	P	P	P	-	-	-	P	
Tavern		-	P	P	P	P	-	-	-	-	
Theater, indoor		-	P	P	-	-	-	-	-	-	

[1] Multiple family dwellings shall be developed according to the requirements of the R4 District.

Table 5.31 Allowed Uses: Non-Residential and Mixed Use Zones										
P = Permitted Use by Right S = Special Land Use	PO	GC	CBD	CH	MC	SR	I	P	CM	Specific Requirements
Retail										
Any retail establishment with a gross leasable area greater than 15,000 sq. ft. (60,000 sq. ft. maximum)	-	P	-	-	-	-	P	-	-	Section 5.50
Building material, lumber, bulk storage yard	-	-	-	-	-	-	P	-	-	
Convenience store	-	P	P	-	-	-	P	-	P	
Floral shop/florist	-	P	P	-	P	-	-	-	P	
Furniture and appliance sales	-	P	-	-	-	-	-	-	-	
Grocery, meats, delicatessen	-	P	P	-	P	-	-	-	P	
Nursery/garden shop, indoor only	-	P	-	-	-	-	P	-	P	
Retail sales of durable and dry goods: apparel, hardware, pharmaceuticals, books, gifts, jewelry, etc.	-	P	P	-	-	-	-	-	P	
Vehicle Related Uses										
Boat fuel/gasoline sales	-	P	-	-	S	-	-	-	-	
Boat service and repair	-	P	-	-	P	-	P	-	-	
Boat/marine sales and related retail (e.g., fishing equipment, etc.)	-	P	P	-	P	-	P	-	P	
Public garages, parking lots/structures as a **principal use**	-	-	P	-	-	-	-	S	-	
Vehicle service station with convenience retail, in conjunction with a bulk petroleum distribution facility	-	S	-	-	-	-	S	-	-	
Vehicle service station, including accessory service/repair and/or convenience retail	-	P	-	-	-	-	P	-	-	Section 5.53(3)
Vehicle parts sales, indoor only	-	P	-	-	-	-	P	-	-	
Vehicle sales	-	P	-	-	-	-	P	-	-	
Vehicle repair, major	-	-	-	-	-	-	P	-	-	Section 5.53(1)
Vehicle repair, minor	-	S	-	-	-	-	P	-	-	Section 5.53(2)
Vehicle wash establishment	-	S	-	-	-	-	P	-	-	Section 5.53(4)
Public/Institutional										
Churches and customary related **uses**	P	P	P	P	P	P	P	P	P	
Colleges and universities	-	S	S	-	-	-	S	S	S	
Community centers	P	P	P	-	-	-	P	P	P	
Hospital, clinic	P	P	P	-	-	-	-	-	P	
Publicly owned **building**	P	P	P	P	P	P	P	P	P	
School (elementary, middle and high)	-	-	P	-	-	-	-	P	S	

Table 5.31 Allowed Uses: Non-Residential and Mixed Use Zones										
P = Permitted Use by Right S = Special Land Use	PO	GC	CBD	CH	MC	SR	I	P	CM	Specific Requirements
Industrial and Storage										
Boat/marine construction and maintenance equipment use and storage	-	-	-	-	P	-	P	-	-	
Boat storage, indoor, in a permanent structure	-	-	-	-	P	-	P	-	-	
Boat storage, outdoor (permanent)	-	-	-	-	-	-	P	-	-	
Boat storage, outdoor (off season)	-	P	-	P	P	P	P	P	-	
Manufacture, compounding, assembly and treatment of articles from prepared materials, such as metal, plastics, fiber and wood	-	S	-	-	S	-	P	-	-	
Manufacturing, compounding, processing and packaging products, such as candy, cosmetics, pharmaceuticals and food products (but not refining or rendering)	-	S	-	-	-	-	P	-	-	
Self-storage facility	-	-	-	-	-	-	P	-	-	Section 5.54(1)
Warehousing, truck terminal, logistics and transportation equipment storage	-	-	-	-	-	-	P	-	-	
Other Uses										
Essential services	P	P	P	P	P	P	P	P	P	
Similar **use**	P	P	P	P	P	P	P	P	P	Section 5.55(3)
Wireless telecommunication towers	-	S	-	-	-	-	S	S	-	Section 5.55(4)

5.32. Area, Height and Placement Requirements

All **lots** in the nonresidential districts shall conform to the requirements of the *Table 5.32*. The requirements in footnotes are an integral part of this article and shall apply in all instances.

Table 5.32 Dimensional Requirements: Nonresidential and Mixed Use Districts

Zoning District	Min. Lot Area (sq. ft.)	Min. Lot Width (ft.)	Max. Building Height (ft.)	Minimum Yard Setbacks (ft.)				Lot Coverage (%)
				Front	Side Interior	Side Street Side	Rear	
PO	NA	75	26	15	10	15	25	NA
GC	20,000	100	26	15	10	15	25	NA
CBD	NA	NA	40	0	0	0	0[1]	NA
CH	43,560	150	30	25	20[2]	20	30[1]	50/80[3]
MC	10,000	50	35[4]	20	0	0	0	NA
SR	NA	NA	*See 5.33(1)*	25	20/50[5]	20/50	50	30
I	43,560	150	30	30	20[6]	20	25	60
P	NA	100	35	20	10	15	15	NA
CM	9,000	60	35	15	10	15	20	NA

5.33. Additional SR, Scenic Reserve, District Requirements

(1) No **building** shall exceed twenty-five (25) feet in height to the peak of the roof.

(2) *Waterfront regulations:* Any path, road or similar passage within the **setback** shall be constructed and surfaced to effectively control erosion, and shall meet the requirements of this ordinance and any other applicable regulations.

[1] The minimum rear yard in the CBD District when adjacent to the Pine River Channel or Round Lake shall be fifty (50) feet.
[2] In the CH District, the minimum side or rear yard adjacent to any Residential District shall be fifty (50) feet.
[3] In the CH District, lot coverage of buildings shall not exceed fifty (50) percent; lot coverage of all impervious surfaces shall not exceed eighty (80) percent.
[4] Maximum height in the MC District for residential structures shall be twenty-six (26) feet.
[5] The minimum side yard shall be twenty (20) feet and the total of both side yards shall be at least fifty (50) feet.
[6] The minimum side and rear yards in the I District when adjacent to property in a residential district shall be forty (40) feet.

ARTICLE 6 OVERLAY DISTRICTS

5.40. Intent and Scope

(1) *Intent*. The intent of the overlay districts is to establish regulations in addition to the applicable regulations of the existing (underlying) **zoning district** that either supplement or replace those existing regulations. The Overlay Districts are applied in specific locations based on the environmental features, historic assets, scenic qualities, traffic conditions or other unique characteristics of the area, regardless of the established **zoning districts**.

(2) *Scope*. Several overlay districts are established, as described in this article, to address the varied and unique needs of specific locations within the city. The boundaries of these districts shall be as described in this article and shown on the zoning map. The requirements of this article are in addition to and shall supplement those imposed on the same lands by any underlying zoning provisions of this ordinance or other ordinances of the City of Charlevoix. These regulations supersede all conflicting regulations of the underlying districts to the extent of such conflict.

5.41. Central Business District Overlay District

(1) *Purpose*. To create a vibrant downtown district fronting Bridge Street consisting of primarily retail and food service businesses that enhance the city's economy by defining specific uses intended to increase consumer traffic.

(2) *Applicability*. This overlay district shall include all **buildings** with store entrances facing Bridge Street from Antrim Street north to the Pine River Channel. This section does not apply to floors above street level or any side that is not directly accessible from Bridge Street.

(3) *Permitted Uses*.

(a) Food and beverage services, including: grocery stores, restaurants, cafés (including internet cafes), coffee shops, bars, taverns, wine bars, breweries, bakeries, delicatessens, bistros and specialty shops.

(b) Retail stores having a gross area of less than five thousand (5,000) square feet. (Appliance, furniture and similar stores selling large scale consumer products are not considered retail.)

(c) Art galleries, frame shops, photography and art studios.

(d) Beauty Salons and barber shops as the primary use. Secondary uses may include tanning beds, pedicure or manicure services in the same location.

(4) *Other Regulations*. The **planning commission**, upon request, may determine if a proposed use not listed above is similar to, or comparable to, the permitted uses in subsection (3). If the **planning commission** determines a proposed use is not similar or comparable to the permitted uses, the applicant may apply for a special use permit. The **planning commission** may issue a special use permit provided that the proposed use is found to generate commercial activity in accordance with the purpose of this section and it meets the requirements for Special Land Use Permits in *Article 13*.

5.42. West Garfield Avenue General Commercial Overlay District[1]

(1) *Purpose*. The purpose of this district is to support the future development of the 200 block of W. Garfield (north side) and the 200 block of W. Lincoln (south side) where industrial **uses** have been present in the past and commercial development currently exists, surrounded by residential **uses**.

(2) *Applicability*. This overlay district shall include the following addresses: (See Zoning Map)

204 and 208 W. Lincoln

205 and 207 W. Garfield

(3) *Permitted Uses*. The following **uses** shall be permitted as special land **uses**, in accordance with the procedures of *Article 13 (Special Land Use Review)*.

(a) Restaurants, not including drive-through establishments

(b) Convenience stores

(c) Grocery stores

(d) Storage **buildings** not to exceed three thousand (3,000) square feet.

(e) Single family residential

(f) Furniture, carpet, appliance or similar **use** stores

(g) Retail stores

(4) *Other Regulations*. The **planning commission**, upon request, may determine if a proposed use not listed above is similar to, or comparable to, the permitted uses in *Table 5.31*. If the **planning commission** determines a proposed use is not similar or comparable to the permitted uses, the applicant may apply for a special use permit. The **planning commission** may issue a special use permit provided that the proposed use is found to generate commercial activity in accordance with the purpose of this section and it meets the requirements for Special Land Use Permits in *Article 13*.

(5) *Dimensional Requirements*.

(a) Setbacks. The minimum **setback** requirements are as follows:

Front: fifteen (15) feet / Sides: ten (10) feet / Rear: twenty (20) feet.

(b) Height. The maximum permitted **building height** shall be twenty-six (26) feet.

(c) Lot Coverage. The maximum **lot coverage** shall not exceed fifty (50) percent of the total **lot**.

5.43. West Carpenter/State Street Industrial Overlay District

(1) *Purpose*. The purpose of this district is to support the continued use of, and future development of, larger **lots** adjacent to the Municipal Airport without negative impacts to the **adjacent** residential areas.

(2) *Applicability*. This overlay district shall include the following addresses: (See Zoning Map)

[1] This is the current location of Andy's Party Store, Bases Teen Center, a storage building, and Whitley's Floor Covering.

210A W. Carpenter Ave.

1209 State Street

1213 State Street

1217 State Street

(3) *Permitted Uses*. The following **uses** shall be permitted as special land **uses**, in accordance with the procedures of *Article 13 (Special Land Use Review)*. **Uses** normally applied to the I district are prohibited.

(a) Light manufacturing operations with ten (10) or fewer employees

(b) **Attached** or **detached single family dwellings**

(c) R2A **multiple family dwellings**

(d) Landscaping/nursery related

(e) Storage **buildings**

(4) *Dimensional Requirements*.

(a) Setbacks. The minimum **setback** requirements of the underlying **zoning district** shall apply.

(b) Height. The maximum permitted **building height** shall be twenty-six (26) feet.

(c) Lot Coverage. The maximum **lot coverage** shall not exceed forty (40) percent of the total **lot**.

5.44. North Side Professional Office Overlay District

(1) *Purpose*. The purpose of this district is to continue to allow the conversion of homes to **offices** fronting US 31/Bridge Street while having a minimal impact on the residential character of the neighborhood.

(2) *Applicability*. This overlay district shall include the **lots** zoned R1 Single Family Residential that lie on the east side of Michigan Avenue between East Dixon Avenue and Petoskey Avenue, as well as all **lots** zoned R1 Single Family Residential that lie on Petoskey Avenue between Michigan Avenue and Fairway Drive. The overlay district does not apply to the site occupied by the Charlevoix Community Reformed Church at 100 Oak Street. (See Zoning Map)

(3) *Permitted Uses*. The conversion of homes to **professional offices** shall be permitted as special land **uses**, in accordance with the procedures of *Article 13 (Special Land Use Review)*.

(4) *Other Regulations*. The use of a gabled roof is required, with a minimum roof pitch of 8:12 for new construction. Conversion of existing structures may utilize the existing roof pitch and roof design at the time of application. Rooflines shall be consistent with the established character of the surrounding neighborhood relative to height, pitch, configuration and materials. Parking shall meet the requirements of *Article 10*.

(5) *Dimensional Requirements*. The dimensional requirements of the R1 zone shall be required.

ARTICLE 7 USE REQUIREMENTS

5.45. Specific Use Requirements

(1) Certain **uses**, because of their unique locational needs or operational characteristics are subject to additional requirements beyond those of the **zoning district** in which they are located. Those added conditions or requirements are specified in this article.

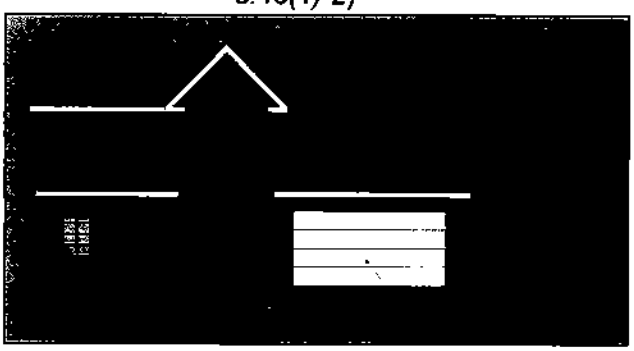
(2) Requirements listed for any **use** that is a special land **use** shall be considered additional standards of approval, along with the general standards of review in *Section 5.133* for all special land **uses**.

5.46. Accessory Buildings and Uses[1]

(1) *Accessory Buildings and Structures.*

(a) Authorized **accessory buildings** and **structures** may be erected as part of the **principal building**, may be connected to the **principal building** by a roofed breezeway or similar **structure** or may be completely detached from the **principal building**.

(b) Where an **accessory building** is attached to the **principal building**, it shall be considered part of the **principal building** for purposes of determining **setback** dimensions and **building height**. (See *Figure 5.46(1)-1*) If, however, the attached **accessory building** is connected to the **principal building** by a roofed porch, breezeway or similar covered **structure**, it shall not exceed sixteen (16) feet in height, shall not be closer than twenty (20) feet to the **rear lot line** and shall meet the **front** and **side yard** setback requirements of that zone district. (See *Figure 5.46(1)-2*)



(c) In the R1 and R2 single family **residential districts** if the **principal building** has an attached **accessory building**, only one (1) detached **accessory building** shall be permitted.

(d) **Lots** in the R1 and R2 Zone shall be permitted to have a secondary detached **accessory building**, such as a storage shed. Secondary **accessory buildings** shall meet all the requirements of this section and not exceed two hundred (200) square feet in area.

[1] This section shall not apply to boathouses. For specific boathouse requirements see *Section 5.46(4)*.

(e) No detached **accessory building** shall have a building footprint (length x width) greater than two thousand (2,000) square feet.[1]

(f) The total area of all **accessory buildings** on a **lot** shall not occupy more than twenty-five (25) percent of the **rear yard.**

(g) The minimum distance between a **principal building** and detached **accessory buildings** shall be ten (10) feet.

(h) Detached **accessory buildings** and **structures** shall meet the following minimum **setbacks**:

1. Rear Yard: Six (6) feet from a **rear lot line**. Detached **accessory structures** that store vehicles **adjacent** to **alleys** or sidewalks shall not be closer than fifteen (15) feet from the edge of the **alley** or sidewalk surface.

2. Side Yards: An **accessory building** shall conform to the **side yard setback** requirements of the **principal building**, unless it is located in a **street side yard**, the minimum **setback** shall be fifteen (15) feet from the **street side lot line**.

3. Front Yard: An **accessory structure** shall not be located within any **front yard**.

(i) Detached **accessory structures** shall not exceed sixteen (16) feet in height.

(j) Prohibited uses within detached **accessory structures** or **accessory structures** connected by a breezeway or similar structure:

1. May not contain features that form a habitable **dwelling unit** or create a second **dwelling unit**.

2. These **structures** may contain utility sinks, one bathroom, and refrigeration units. Full kitchen facilities that include a range or stove are prohibited.

3. Rooms within **accessory structures** may be used for additional sleeping quarters for the owner, or resident, and their immediate **family** provided that these rooms may not be rented out as transient housing for any length of time.

(k) Stand-alone **carports** are prohibited in all zones. **Carports** attached to existing structures shall meet the requirements of the ordinance.[2] Tents, wall tents, garages in a box, and similar enclosures are prohibited.

(l) Permanent greenhouses shall be considered an **accessory structure** and meet the requirements of this section.

(2) *Additional Requirements for Swimming Pools and Hot Tubs.*

(a) Any pool over twenty-four (24) inches deep with a surface area of more than two hundred fifty (250) square feet shall comply with the requirements of this subsection and shall not be constructed, installed, enlarged or altered until a building permit has been obtained.

[1] This subsection shall not apply to secondary accessory structures covered in Section 5.46(1)(d).
[2] This subsection shall not apply to the Industrial (I) Zoning District.

(b) The outside edge of the pool wall and/or the **deck** and any other appurtenances shall not be located closer than ten (10) feet from any rear or side property line, nor less than ten (10) feet from the **principal building**. Swimming pools shall not be located in the front yard.

(c) Each pool shall be enclosed by a minimum four (4) foot high **fence**, wall, or other structure or device, sufficient to make the pool inaccessible to small children. This enclosure, including gates, shall not be less than four (4) feet above the underlying ground; all gates must be self-latching with latches placed at least four (4) feet above the underlying ground or otherwise made reasonably inaccessible from the outside to small children. The **fence** may be located around the perimeter of a **deck** surrounding an above ground pool, provided that the total height of the **deck** and the **fence** does not exceed ten (10) feet. Above ground pools may have gates, removable or swing-up steps or other means to limit entry in lieu of a **fence**. Except for hot tubs and spas, a swimming pool cover shall not be allowed in lieu of a **fence**.

(d) All swimming pool and hot tub installations shall comply with the State Construction Code and all standard codes referred to therein. All electrical installations or wiring in connection with swimming pools shall conform to the provisions of the National Electrical Code. If service drop conductors or other utility wires cross under or over a proposed pool area, the applicant shall make satisfactory arrangements with the utility involved for the relocation thereof before a permit shall be issued for the construction of a swimming pool. A no-fault ground unit shall be provided to protect against electrical shock.

(3) *Bed and Breakfast Establishments.*

(a) Requirements.

1. The **bed and breakfast** shall be located within a **residence** which is the principal **dwelling unit** on the property. Whenever the **bed and breakfast** is open for the renting of rooms, the **residence** shall be occupied by the owner or innkeeper at all times.

2. The rental rooms within the establishment shall be part of the principal **dwelling**. **Bed and breakfast** establishments shall not contain more than five (5) rental rooms, however the **planning commission** may consider additional rooms based on the following criteria:

   a. The existing single family home has the capacity for more than five (5) rental rooms.

   b. It is a single family home which has been operated as a **bed and breakfast** establishment in the past.

   c. There is sufficient parking on site, or within three hundred (300) feet of the property, to accommodate additional rooms.

   d. The **planning commission** finds that the additional rooms will not have an adverse impact to the residential character of the neighborhood.

3. Off-street parking shall include a minimum of five (5) **parking spaces**. Required **parking spaces** shall be accessible at all times.

4. The **residence** shall have at least two (2) exits to the outdoors.

5. One (1) **sign** is permitted and shall be limited to four (4) square feet. If the **sign** is a freestanding sign, it shall not exceed eight (8) feet in height. Lighting of signs is not permitted unless the **bed and breakfast** is located on Bridge Street. In these cases external lighting shall be allowed meeting all the requirements of *Article 11*.

6. A **bed and breakfast** establishment shall be consistent with the essential character of the residential neighborhood in terms of **use**, traffic generation and appearance.

7. A **bed and breakfast** establishment shall not be permitted on a **lot** or **parcel**, (including a **nonconforming lot** or parcel of record) which does not meet the established lot size requirements for the **zoning district** in which it is located.

(4) *Boathouses*. Special land **use** approval for a **boathouses** in the R1 Zone shall be subject to the following requirements. **Boathouses**:

(a) shall not be permitted on Lake Michigan or Lake Charlevoix;

(b) shall have a gabled roof with a minimum roof pitch of 8:12 for new construction. Repair of existing structures may utilize the existing roof pitch and roof design at the time of application. Multiple peaks and a variety of rooflines or other architectural features consistent with the character of the neighborhood are encouraged. Eaves extending out greater than twenty-four (24) inches shall be considered part of the building footprint;

(c) are permitted over the water but may not extend greater than eighty (80) feet lakeward from the existing sea wall location[1], or **ordinary high water mark** if no sea wall is present;

(d) where inland dredging is required, **boathouses** may not extend greater than fifty (50) feet inland from the existing sea wall location or **ordinary high water mark** if no sea wall is present;

(e) shall be located at least ten (10) feet from **side lot lines**; no **rear yard setback** required;

(f) shall not exceed a building footprint (length x width) of two thousand (2,000) square feet in area, exclusive of eaves;

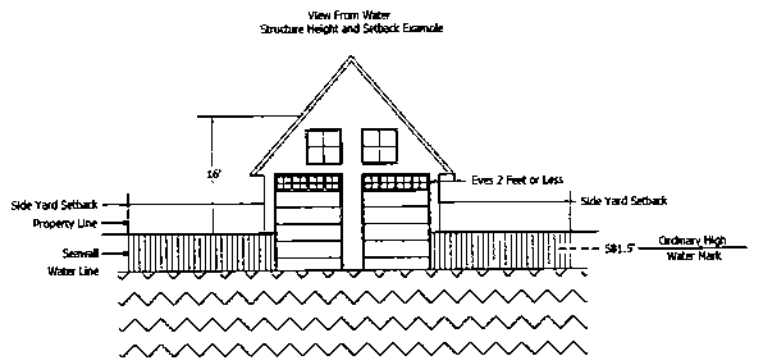
(g) shall not contain sleeping quarters, kitchens or bathrooms;

(h) in the R1 **Zone**, shall not exceed a height of sixteen (16) feet with the base elevation starting at the **ordinary high water mark**. (See *Figure 5.46(4)-1*)

FIGURE 5.46(4)-1 ON NEXT PAGE

[1] Existing sea wall locations shall be those locations as of the adoption of the zoning ordinance.

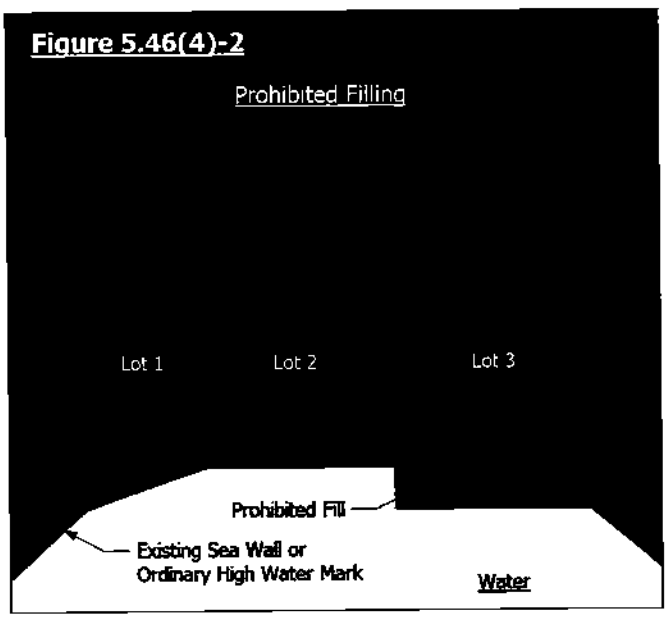
Figure 5.46(4)-1



(i) Existing sea wall[1] locations shall be considered the **rear lot line** for the purposes of calculating **lot area** and **coverage** requirements.

(j) Sea walls may not be extended lakeward, nor shall any **filling** take place for the purposes of increasing lot size or relocating the **rear lot line**. (See *Figure 5.46(4)-2*)

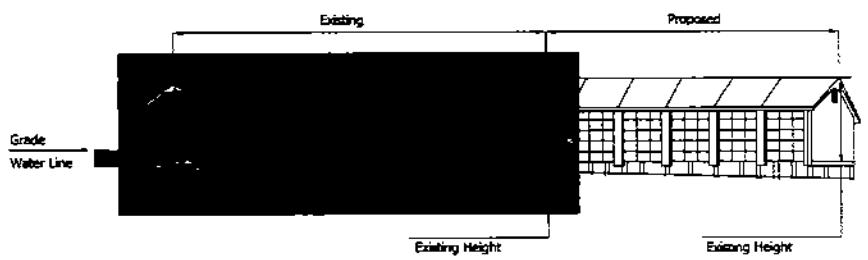
Figure 5.46(4)-2



[1] Existing sea wall locations shall be those locations as of the adoption of the zoning ordinance.

(k) **Boathouses** in the Belvedere Club and Chicago Club are excluded from the height requirements for **accessory structures** provided that they may be extended in the same building line elevation and size as the existing **boathouses**. (See *Figure 5.46(4)-3*)

Figure 5.46(4)-3



(5) *Day Care: Group Day Care Home*. Special land use approval for a **group day care home** shall be subject to the following:

(a) A **group day care home** shall not be located within a five hundred (500) foot radius of any of the following:

1. A facility offering substance abuse treatment and rehabilitation service to seven (7) or more people licensed under Article 6 of the public health code, 1978 PA 368, MCL 333.6101 to 333.6523.

2. A community correction center, resident home, halfway house or other similar facility which houses an inmate population under the jurisdiction of the department of corrections.

(b) The outdoor recreation area shall be fenced and screened from any **abutting residential district** or **use** by a decorative **fence** or wall, or a landscaped equivalent.

(c) The applicant shall provide evidence of the ability to comply with all applicable State licensing requirements.

(6) *Drive-Through Facility (except those serving a restaurant).*

(a) Sufficient stacking capacity for the drive-through portion of the operation shall be provided to ensure that traffic does not extend into the public right-of-way nor does it interfere with internal circulation of vehicles. A minimum of two (2) stacking spaces for each drive-through station shall be provided.

(b) The parking and maneuvering areas of the site shall be fenced and screened from the view of any **abutting residential district** or **use** by a decorative **fence** or wall, a landscaped equivalent, or a combination of both.

(c) Outdoor speakers for the **drive-through facility** shall be located in a way that minimizes sound transmission toward **adjacent** property. Amplified sound shall not be audible at the property line of any **adjacent** residential property.

(d) Access lanes shall be designed so service and stacking do not interfere with **parking spaces** or maneuvering on the site.

(7) *Home Occupations*. **Minor home occupations** do not require a zoning permit. **Major home occupations** shall require special land use approval pursuant to *Article 13*.

Home occupations are permitted in all **zoning districts** as an **accessory use** to a **dwelling unit**. The following standards apply to all **home occupations**:

(a) The **home occupation** shall be conducted entirely within a **dwelling unit** and/or an **accessory building**.

(b) Except for a **sign**, as allowed by *Article 11*, the **home occupation** must not be evident from the **street** or any neighboring property. (**Minor home occupations** shall not have signage.)

(c) The **home occupation** shall not change the character of the **dwelling** in which it is conducted, nor shall it constitute, create or increase a nuisance.

(d) The **home occupation** shall be carried out only by the inhabitants of the **dwelling**, plus not more than one (1) non-resident employee.

(8) *Outdoor Display and Sales (Accessory)*. **Outdoor display and sales** that are accessory to a permitted or special land **use** shall be subject to the following requirements:

(a) Required Setbacks.

1. **Outdoor display or sales** located within a roofed enclosure shall be considered to be within an **accessory building** and subject to all applicable requirements of *Section 5.46(1)*.

2. If the enclosure is attached in any way to the **principal building**, it shall be considered part of the **principal building** and subject to all requirements for the **principal building**.

3. If the enclosure is not attached to the **principal building**, but is located within a **yard adjacent** to a **residential district**, it shall meet the minimum **setback** requirements for a **principal building**.

4. Open sales, display or storage areas shall meet the minimum **setback** requirements for a **principal building**.

(b) **Outdoor storage** is not permitted in any parking area. Sales or display of merchandise may be permitted within a parking area, provided:

1. The items displayed or sold are seasonal in nature and the display area is for a limited duration.

2. The **outdoor sales and displays** shall not reduce the available **parking spaces** below the minimum required by this ordinance.

3. Sales and display areas shall not interfere with safe and efficient traffic and pedestrian movements on the site.

(c) **Outdoor sales and display** areas **adjacent** to a **building** shall be situated so safe and convenient ingress/egress and emergency access to the **building** are maintained.

(d) **Outdoor display and sales** areas located within any **yard adjacent** to a **residential district** (except for a **yard** separated from the **residential district** by a

street right-of-way) shall be screened with a solid **fence** or decorative wall with a maximum height of six (6) feet.

(9) *Solar Panels.*

(a) General Requirements.

1. The exterior surfaces of a solar energy collector shall be generally neutral in color and substantially non-reflective of light. A unit may not be installed or located so sunlight or glare is reflected into neighboring **residences** or onto **adjacent streets**.

2. A solar energy collector shall be permanently and safely attached to the **building** or **structure**. Proof of the safety and reliability of the means of attachment shall be submitted to the County Department of Building Safety prior to installation.

3. Solar energy collectors, and the installation and use thereof, shall comply with the Charlevoix County construction code, the electrical code and other applicable city, county, state and federal requirements.

4. There shall be no **signs** on the unit, other than a **sign** or logo identifying the manufacturer with an area no greater than three (3) square feet, plus any necessary safety information **signs**.

5. A building-mounted unit may only be attached to the **principal building**, or to an **accessory building** serving the **principal use**, such as a barn, **garage** or shed.

(b) Ground-Mounted Units. A ground-mounted solar energy collector shall be subject to the requirements for detached **accessory structures**, as required in *Section 5.46(1)*, above. No individual ground-mounted unit shall exceed five hundred (500) square feet in area or be greater than fifteen (15) feet in height.

(c) Roof-Mounted Units.

1. A roof-mounted unit shall not project above the peak or beyond the eaves, gables or other edge of the roof on which it is mounted.

2. Installation:

a. On a roof surface visible from the **street**, a roof-mounted unit shall not extend more than eighteen (18) inches above the roof surface. The panel(s) shall be mounted at the same angle as the roof upon which the unit is mounted.

b. On a roof surface that is not visible from the **street**, a roof-mounted unit shall not extend more than six (6) feet above the roof surface. The unit need not be mounted at the same angle as the roof. No portion of the unit may be visible from the **street**.

c. A roof-mounted unit shall be only of such weight as can safely be supported by the **structure**. Proof, in the form of certification by a professional engineer or other qualified professional, shall be submitted to the County Department of Building Safety prior to installation.

(d) Wall-Mounted Units.

1. A wall-mounted solar energy collector shall not obstruct drives or other traffic ways and shall not extend further than eight (8) feet from the building wall. No portion of the unit may extend above the building wall to which it is attached.

2. A wall-mounted unit may not extend into a **required yard**.

3. Surface area:

a. On any wall visible from a **street**, the surface area of the wall-mounted unit shall not exceed thirty (30) percent of the area of the wall onto which it is mounted and shall not obscure any window or door.

b. On any other wall, the surface area of the unit shall not exceed fifty (50) percent of the area of the façade. The unit may be located in front of windows or other openings.

c. For the purpose of this section, the area of the façade wall shall include all of the area bounded by the height and width of the wall, including any windows, doors or other openings.

(10) *Wind Energy Conversion Systems, Single Accessory*. This subsection establishes standards and procedures by which the installation and operation of a Single Accessory **Wind Energy Conversion Systems (WECS)** shall be governed within the City of Charlevoix.

(a) Prohibited Use. Only **Single Accessory WECS** shall be allowed. A **WECS** with the primary purpose of providing power to the utility grid or any other **use** not on the same site is prohibited.

(b) Review Requirements.

1. A **WECS** may only be authorized upon approval of a special land **use**, according to *Article 13*.

2. In addition to any submittal requirements for special land **uses** in *Article 13* or site plan review submittal requirements in *Article 12*, the application and **site plan** for a **Single Accessory WECS** shall include the following information:

a. Name of applicant, name of **site plan** preparer (if different), name of **WECS** manufacturer and name of **WECS** installer, with contact information;

b. A scaled drawing of the property, showing dimensions of all property lines and the area of the **lot** in square feet;

c. Location and **setback** of all **structures** on the site, including any overhead utility lines;

d. Proposed location of the **WECS** equipment on the site or on the **building**;

e. **Setbacks** of the **WECS**, in accordance with the **setback** requirements of this subsection, from property lines and (if ground-mounted) from **structures**;

f. A scaled elevation drawing of the **WECS** installation (including the **building**, if the **WECS** is building-mounted) showing the **WECS** height, rotor diameter and all other applicable elements to confirm conformance with the requirements of this Section;

g. Certification that the **WECS** system and mount meets any current standards developed by one of the following: the IEC (International Electrotechnical Commission), ANSI (American National Standards Institute) or SWCC (Small Wind Certification Commission).

(c) Single Accessory WECS General Requirements.

1. A property may have either ground-mounted or building-mounted **WECS**, but not both.

2. Minimum Lot Area. A building-mounted **WECS** shall be allowed on any **lot**, provided that all other requirements are met. The minimum **lot area** for installation of a ground-mounted **WECS** shall be ten thousand (10,000) square feet.

3. Power rating of the **WECS** turbine shall not be greater than twenty-five (25) kilowatts (kW).

4. The **WECS** shall provide energy only to the **structures** and **uses** on the same property upon which the tower is located and must be owned or leased by the owner of the same property; however, this does not prevent the distribution to the local utility company, through net metering, of any power that is generated beyond the needs of the **structures** or **uses** on the property.

5. No sound attributed to the **WECS** in excess of fifty-five (55) dBA (A-weighted decibels) shall be discernible at the property line.

6. There shall be no **signs** on the **WECS** other than the name of the manufacturer, which may only be affixed to the base of the tower or to the nacelle. No **sign** shall exceed three (3) square feet in area.

7. There shall be no lighting on or directed at the **WECS**, except as may be required by the Federal Aviation Administration.

8. The **WECS** shall be painted in a matte color, such as gray or light blue, intended to blend into the background. A building-mounted **WECS** may be painted in similar colors to those on the **building**.

9. A **WECS** shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation or over-speeding. Emergency shut-off information shall be posted on the tower in an easily visible location, or for a building-mounted **WECS**, shall be in a location easily accessible and visible.

10. A **WECS** shall employ an anti-climbing device or be designed to prevent climbing and other unauthorized access.

11. A **WECS** shall not be installed in any location where its proximity to existing fixed broadcast, re-transmission or reception antenna for radio, television or wireless phone or personal communication systems would produce electromagnetic interference with signal transmission or reception.

12. The applicant shall provide written evidence that the **WECS** complies with all applicable federal, state and county requirements, in addition to city ordinances.

13. All **WECS** installations shall comply with applicable electric and building code standards, as adopted by the State of Michigan and the County Department of Building Safety.

14. Abandonment. A **WECS** shall be removed when the device or equipment is no longer operating or when it has been abandoned. A **WECS** shall be deemed abandoned when it has not produced electrical energy for twelve (12) consecutive months.

15. Repair and Maintenance. An existing and approved **WECS** may be repaired and maintained; however, a **WECS** may only be replaced with a new **WECS** upon approval of the **zoning administrator**, provided that the new **WECS** is of the same height, rotor diameter, **setback**, etc. as the **WECS** it replaces. For the purposes of this paragraph, a "new or replacement **WECS**" shall mean all of the **WECS**, excluding the tower or support **structure**.

(d) Ground-Mounted Single Accessory WECS.

1. There shall be no more than one (1) ground-mounted on-site service **WECS** per **parcel** or **lot**.

2. A ground-mounted **WECS** shall not be located within a **front yard**.

3. The **WECS** shall be located on the property so that it is set back from all property lines a distance equal to the **WECS** height. The **setback** shall be measured from the property line (considered as a plane extending from the ground to the highest point of the **WECS**) to the closest extension of the rotor relative to the property line.

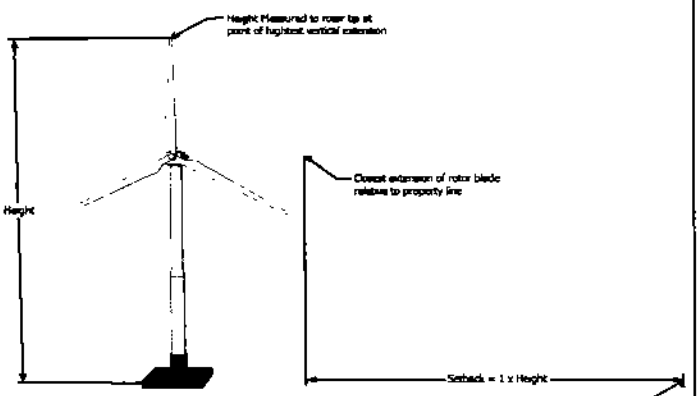
4. The **WECS** height shall be limited by available **setbacks** as required in *Section 5.46(10)(d)3* immediately preceding; however, no **WECS** shall exceed fifty (50) feet high.

5. The minimum rotor blade tip clearance from **grade**, any **structure** or utility line shall be fifteen (15) feet.

6. The diameter of the rotor shall be dependent upon maximum **WECS** height and rotor blade tip clearance, but in no case shall it exceed fifty (50) feet.

FIGURE 5.46(10)(d) ON NEXT PAGE

Figure 5.46(10)(d): Ground-Mounted WECS

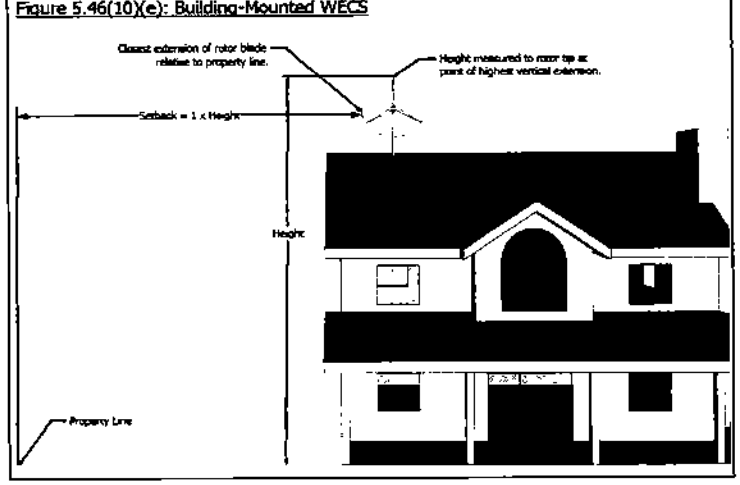


(e) Building-Mounted Single Accessory WECS.

1. There may be more than one (1) building-mounted **single accessory WECS** on a single property; however, each individual **WECS** shall meet all of the requirements in this subsection, and each **WECS** shall be separated from any other **WECS** no less than ten (10) feet, measured between the maximum extension of the rotors.

2. The **WECS** shall be mounted so that it is set back from **adjoining** property lines a distance equal to the combined height of the **WECS** and the height of the portion of the **building** on which it is mounted. The **setback** shall be measured from the property line (considered as a plane extending from the ground to the highest point of the **WECS**) to the closest extension of the rotor relative to the property line.

Figure 5.46(10)(e): Building-Mounted WECS



3. The **WECS** height shall be limited by available **setbacks** as required in Section 5.46(10)(e)2 immediately preceding; however, no building-mounted

WECS shall exceed the maximum permitted height for **principal buildings** in the district, plus twenty (20) feet.

4. The diameter of the rotor shall not exceed twenty-five (25) feet.

5. The mount and the **structure** used to support a building-mounted **WECS** shall meet applicable standards, as certified by an engineer.

(f) Conditions of Approval. Consistent with the purpose for which conditions of approval for a special land use may be imposed as provided in *Article 13*, the conditions, among other purposes, may regulate the construction, installation, use, maintenance, repair and removal of any **WECS**. Such conditions may include, but are not limited to, the following:

1. The preservation of existing **trees** and other existing vegetation not required to be removed for installation of a **WECS**.

2. The reasonable replacement of **trees** or other vegetation removed or destroyed during the construction or installation of a **WECS**.

3. Altering the location of the **WECS** to prevent impacts on neighboring properties, provided that all other requirements of this section are met.

4. Requiring a performance bond or letter of credit, in favor of the city, and conditioned upon the timely and faithful performance of all required conditions of the special land **use**, including, but not limited to, the timely and complete removal of a **WECS**, regulated under the terms of *Section 5.122*, when required. Such performance bond or letter of credit shall remain in effect during and after the operation of a **WECS** until its operations have ceased and it has been removed.

5.47. Residential Uses

(1) *Dwellings, Single Family Attached or Detached (Outside Manufactured Home Communities)*. All **dwelling units** located outside a licensed **manufactured home community** shall comply with the following:

(a) A **dwelling unit** shall conform to the minimum **floor area** requirements of the district in which it is located.

(b) A **dwelling unit** shall have a minimum floor to ceiling height of seven feet, six inches (7'-6"); or if a **manufactured home**, it shall meet the requirements of the United States Department of Housing and Urban Development Regulations, entitled "Mobile Home Construction and Safety Standards", effective June 15, 1976, as amended.

(c) The minimum width of a **single family dwelling unit** shall be twenty-two (22) feet for at least sixty-seven (67) percent of its length, measured between the longest exterior walls.

(d) All **dwelling units** shall comply with the Michigan State Construction Code as promulgated by the Michigan State Construction Code Commission under provisions of Public Act 30 of 1972, as amended, being MCL 125.1501 *et. seq.* or the "Mobile Home Construction and Safety Standards", as promulgated by the United States Department of Housing and Urban Development, being 24 CFR 3280, and as from time to time such standards may be amended.

(e) A **dwelling unit** shall be attached to a permanent foundation constructed in accordance with the State Construction Code and shall have the same perimeter dimensions as the **dwelling**. In the case of a **manufactured home**, it shall be installed per the manufacturer's set-up instructions and shall be secured to a foundation by an anchoring system or device complying with the rules and regulations of the Michigan Manufactured Housing Commission or the State Construction Code, whichever is stricter.

(f) If provided, the wheels of a **manufactured home** shall be removed and the towing mechanism, undercarriage and chassis shall not be exposed.

(g) All **dwellings** shall be connected to city sanitary sewer and water utilities.

(h) Any **addition** to a **dwelling** shall meet all the requirements of this ordinance.

(i) A **dwelling** may have either a roof overhang of not less than six (6) inches on all sides or, alternatively, a roof drainage system that concentrates water at collection points and discharges it away from the **dwelling**.

(2) *Senior Housing: Independent Living, Assisted Living and Similar.*

(a) Developments or portions of developments designed as multiple family **buildings** shall be subject to the requirements applying to **multiple family dwellings**.

(b) Developments or portions of developments designed as **single** or **two family dwellings** shall be subject to the requirements applying to **single** and **two family dwellings**.

(3) *Site Condominiums.* This chapter requires preliminary review of **site condominium** plans by the **planning commission**, followed by final review and approval by the **city council**, to ensure that **site condominiums** comply with this ordinance and other applicable city ordinances.

(a) Planning Commission Review of Preliminary Plans.

1. Prior to final review and approval of a **site condominium development plan** by the **city council**, a preliminary **site condominium development plan** shall be reviewed by the **planning commission** in accordance with the procedures, standards and requirements provided by this section. Such review shall take place following a public hearing by the **planning commission** on the preliminary plan. At least fifteen (15) days' notice of the hearing shall be given by ordinary mail, sent to the owners of, or parties with interest in, the lands within three hundred (300) feet of the property to be included in the development, as listed in the current city tax assessment rolls.

2. Application for review and approval of a **site condominium development plan** shall be initiated by submitting the following to the **zoning administrator**:

a. A minimum of ten (10) copies of a preliminary **site condominium development plan** which complies with the requirements of *Section 5.305(a)* of the city's Parcel Division Ordinance; and

b. An application fee in accordance with the fee schedule established by resolution of the **city council**.

3. The **planning commission** shall review the preliminary **site condominium development plan** in accordance with the standards and requirements contained in *Section 5.306* of the city Parcel Division Ordinance. All of the requirements for **plats**, as set forth in that section, shall apply to **site condominium developments**. In addition, the following standards and requirements shall apply:

   a. In its review of a **site condominium development plan**, the **planning commission** may consult with the **zoning administrator**, city attorney, city engineer, city fire chief or other appropriate persons regarding the adequacy of the proposed common elements and maintenance provisions, **use** and occupancy restrictions, utility systems and **streets**, development layout and design, or other aspects of the proposed development.

   b. Each **site condominium unit** shall comply with all applicable provisions of this ordinance, including minimum area, minimum width, required **front, side and rear yards**, and maximum **building height**.

   c. All **streets** shall be paved and developed to the minimum design, construction, inspection, approval and maintenance requirements for platted **public streets**, as required by the City of Charlevoix.

   d. If public water and sanitary sewer facilities are not available, each **condominium unit** shall be served by a private central system (designed for connection to a public system when and if a public system is made available).

   e. The **planning commission** may require that portions of the plan, as relevant to the reviewing authority in question, be submitted to the Charlevoix County Drain Commissioner, Michigan Department of Natural Resources, Michigan Department of Public Health and other appropriate city, state and county review and enforcement agencies having direct approval or permitting authority over any aspect of the proposed **site condominium development**.

4. After reviewing the preliminary **site condominium development plan**, the **planning commission** shall prepare a written statement of recommendations regarding the proposed **site condominium development**, including any suggested or required changes in the plan. The **planning commission** shall provide a copy of its written recommendations to the applicant and to the **city council**.

(b) <u>Review and Approval of Final Plans by City Council.</u>

1. After receiving the **planning commission's** recommendations on the preliminary plan, the applicant shall submit to the **zoning administrator** a minimum of ten (10) copies of a final **site condominium development plan** which complies with the requirements of this section and of *Section 5.305(a)* of the City of Charlevoix Parcel Division Ordinance. All of the requirements for **plats**, as set forth in that ordinance, shall be required for **site condominium developments**. The **zoning administrator** shall forward the copies of the final plan to the **city council**.

2. The final **site condominium** plan shall incorporate all of the recommendations, if any, made by the **planning commission** based on its prior review of the preliminary plan. If any of the **planning commission's** recommendations are not incorporated in the final plan, the applicant shall clearly specify, in writing, which recommendations have not been incorporated and the reasons why. Except for changes made to the plan as needed to incorporate the recommendations of the **planning commission**, the final plan shall otherwise be identical to the preliminary plan acted upon by the **planning commission**. Changes made to the plan other than those necessary to incorporate the recommendations of the **planning commission** shall be resubmitted to the **planning commission** for further review and recommendation prior to approval of the plan by the **city council**.

3. After receiving the **planning commission's** recommendations and a final **site condominium development plan**, the **city council** shall proceed to review and may approve, deny, or approve with conditions the plan in accordance with the standards and requirements provided the City of Charlevoix Parcel Division Ordinance and other applicable procedures, standards and requirements of this section.

4. As a condition of approval of a final **site condominium development plan** the **city council** may require that a financial guarantee, covering the estimated cost of improvements associated with the **site condominium development** for which approval is sought, be deposited with the city, as provided by the Michigan Zoning Enabling Act, Public Act 110 of the Public Acts of 2006, as it may be amended from time to time.

(c) Contents of Site Condominium Project Plans. A **condominium** development plan shall include the documents and information required by Section 66 of the Condominium Act, by *Section 5.305(a)* of the city Parcel Division Ordinance and by the following:

1. The **use** and occupancy restrictions and maintenance provisions for all general and **limited common elements** that will be included in the **master deed**.

2. A storm drainage and storm water management plan, including all lines, swales, drains, basins and other facilities and **easements** granted to the appropriate jurisdiction for installation, repair and maintenance of all drainage facilities.

3. A utility plan showing all water and sewer lines and **easements** granted to the appropriate jurisdiction for installation, repair and maintenance of all utilities.

4. A narrative describing the overall objectives of the proposed **site condominium development**.

5. A narrative describing the proposed method of providing potable water supply, waste disposal facilities and public and private utilities.

6. A **street** construction, paving and maintenance plan for all **private streets**.

(d) Construction in Compliance with Approved Plan. No **buildings** or **structures** shall be constructed, nor shall any other site improvements or changes be made on the property in connection with a proposed **site condominium development**, except in compliance with a final **site condominium development plan**, as approved by the **city council**, including any conditions of approval.

(e) Issuance of Permits. No building permit shall be issued, and no public sewer or public water service shall be provided for any **dwelling** or other **structure** located on a **parcel** established or sold in violation of this section. The sale or the reservation for sale of **site condominium units** shall be as regulated by the Condominium Act. No **building** in a **site condominium development** may be occupied or used until all required improvements have been completed and all necessary utilities installed.

(f) Expandable or Convertible Condominium Developments. Approval of a final **site condominium development plan** shall not constitute approval of expandable or convertible portions of a **site condominium development**, unless the expandable or convertible areas were specifically reviewed and approved by the **planning commission** and **city council** in compliance with the procedures, standards and requirements of this section.

(g) Changes in Condominium Developments. Any change proposed in connection with a development for which a final **site condominium** plan has previously been approved shall be regulated as follows:

1. The following definitions shall apply:

   a. **Exempt change** means a change to a **site condominium project** (other than a major or minor change) that is exempt from review and approval, as required for major or minor changes under this section. Exempt changes shall be limited to the following:

      i. a change in the name of the development, in the name of a **street** within the development or in the name of the developer;

      ii. a change in the voting rights of co-owners or mortgagees; or

      iii. any other change in the **site condominium development** which, as determined by the **zoning administrator**, does not constitute a major or minor change or will not otherwise change the site configuration, design, layout, topography or any other aspect of a development which is subject to regulation under the zoning ordinance.

   b. **Major change** means a change in the site configuration, design, layout or topography of a **site condominium development** (or any portion thereof), including any change that could result in:

      i. an increase in the number of **site condominium units**; or

      ii. any other change in the site configuration, design, layout, topography or other aspect of the project which is subject to regulation under this zoning ordinance, including, without limitation, a change in the location of **streets** and utilities, or in the size, location, area, horizontal boundaries or vertical boundaries of a **site condominium unit**, or that which is

determined by the **zoning administrator** to constitute a major change to the **site condominium project**.

c. **Minor change** means a change in the site configuration, design, layout or topography of a **site condominium development** (or any portion thereof), that will result in:

i. a decrease in the number of **site condominium units**;

ii. a reduction in the area of the building site for any **site condominium unit**;

iii. a reduction of less than ten (10) percent in the total combined area of the general common elements of the **site condominium**;

iv. a reduction in the total combined area of all **limited common elements** of the **site condominium**; or

v. any other minor variation in the site configuration, design, layout, topography or other aspect of the development which is subject to regulation under this ordinance, and which, as determined by the **zoning administrator**, does not constitute a major change.

2. Any change which constitutes a major change shall be reviewed by the **planning commission**, at a public hearing and with the notice required for an original approval of a **site condominium development**, and shall also be reviewed and approved by the **city council**, as provided in this chapter for the original review and approval of preliminary and final plans.

3. Any change which constitutes a minor change shall be reviewed and approved by the **zoning administrator**.

4. Any change which constitutes an exempt change shall not be subject to review by the city, but a copy of the exempt changes shall be filed with the zoning administrator.

(h) Incorporation of Approved Provisions in Master Deed. All provisions of a final **site condominium development plan** which are approved by the **city council**, as provided by this section, shall be incorporated by reference in the **master deed** for the **site condominium project**. Further, all major changes to a development shall be incorporated by reference in the **master deed**. A copy of the **master deed**, as recorded with the Charlevoix County Register of Deeds, shall be provided to the city within ten (10) days after recording.

(i) Commencement of Construction. Construction of an approved **site condominium development** shall commence within two (2) years after final site condominium development approval and be diligently pursued to completion in accordance with the terms and conditions of the approval. The two-year period may be extended by the **city council**, at its discretion, for additional time periods as determined appropriate by the **council**. Any extension shall be applied for, in writing, by the applicant prior to the expiration of the initial two-year period.

(j) Variances. Upon application, the **zoning board of appeals** may permit a **variance** or **variances** which are reasonable and within the general policies and purposes of

this section. A **variance** may be granted if the applicant demonstrates that literal enforcement of any of the provisions of this section is impractical or will impose practical difficulties in the **use** of the land because of special or peculiar conditions pertaining to the land. The **ZBA** may recommend, and may attach, conditions to the **variance**.

5.48. Lodging, Dining and Entertainment Uses

(1) *Sexually Oriented Businesses.*

(a) Intent. In the development and execution of these zoning regulations, it is recognized that some **uses**, because of their very nature, may have serious objectionable operational characteristics, particularly when several of those **uses** are concentrated under certain circumstances, thereby causing a detrimental effect upon the **adjacent** areas. The proximity of adult-regulated **uses** to certain other **uses** considered particularly susceptible to the negative impacts of a concentration of adult-regulated **uses** has been shown to erode the quality of life, adversely affect property values, disrupt business investment, encourage residents and businesses to move or avoid the community, increase crime and contribute to a blighting effect on the surrounding area. There is convincing documented evidence of the negative effect that adult-regulated **uses** have on both existing businesses around them and the surrounding residential areas to which they are **adjacent**. Therefore, the following intents are served by these regulations:

1. This Section describes the **uses** regulated and the specific standards necessary to ensure that the adverse effects of these **uses** will not contribute to the deterioration of the surrounding neighborhood, to prevent undesirable concentration of these **uses**, and to require sufficient spacing from **uses** considered most susceptible to negative impacts.

2. These provisions are not intended to impose, nor shall they have the effect of imposing a limitation or restriction on the content of any communicative materials including, but not limited to, sexually oriented materials that are protected by the First Amendment to the United States Constitution.

3. Additionally, it is not the intent of the provisions of this Section to restrict or deny, nor shall it have the effect of restricting or denying, access by **adults** to sexually oriented materials that are protected by the federal and state constitutions.

4. Further, it is not the intent of these provisions to deny, nor shall they have the effect of denying, access by the distributors and exhibitors of adult oriented entertainment to their target market.

5. These regulations shall not be interpreted as intending to legitimize any activities that are prohibited by federal or state law, or by any other ordinance of the City of Charlevoix.

(b) Definitions.

1. **Sexually Oriented Business.** Any use of land devoted to displaying or exhibiting printed, recorded or electronic material, or live entertainment, a significant portion of which depicts, describes or presents "Specified Sexual Activities" or "Specified Anatomical Areas" including, but not limited to: adult

arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio, sexual encounter center or massage parlor. The term "significant" as used above and as follows, is defined as greater than twenty (20) percent of the total material displayed or exhibited for sale or entertainment. Adult-regulated uses, activities and related definitions include, but are not limited to the following:

a. **Adult Arcade.** Any place to which the public is permitted or invited wherein coin-operated, slug-operated or for any form of consideration an electronically, electrically or mechanically controlled still or motion picture machine, projector, video or disc player, or other image-producing device is maintained to show images to five (5) or fewer persons per machine at any one time, and where the image is so displayed, distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

b. **Adult Bookstore, Adult Novelty Store or Adult Video Store.** A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration, any one or more of the following:

   i. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, discs or other video reproduction, slides, or other visual representations which are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

   ii. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

c. **Adult Cabaret.** A nightclub, bar, restaurant or similar commercial establishment which regularly features:

   i. Persons who appear live in a state of nudity or semi-nudity; or

   ii. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

   iii. Films, motion pictures, video cassettes or discs, slides or other video or photographic reproductions which are distinguished or characterized by the depiction of "specified sexual activities" or "specified anatomical areas."

d. **Adult Motel.** A hotel, motel or similar commercial establishment which:

   i. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities"

or "specified anatomical areas;" and has a sign visible from the public right-of-way which advertises the availability of this type of photographic reproduction; or

ii. Regularly offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

iii. Regularly allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

e. **Adult Motion Picture Theater.** A commercial establishment where, for any form of consideration, films, motion pictures, videos, slides or other similar photographic reproduction are regularly shown which are consistently distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

f. **Massage Parlor.** An establishment offering or providing massages, body rubs, physical stimulation or other similar treatments where the person either receiving or providing the service exposes "specified anatomical areas," or which involves real or simulated "specified sexual activities." The following uses are not included as part of this definition:

i. Services by a licensed physician, chiropractor or osteopath, a licensed or certified physical or massage therapist, a licensed practical nurse or any other similarly licensed medical professional;

ii. Electrolysis treatment by a licensed operator of electrolysis equipment;

iii. Hospitals, nursing homes, medical clinics or medical offices; and,

iv. Barber shops or beauty parlors, health spas and/or salons offering massage to the scalp, face, neck or shoulders only.

g. **Specified Anatomical Areas.** The graphic depiction, whether real or simulated, of less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of areola and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

h. **Specified Sexual Activities.** The graphic depiction, whether real or simulated, of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, sexual intercourse or sodomy and fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(c) Locational Requirements.

1. Sexually oriented business are not permitted in any **zoning district** except the Industrial (I) zone.

2. No sexually oriented business shall be permitted in a location in which a **principal building** or **accessory structure**, including **signs**, is within three hundred (300) feet of any **principal building** or **accessory structure** of another sexually oriented business.

3. No sexually oriented business shall be established on a **parcel** within three hundred (300) feet of any **parcel** in a **residential district** or any **parcel** used as a **dwelling**, public park, school, child care facility, **church** or similar place of worship, public library, city hall, police department or fire department, youth center, or commercially operated school attended by children such as dance schools, gymnastic centers, etc. The distance between a proposed sexually oriented business and any such zoned area or existing **use** shall be measured in a straight line from the nearest property line upon which the proposed sexually oriented business is to be located to the nearest property line of that zoned area or existing **use**.

(d) Procedures.

1. Special Use. Review of any request for establishment of a sexually oriented business shall be in accordance with the special land **use** provisions of *Article 13* of this ordinance; provided, the **planning comission** shall make a recommendation, after public hearing, to the **city council**. The **city council** shall also conduct a public hearing, in accordance with the timing and notification requirements of *Section 5.131(2)* and shall approve, deny or approve with conditions the special land **use** request based on the requirements of this Article and the general standards of *Section 5.133*.

2. Conditions of Approval. Prior to granting approval for the establishment of any sexually oriented business, the **city council** may impose conditions or limitations upon the establishment, location, construction, maintenance or operation of the **use** which are necessary for the protection of the public interest. Any evidence, bond or other performance guarantee may be required as proof that the conditions stipulated in connection therewith will be fulfilled.

(e) Regulated Uses. The following **uses** are regulated by this Article:

1. Adult arcade
2. Adult book store
3. Adult cabaret
4. Adult motel
5. Adult motion picture theater
6. Massage parlor

(f) Conditions and Operating Requirements.

1. Any **sign** or advertising for the sexually oriented business must comply with the provisions of this ordinance. No **sign** or advertising may include photographs, silhouettes or drawings of any "specified anatomical areas" or "specified sexual activities," or obscene representations of the human form and may not include animated or flashing illumination.

2. The entrances to the proposed sexually oriented business at both the exterior and interior walls, in a location visible to those entering and exiting the business, must be clearly marked with lettering at least two (2) inches in height stating:

   a. "Persons under the age of 18 are not permitted to enter the premises;" and

   b. "No alcoholic beverages of any type are permitted within the premises."

3. No product or service for sale or gift, or any picture or other representation of any product or service for sale or gift, shall be displayed so as to be visible by a person of normal visual acuity from the nearest **adjoining** roadway or neighboring property.

4. Hours of operation shall not exceed 9:00 a.m. to 11:00 p.m., Monday through Saturday.

5. All off-street and on-site parking areas shall comply with this ordinance based on the primary **use** (i.e., retail, theater, etc.) and shall additionally be illuminated at all times.

6. Any booth, room or cubical available in any sexually oriented business that is used by patrons for the viewing of any entertainment shall:

   a. Be unobstructed by any door, lock or other entrance and exit control device;

   b. Have at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times from the **adjoining** aisle of any occupant;

   c. Be illuminated such that a person of normal visual acuity looking into the booth, room or cubical from its entrance **adjoining** the public lighted aisle can clearly determine the number of people within;

   d. Have no holes or openings in any side or rear wall not relating to utility, ventilation or temperature control services or otherwise required by any governmental code or authority.

7. No person operating a sexually oriented business shall permit any person under the age of eighteen (18) to be on the premises of the business as an employee, customer or otherwise.

(2) *Restaurant With Drive-Through.*

(a) Sufficient stacking capacity for the **drive-through facility** shall be provided to ensure that traffic does not extend into a private or public right-of-way, with a minimum of seven (7) stacking spaces. Stacking spaces shall be located so as not to interfere with vehicular circulation, access to **parking spaces** and egress from the property by vehicles not using the **drive-through facility**.

(b) In addition to **parking space** requirements of *Article 10*, at least two (2) parking or waiting spaces shall be provided, in close proximity to the exit of the drive-through portion of the operation, to allow for customers waiting for delivery of orders. The

waiting spaces shall be designed to allow maneuvering without being blocked by another vehicle and shall not impede traffic flow on the site.

(c) Public access to the site shall be located at least one hundred (100) feet from any intersection as measured from the nearest right-of-way line to the nearest edge of the access.

(d) The parking and maneuvering areas of the site shall be fenced and screened from the view of any **abutting residential district** or **use** by a decorative **fence** or wall, or a landscaped equivalent.

(e) The intensity level of sounds leaving the site shall not exceed fifty-five (55) decibels (dBA) at any **lot line** bordering residential **uses**.

(f) Outdoor menu boards shall be located behind the front building line.

5.49. Recreation and Open Space Uses

(1) *Recreation Facility, Outdoor.*

(a) The minimum site area shall be one (1) acre.

(b) No **building** or spectator seating facility shall be located within one hundred (100) feet of a **lot line adjoining** property in a **residential district**.

(c) All **buildings**, courts and playfields shall be set back a minimum of fifty (50) feet from all **front, side and rear lot lines**. The **setback** shall apply to open recreation areas, such as football, soccer and baseball/softball fields and shall be measured from the edge of the fields.

(d) The minimum parking lot **setback** shall be twenty (20) feet for any **lot line**. **Ground cover** and landscaping shall be provided within the **setback**.

(e) Activities that produce mechanical noise, such as go-carts, are prohibited.

(f) Accessory commercial activities shall be limited to those necessary to serve only the patrons of the facility.

(g) Central loudspeakers/paging systems are prohibited.

(h) No temporary sanitary facility or trash receptacle shall be located within one hundred (100) feet of an existing **dwelling**.

(i) Adequate trash receptacles shall be provided as needed throughout the site.

(j) Operating hours for all **uses** shall be determined by the **planning commission** based on the nature of the **use** and the nuisance potential to **adjoining** property owners.

5.50. Retail Uses – Gross Leasable Area Greater Than 20,000 Square Feet

(1) A single retail business shall not occupy a gross leasable area greater than twenty thousand (20,000) square feet. This shall not be construed to limit the total size of a multi-tenant **building**, such as a shopping center.

(2) In addition to the special land **use** standards of *Section 5.133*, the following criteria shall be considered. The proposed **use**:

(a) will be designed, constructed and operated in a manner that will complement the immediate surroundings and the community as a whole;

(b) will not generate excessive traffic beyond the capacity of the **adjacent street** network or create peak hour congestion;

(c) will not operate during hours or days of the week that will create a nuisance for surrounding properties and residents; and

(d) will not impose demands on public services such as, but not limited to: police, fire, water or sewer, beyond the city's capacity to provide those services.

5.51. Office and Service Uses

(1) *Day Care Center/Nursery.*

(a) Adequate space for drop off and pick up of children shall be provided near the door to the facility, so children are not required to cross **parking lots** or street traffic unattended.

(b) A minimum of two (2) drop-off spaces shall be provided per twenty (20) children or major fraction thereof, based on licensed capacity.

(c) A fenced outdoor play area shall be provided, in accordance with State requirements.

(2) *Kennel, Commercial.*

(a) Runs, exercise areas and **accessory buildings** where animals are kept shall be set back at least seventy-five (75) feet from any **lot line abutting** a residential **use**.

(b) Runs and/or exercise areas and **buildings** where the animals are kept shall only be located in a **rear yard**.

(c) A **kennel** shall be operated in conformance with all applicable County, State and Federal regulations.

(d) The main **kennel building** used to house animals shall be sound insulated to minimize animal noise.

(e) Animals shall not be permitted in outdoor exercise yards or pens between 10:00 p.m. and 7:00 a.m.

(f) Animals shall be confined and shall not freely roam the property, except during supervised training.

(g) A run and/or exercise area shall be enclosed by a sufficiently tall chain link **fence** or completely covered on the sides and top to prevent animals from escaping.

(h) The waste disposal system shall be adequate and approved by the county health department.

(3) *Veterinary Clinic or Hospital.*

(a) An animal holding area shall be enclosed by a wall or **fence** of a height sufficient to contain animals on the premises.

(b) **Kennels**, pens, animal holding areas and/or stalls shall be at least at least one hundred (100) feet from a front property line and thirty (30) feet from a side or rear

line; however, if a **side or rear yard** abuts property in a **residential district**, the minimum **setback** shall be fifty (50) feet.

5.52. Medical Marijuana Related Uses

(1) Purpose and Intent.

(a) Purpose and Intent. As a result of the enactment of the Michigan Medical Marijuana Act (hereinafter referred to as the "MMMA"), Initiated Law 1 of 2008, MCL 333.26423, *et seq.*, and its administrative rules, R 333.101, *et seq.*, the City of Charlevoix intends to provide reasonable land **use** regulations associated with the medical use of marijuana in accordance with the MMMA to:

1. Protect public, health, safety and welfare.
2. Provide adequate separation of primary caregiver facilities from schools, **churches** and any areas where children congregate including, but not limited to, **day care facilities**, public beaches and athletic fields.
3. Mitigate negative impacts associated with medical marijuana use in residential areas.
4. Require adequate separation between primary caregiver facilities to prevent clustering of grow operations in one area.

(2) *Definitions.*[1]

Enclosed, locked facility. That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423.

Marijuana or marihuana. That term as defined in Section 7106 of Act No. 368 of the Public Acts of 1978, as amended (Michigan Public Health Code), being MCL 333.7106.

Medical Use. That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423.

Primary caregiver. That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423 who has registered with the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marijuana Act.

Primary caregiver facility. A **structure** in which the activities of a primary caregiver are conducted.

Qualifying patient. That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423 who has registered

[1] (Editor's Note: Definitions are listed here for reference but may change if the MMMA is amended by the State Legislature.) MMMA: Initiated Law 1 of 2008. Section 333.26423 Definitions:
"Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.
"Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.
"Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

with the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marijuana Act, and includes the parents or legal guardians of a qualifying patient under the age of eighteen (18) who are serving as the primary caregiver as required by the Michigan Medical Marijuana Act exclusively for that qualifying patient under the age of eighteen (18).[1]

(3) *Regulations for Qualifying Patients.*

The medical use of marijuana by a qualifying patient in that qualifying patient's **dwelling** or an **accessory structure** is hereby recognized as an **accessory use** to the principal residential **use** of the property and can be established without a **zoning permit** in any **zoning district**, but shall be subject to the following regulations:

(a) The qualifying patient must be issued and at all times must maintain a valid registry identification card, or appropriate documentation, from the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.

(b) All marijuana plants or products must be contained within the **dwelling** or **accessory structure** in an enclosed, locked facility that permits access only by the qualifying patient.

(c) If a room with windows within the **dwelling** or **accessory structure** is utilized to grow marijuana for medical use, any artificial lighting shall be shielded to prevent glare, must not be visible from neighboring properties, and must not be visible from **adjacent streets** or public ways.

(4) *Regulations for Primary Caregivers.*

The medical use of marijuana by a primary caregiver is hereby authorized as a **use** by right within a **dwelling** or an **accessory structure** in the R1 and R2 **Zoning Districts** only, provided that all of the following regulations are met:

(a) The primary caregiver must be issued and at all times must maintain a valid registry identification card, or appropriate documentation, from the Bureau of Health Professions, Michigan Department of Licensing and Regulatory Affairs or any successor agency under the provisions of the MMMA.

(b) The primary caregiver must obtain a **zoning permit** under *Section 5.161* of the City Zoning Ordinance.

(c) Except when being transported as provided in subsection (i) below, all marijuana plants or products must be contained within the **dwelling** or **accessory structure** in an enclosed and locked facility where the marijuana plants and products are labeled for each qualifying patient and access is permitted only to the primary caregiver.

(d) If a room with windows within the **dwelling** or **accessory structure** is utilized to grow marijuana for medical use, any artificial lighting shall be shielded to prevent

[1] *"Primary caregiver"* means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.
"Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

glare, must not be visible from neighboring properties and must not be visible from **adjacent streets** or public ways.

(e) Except as provided herein, no more than one (1) primary caregiver shall be permitted to provide primary caregiver services to qualifying patients within a single **dwelling** or **accessory structure**.

(f) Except for any qualifying patients who reside with the primary caregiver at the **dwelling**, no more than five (5) qualifying patients may be present at the same time at a **dwelling** or **accessory structure** in which a primary caregiver of medical marijuana is providing primary caregiver services to qualifying patients for any purpose directly related to primary caregiver services. This subsection, however, shall not be construed to prohibit the presence of qualifying patients at a **dwelling** or **accessory structure** in which a primary caregiver of medical marijuana is providing primary caregiver services for purposes unrelated to primary caregiver services.

(g) Qualifying patient visits to a **dwelling** or **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients shall be restricted to between the hours of 7:00 a.m. and 10:00 p.m., except when the qualifying patient resides with the primary caregiver at the **dwelling** and except when the qualifying patient visits are for purposes unrelated to primary caregiver services.

(h) No qualifying patients under the age of eighteen (18) shall be permitted at any time at a **dwelling** or **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients, except in the presence of his/her parent or guardian, except when the qualifying patient resides with the primary caregiver at the **dwelling**, and except when the qualifying patient visits are for purposes unrelated to primary caregiver services.

(i) No marijuana for medical use shall be dispensed by the primary caregiver to qualifying patients at the **dwelling** or **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients, except to a qualifying patient who resides with the primary caregiver at the **dwelling**. Except as provided herein, the primary caregiver shall deliver all marijuana for the medical use of such qualifying patient, and such delivery shall take place on private property away from public view. Any such delivery vehicle shall be unmarked and not bear any emblem or **sign** that would indicate the nature of its cargo. In addition, all marijuana for medical use delivered to a qualifying patient shall be packaged so the public cannot see or smell the marijuana.

(j) No marijuana for medical use shall be consumed, smoked, or ingested by a qualifying patient by any method at a **dwelling** or **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients, except by a qualifying patient who resides with the primary caregiver at the **dwelling**.

(k) A **dwelling** or an **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients shall display indoors and in a manner legible and visible to his/her qualifying patients:

1. A notice that qualifying patients under the age of eighteen (18) are not allowed at the **dwelling** or **accessory structure** in which a primary

caregiver is providing primary caregiver services to qualifying patients, except in the presence of his/her parent or guardian, except when the qualifying patient resides with the primary caregiver at the **dwelling**, or except when the qualifying patient visits are for purposes unrelated to primary caregiver services, and

2. A notice that no dispensing or consumption of marijuana for medical use shall occur at the **dwelling** or **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients, except to or by a qualifying patient who resides with the primary caregiver at the **dwelling**.

(l) A **dwelling** or an **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients shall not have any signage, symbols, pictures or similar features visible from the outdoors that would indicate the nature of the primary caregiver services being conducted in the **dwelling**.

(m) No primary caregiver facility shall be located in violation of any of the following spacing requirements:

1. One thousand (1,000) feet from any public or private school;
2. Three hundred (300) feet from any **church** or place of worship and its **accessory structures**;
3. Five hundred (500) feet from the Charlevoix Public Library;
4. Five hundred (500) feet from the B.A.S.E.S Teen Center;

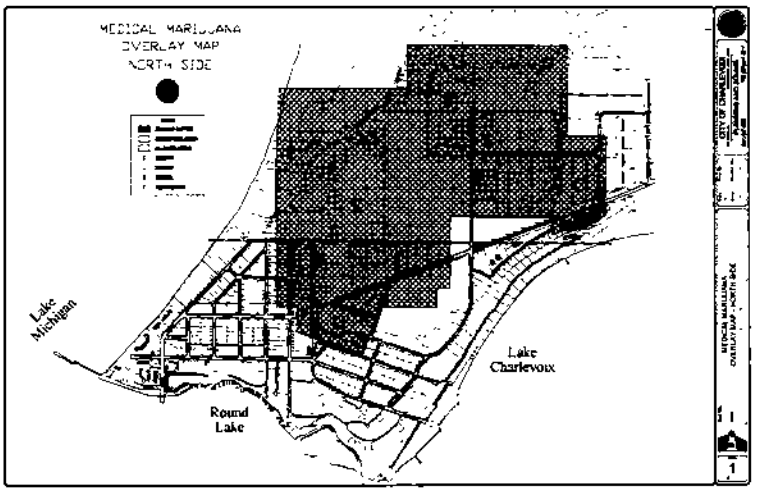
The above spacing requirements shall be from **lot line** to **lot line**. The Medical Marijuana Reference Maps in *Section 5.52(4)* illustrate the **parcels** where a primary caregiver facility may be established. To the extent there is a conflict between the Medical Marijuana Reference Map and the application of the spacing requirements provided herein, the application of the spacing requirements shall control.

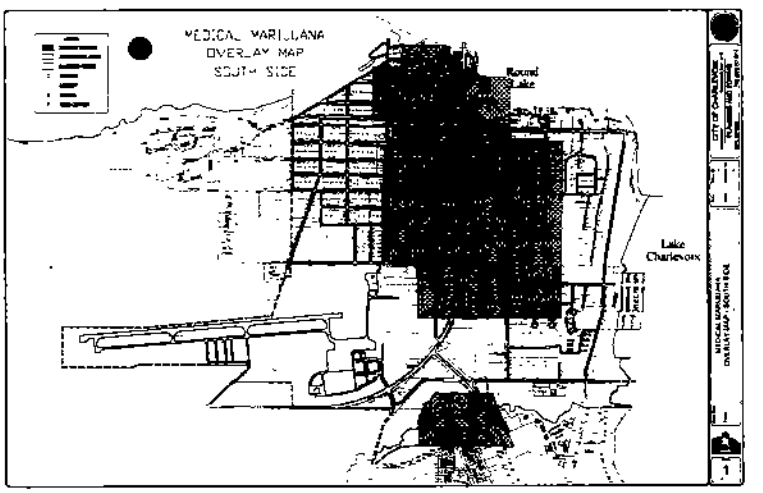
(n) The portion of the **dwelling** or **accessory structure** in which a primary caregiver is providing primary caregiver services to qualifying patients, including any room or area utilized to grow marijuana for medical use, shall contain electrical service and wiring, certified by an electrician licensed in the State of Michigan, meeting the applicable requirements of the electrical code in effect in Charlevoix County.

(o) All primary caregivers must notify the **zoning administrator** on a yearly basis if the primary caregiver facility is still in operation. Notification shall be in writing and shall be submitted no less than one month before and not after the month and day of the issuance of the original permit. (Example: If the original permit is issued on February 10, 2012, notification to the **zoning administrator** must be between January 10, 2013 and February 10, 2013.)

(p) Any primary caregiver with a valid **zoning permit** who chooses to cease operations at any point in time shall notify the **zoning administrator** in writing within seven (7) days. The **zoning administrator** shall have the right to inspect the facility for compliance.

(4) *Medical Marijuana Reference Maps.*





5.53. Vehicle Related Uses

(1) *Vehicle Repair, Major.*

(a) All main and **accessory structures** shall be set back a minimum of seventy-five (75) feet from any **residential district**.

(b) Overhead doors shall not face a **public street** or **residential district**. The **planning commission** may modify this requirement upon a determination that there is no reasonable alternative and the poor visual impact will be diminished through use of building materials, architectural features and landscaping.

(c) Where applicable, vehicle stacking space shall be provided in front of each service bay for at least two (2) vehicles.

(d) All maintenance and repair work shall be conducted completely within an enclosed **building**.

(e) There shall be no **outdoor storage** or display of vehicle components and parts, materials, commodities for sale, supplies or equipment.

(f) Storage of wrecked, partially dismantled or other derelict vehicles, or overnight parking of any vehicle except a tow truck shall be permitted up to thirty (30) days in a designated area. Such area shall be located in a **rear** or **side yard** and screened from public view in accordance with the **screening** requirements of *Section 5.81(9)(e)*.

(g) If the **use** includes installation of oil or other automotive fluids except for fuel, the applicant shall submit a Pollution Incidence Protection Plan (PIPP). The PIPP shall describe measures to prevent groundwater contamination caused by accidental spills or leakage of gasoline or other hazardous materials, such as special check valves, drain back catch basins and automatic shut off valves, as approved by the fire department.

(2) *Vehicle Repair, Minor.*

(a) A **building** or **structure** shall be located at least thirty (30) feet from any **side or rear lot line abutting** a **residential district**.

(b) Equipment, including hydraulic hoists, pits, and lubrication, greasing, and other automobile repairing equipment shall be located entirely within an enclosed **building**. **Outdoor storage** or display of merchandise, such as tires, lubricants and other accessory equipment is not permitted.

(c) All activities shall occur inside a **building**. No vehicle may be stored on the property for more than fourteen (14) days.

(d) Storage of gasoline, liquefied petroleum gas, oil or other flammable liquids or gas above ground shall not be permitted.

(e) Floor drains shall not connect to the sanitary sewer system.

(f) If the **use** includes installation of oil or other automotive fluids except for fuel, the applicant shall submit a Pollution Incidence Protection Plan (PIPP). The PIPP shall describe measures to prevent groundwater contamination caused by accidental spills or leakage of gasoline or other hazardous materials, such as special check valves, drain back catch basins and automatic shut off valves, as approved by the fire department.

(g) If the **use** includes fuel sales, the requirements for a **vehicle service station** shall also be met.

(3) *Vehicle Service Station.*

(a) The site shall be located with **frontage** on and direct access to at least one arterial **street**.

(b) Minimum **setback** from the right-of-way shall be thirty (30) feet for **buildings** and canopy **structures**. The **setback** for a canopy or similar shelter, if provided, shall be measured to the leading edge of the canopy fascia.

(c) Gasoline pumps, air and water hose stands and other appurtenances shall have a minimum **setback** of twenty-five (25) feet from the right-of-way.

(d) Prohibited activities include **outdoor storage** or parking of rental or disabled or wrecked vehicles for more than seven (7) consecutive calendar days and **major vehicle repair**.

(4) *Vehicle Wash Establishment.*

(a) All washing activities must occur inside a **building**.

(b) Required stacking spaces for waiting vehicles shall not be located within a public or private right-of-way and shall not conflict with maneuvering areas, **parking spaces** and other activities. Stacking lanes shall be designed to prevent vehicle queues from extending beyond the property.

(c) Wastewater must be recycled, filtered or otherwise cleansed to minimize discharge of soap, wax and solid matter into public sewers.

(d) Only one **driveway** shall be permitted from any **street**, unless the **planning commission** determines additional **driveways** will be necessary to ensure safe and efficient access to the site.

(e) For automated drive-through wash facilities, a by-pass lane is required that allows by-passing waiting vehicles.

(f) Overhead doors shall not face a **street**, except if approved by the **planning commission** in these circumstances:

1. when the doors of a through-garage are located at the front and rear of a **building**; or

2. when a **garage** is located on a corner or **through lot**; or

3. when determined that a rear garage door would negatively affect an **abutting** residential **use** or district.

(g) The property owner or operator must comply with all applicable noise regulations. Air handling equipment shall be located on a roof, be equipped with intervening noise reduction baffles, be in proper working condition and comply with this provision.

5.54. Industrial and Storage Uses

(1) Self-Storage Facility.

(a) Minimum separation between **self-storage buildings** shall be twenty-four (24) feet.

(b) Internal drive aisles shall be at least twenty (20) feet wide; however, drives located between **self-storage buildings** and the property line may be one-way (and shall be marked as such) and twelve (12) feet in width.

(c) All **buildings** shall be one **story** and shall not exceed twenty (20) feet in height.

(d) An individual storage **building** shall not exceed seven thousand five hundred (7,500) square feet.

(e) Except for **recreational vehicles**, **motor homes** and travel **trailers**, which may be stored outdoors, all other items shall be stored in an enclosed **building**. An **outdoor storage** area must be paved and completely screened from view from all **adjacent residential districts** and **uses**.

(f) Limited sales of products and supplies incidental to the **principal use**, such as packing materials, identification labels, rope, locks, tape, etc. are permitted. Other **uses** such as auctions (except those authorized by Charlevoix County for abandoned or garnished assets), sales or businesses of any other type are prohibited. The storage of combustible or flammable liquids, combustible fibers or explosive materials, as defined in the fire protection code, or toxic materials is also prohibited.

5.55. Other Uses

(1) Athletic Courts.

(a) Full sized regulation **athletic courts**, including basketball, tennis and pickle ball courts shall be allowed in the Private Club Residential (PC), High Density Residential (R4), Scenic Reserve (SR), and Public Facilities (P) zones. These courts may be enclosed by fencing not to exceed fifteen (15) feet tall and shall not be lit at night unless the court is in use.[1]

(b) **Athletic courts** are permitted in the Low Density Single Family Residential (R1) and Medium Density Single Family Residential (R2) districts provided that they meet the following requirements:[2]

1. No **athletic court** shall be located in any **front** or **side yard**, nor shall any **athletic court** be located closer than five (5) feet from any property line.
2. No **athletic court** shall exceed one thousand five hundred (1,500) square feet in area.
3. **Athletic courts** shall not be lighted.
4. Fencing for **athletic courts** shall meet the requirements of *Section 5.65* for **fences**.
5. **Athletic courts** shall be included in calculating **lot coverage** for the underlying district.

(2) Mineral Extraction Operations.

(a) A special **use** approval shall be required for mineral extraction operations, including removal of soil, sand or gravel, where more than six hundred (600) cubic yards will be removed. The special **use** permit shall be subject to approval by the **city council** following a public hearing and recommendation from the **planning commission**. Once issued, the special **use** may be reviewed annually by the **city**

[1] Lighting of athletic courts at school facilities shall be exempt from lighting requirements if lighting is required by state or federal law.
[2] This section shall not apply to athletic courts that are part of front or rear driveways. (Such as a basketball hoop on a garage where the hard surface is also the driveway.)

council to ensure that the operation conforms to all plans, progress, conditions and sureties. Removal operations shall not begin until the special **use** is approved and a zoning compliance permit is issued.

(b) Application. In addition to the submittals for a special **use** outlined in *Section 5.131*, an application for a mineral extraction permit shall be accompanied by the following:

1. A topographic map with two (2) foot contour intervals including the locations of all **streets**, **buildings** and existing drainage facilities within three hundred (300) feet of the property.
2. A topographic map with two (2) foot contour intervals showing final elevations, including the proposed locations of access drives, parking areas and equipment.
3. An estimated schedule for removal and an agreement conforming to all provisions of this section.
4. A traffic control plan showing proposed truck routes to and from the site.
5. A written description of proposed post-removal **use** of the property.
6. A reclamation plan showing final grading of the site with two (2) foot contours, vegetation, roadways and other features to be installed.
7. A fee, determined by resolution of the **city council**, to defray review, administration and inspection costs.

(c) Conditions. A special **use** permit shall not be issued unless activities comply with all the following conditions and the **city council** finds that there will be no serious consequences to the immediate area or community at large. A special **use** permit may be revoked if the **use** is found in violation of any part of this section:

1. Activities shall comply with applicable soil erosion and sedimentation control regulations.
2. Final **grades** shall not exceed five (5) percent and shall meet existing elevations at all property lines. **Grades** in excess of five (5) percent may be permitted by the **city council** if the applicant demonstrates that an increase is essential to implement a plan for future **use**.
3. The limits of the **excavation** shall be at least fifty (50) feet from any **adjoining** property line and one hundred (100) feet from any street right-of-way or private street **easement** line.
4. Mineral extraction shall not create permanent depressions that may fill with water. All storm runoff must discharge into existing drainage systems.
5. Since artificial lakes and water bodies can present threats of ground water pollution and stagnant water, thereby adversely affecting the public health, safety and welfare, they shall not be created as part of removal operations unless the applicant demonstrates:
   a. Engineering and geological studies find there will be a positive source of unpolluted underground or stream-fed water in adequate amounts to produce positive water flow at all times;

b. Plans for the proposed artificial lake or water body have received all State of Michigan approvals and conform to all federal, state, county and municipal standards;

c. A **site plan** of the proposed future development has been approved by the city; and

d. In an artificial lake or water body, a channel or lagoon shall not project beyond the main body of water greater than two times the width of the channel or lagoon.

6. Other conditions may also be imposed, to protect the public health, safety and welfare.

(d) The city may require a financial guarantee in accordance with *Section 5.122* to ensure compliance with the zoning ordinance and any conditions of approval.

(3) Similar Uses.

(a) Applications for a **use** not specifically authorized in a **zoning district**, but similar to others that are identified, shall be submitted to the **planning commission** for review and a decision, based on the following:

1. The **planning commission** shall first find that the proposed **use** is not listed as a permitted or special land **use** in any other district.

2. If the **use** is not permitted elsewhere, the **planning commission** shall review the district purpose, permitted **uses** and special land **uses** in the **zoning district** to determine if the proposed **use** is consistent with the district purpose and is similar to other allowed **uses** relative to its character, scale and overall compatibility.

3. The **use** would not be more appropriate within a different **zoning district**.

(b) If a proposed **use** is determined to be similar to other **uses** listed within the district, it shall comply with all the standards or requirements associated with the similar listed **use**(s). If the listed **use**(s) is a special land **use**, the similar **use** shall only be approved according to the requirements of *Article 13.*

(c) The determination of whether a proposed **use** is similar to another listed **use** shall be considered as an interpretation of the **use** regulations and not a use **variance**. Once a **use** has been determined to be similar, it shall be deemed to be included in the list of **uses**, as regulated.

(4) Wireless Telecommunications Towers.

(a) Required Approvals. The placement of communication facilities shall meet the following approval requirements:

1. Installation of a New Antenna. The installation of a new antenna(s) on an existing tower, including a legal non-conforming tower, and existing alternative **structure** (such as a water tower, **building** or church steeple) may be approved administratively by the **zoning administrator**, provided all the requirements of this subsection are met; however, such an installation on a city-owned or other municipal-owned **structure** must first be approved by the **city council**. A new antenna that adds either ten (10) percent or twenty-five (25) feet, whichever is less, to the highest point of an

existing tower or alternative **structure** is subject to the provisions of this section for the installation of a new tower as described by *Section 5.55(4)(f)* and *(g)*, below.

2. Installation of a New Tower. The installation of a new tower(s) requires approval of a special land **use** permit according to *Article 13.*[1]

3. Installation of a New Accessory Structure. The installation of a new **accessory structure(s)**, such as an equipment **building**, to support the installation of an additional antenna on an existing tower or alternative **structure** may be approved administratively by the **zoning administrator**, provided that adequate space exists on the tower site.

(b) Removal. A tower that is unused or abandoned for twelve (12) consecutive months shall be removed by the property owner at their expense.

(c) Interference with Public Safety Facilities. A new telecommunications facility shall not interfere with public safety telecommunications.

(d) Required Documentation for All Facilities. In addition to the requirements provided in *Article 13* for special land **use** and/or for land **use** permit submittals, an application for a new tower, new antenna and new related facilities shall include the following. Where an alternative **structure** is used, comparable information for that **structure** shall be provided.

1. Engineer's Report: A report from a professional engineer licensed in the State of Michigan that:

   a. describes the height and design of a new tower and/or antenna including a cross-section, latitude, longitude and elevation;

   b. describes or updates (in the case of new antennas) the tower's capacity, including the type and number of antennas it can accommodate;

   c. certifies that construction specifications comply with all applicable requirements of the building codes adopted by the city, including but not limited to: tower foundation, guy wire anchors (if used), collocation and strength requirements for natural forces (ice, wind, earth movements, etc.);

   d. certifies the facility will not interfere with established public safety telecommunications; and

   e. includes an engineer's seal and registration number.

2. Proof of Compliance: Copies of required approvals from the Federal Communications Commission (FCC), Federal Aviation Administration (FAA) and all other appropriate state and federal agencies.

3. Removal Affidavit: A letter committing all parties, including the property owner and their successors, to remove the tower and all related **accessory structures**, **fences** and equipment if the tower is abandoned. The removal

[1] MCL 125.3514 requires the application be reviewed for administrative completeness within fourteen (14) days and the decision be made within sixty (60) days.

affidavit shall be recorded in the Charlevoix County Register of Deeds, with a copy of the recorded affidavit provided to the zoning administrator.

(e) Determination of New Tower Need. A new telecommunications tower may only be approved if the applicant has submitted verification from a professional engineer licensed in the State of Michigan that the antenna(s) planned for the proposed new tower cannot be accommodated on an existing or approved tower or other **structure** within a two (2) mile radius of the proposed tower location due to one or more of the following:

1. Inadequate Structural Capacity. The antenna(s) would exceed the structural capacity of the existing or approved tower, or other **structure**.
2. Interference. The antenna would cause interference, impacting the usability of other existing or planned equipment at the tower site.
3. Inadequate Height. The existing or approved towers or **structures** within the search radius cannot accommodate the planned equipment at the necessary height.
4. Land Availability. Additional land area is not available.

(f) Design Requirements for New Towers and Related Facilities. All telecommunications facilities shall meet the following design requirements:

1. Lighting. Tower lighting shall only be as required for safety or security reasons or as required by the FAA or other federal or state authority. All ground level security lighting shall be full sharp cut-off fixtures (shielded down lights).
2. Collocation. All telecommunication towers shall be designed, and engineered structurally, electrically and in all other respects to accommodate both the applicant's equipment and at least one (1) additional user for every fifty (50) feet, or fraction thereof, in total tower height in excess of seventy-five (75) feet.
3. Each additional user shall be assumed to have an antenna loading equal to that of the initial user.
4. Towers must be designed to allow for rearrangement of antennas and to accept antennas mounted at varying heights.
5. Height. All towers and antennas shall conform with all FAA tall **structure** requirements. The maximum height of all **accessory structures** shall be fourteen (14) feet.
6. Signs. **Signs** for all telecommunications facilities shall be permitted up to a total of four (4) square feet per user, mounted on the associated equipment **building**. **Signs** required for technical and safety information shall be exempt from this requirement.

(g) Site Requirements for New Towers and Related Facilities. All new telecommunications facilities shall meet the following site requirements:

1. Vehicular Access. Vehicle access drives may be gravel or paved and shall be located within an access **easement** that is at least twenty (20) feet wide.

Any portion of the entrance located in a public right-of-way shall meet the applicable **public street** or road design, construction and pavement requirements.

2. Site Area. A tower shall be located on a **lot** (or lease area) that is sufficiently large to accommodate the **use** and all anticipated **accessory structures** for future antenna users.

   a. The arrangement of the tower and site topography shall be considered when determining if the site area is sufficient.

   b. All tower support and stabilizing wires shall be located within the site area.

3. Setback. The minimum required **setbacks** for the tower and related facilities shall be as follows:

   a. Minimum **Side** and **Rear Setback**: fifty (50) feet from all property lines.

   b. **Front Yard Setback**: As specified for the **zoning district** in which the tower is located.

   c. Additional **Setback** From **Residential Districts**: A tower and related facilities shall not be closer than a distance equal to the total height of the tower plus antennas to a property within a **residential district**, and no closer than one-half (1/2) the height of the tower plus antennas to a property line in any other district.

4. Encroachment. No part of any telecommunications facility nor associated lines, cables, equipment, wires or braces shall at any time extend across or over any part of a public right-of-way, sidewalk or property line.

5. Fencing. An eight (8) foot high security **fence** shall completely surround the tower and accessory equipment building site. Sharpened or electrified fencing is not permitted. An area ten (10) feet in width shall remain outside of the **fence** for the purpose of providing the landscape **screening** described below.

6. Landscape Screening. Evergreen **buffer** plantings shall be located and maintained around the outermost perimeter of the security **fence** of all communication facilities. The landscape plan shall show all plantings and shall be approved by the **zoning administrator** or **planning commission**, as applicable, as part of the review and approval process.

   a. Evergreen **trees** shall be planted around the perimeter of the security **fence**, every ten (10) feet apart on center.

   b. If evergreen hedges are used, they shall be planted a maximum of five (5) feet apart on center.

PART III: PROVISIONS GENERALLY APPLICABLE TO ALL DISTRICTS

Article 8	**General Provisions**
Article 9	**General Site Development Requirements**
Article 10	**Off-Street Parking, Loading, Access and Circulation**
Article 11	**Signs**

ARTICLE 8 GENERAL PROVISIONS

5.60. Access

(1) All **lots** shall have **frontage** on a dedicated **public or private street**.

(2) A copy of an approved **driveway** permit from the city, Charlevoix County or MDOT, as applicable, shall be required.

(3) Multiple-family, commercial, **office** or industrial developments consisting of multiple **buildings** need not front each **structure** within the development upon publicly dedicated **streets**.

5.61. Building Regulations

(1) *Conformity Required.* **Buildings** or **structures** shall not be erected, constructed, **used**, reconstructed, altered or maintained; and any **lot** or land shall not be **used** or maintained; and a new **use** shall not be made of any **building**, **structure** or land, except in conformity with the provisions of this ordinance.

(2) *Unlawful Building.* Any **building** that is **used**, erected, occupied or altered contrary to the provisions of this ordinance shall be deemed an unlawful **structure** and a nuisance and may be required to be vacated, torn down or abated by any legal means, and shall not be **used** or occupied until it has been made to conform to the provisions of this ordinance. Public expenditures toward abating such nuisance shall become a lien upon the land.

(3) *Required Space.* Any space used for a required **setback**, **open space** or **lot area** for a **building** may not be counted or calculated to meet the same requirements for any other **building**.

(4) *Frontage.* No **principal building** shall be erected on a **lot**, unless that **lot** fronts its full width, as required by *Section 5.60*, upon an improved **street** or access road. Multiple-family, commercial, **office**, industrial, or other developments may be exempt from this requirement, as provided in *Section 5.60*.

(5) *One Lot, One Building.* A **lot** or **parcel** shall not be devoted to more than one (1) **principal use**, or contain more than one (1) **principal building**, except for properties in the CBD District and groups of **multiple family dwellings**, commercial **buildings** or industrial **buildings** determined by the **zoning administrator** to be a **principal use** collectively, based on meeting all of the following criteria:

(a) Individual **buildings** share common parking areas, signs, access and similar features;

(b) **Buildings** are under **single ownership**;

(c) Individual activities support one another (such as **vehicle sales/vehicle repair** or gas station/restaurant/convenience store); and

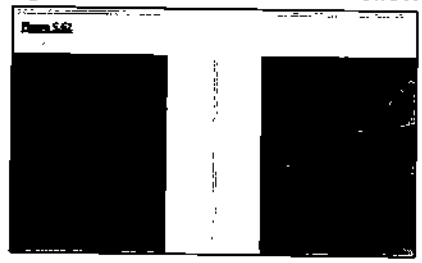
(d) **Buildings** are architecturally unified and compatible.

5.62. Corner Clearance (Clear Vision Triangle)

(1) **Fences**, walls, **structures** or plantings shall not be erected, established or maintained on any **lot** that will obstruct the view of drivers in vehicles approaching the intersection **adjacent** to a **corner lot** or a **driveway** on any **lot**.

(2) **Fences**, walls, **structures** or plantings located in the clear vision triangle, as depicted below, shall not be permitted to exceed a height of thirty-six (36) inches above the lowest point of the intersecting **street**(s). The unobstructed triangular area is described as follows:

(a) The area formed at the corner intersection of two (2) street right-of-way or **easement** lines, the two (2) sides of the triangular area being twenty-five (25) feet in length measured along **abutting** public right-of-way lines, and third side being a line connecting these two (2) sides.



(b) The area formed at the corner intersection of a street right-of-way, **easement**, or **alley** and a **driveway**, the two (2) sides of the triangular area being fifteen (15) feet in length measured along the right-of-way line and edge of the **driveway**, and the third side being a line connecting these two sides.

5.63. Essential Services

(1) **Essential services** shall be permitted as authorized under any franchise in effect within the city, subject to regulation as provided in any law of the State of Michigan or in any ordinance of the city.

(2) It is the intent of this section to ensure conformity of all **structures** and **uses** to the requirements of this ordinance wherever such conformity shall be practicable and not in conflict with the specific requirements of such franchise, legislation or other city ordinance. In the absence of such conflict, the zoning ordinance shall prevail.

(3) Wireless communication facilities are not considered **essential services** and shall be subject to the requirements of *Section 5.55(4), Wireless Telecommunications Towers.*

5.64. Grading

(1) *Drainage*. Elevations for any site with a **building** located on it shall have a **grade** sloping away from the walls of the **building** to permit the flow of surface water. However, sunken or terraced areas may be permitted if they are constructed to prevent run-off surface water from flowing onto **adjacent** properties.

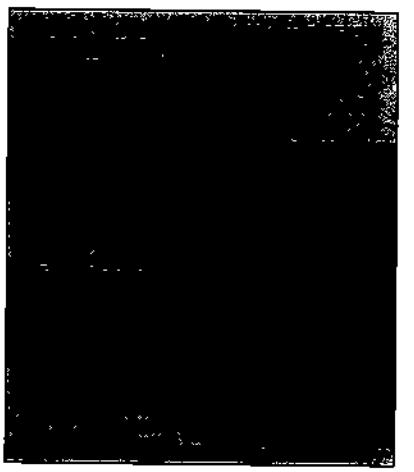
(2) Grading and/or **filling** of materials prior to, or after, application for **zoning permits** to elevate the **grade** for a taller **structure** is prohibited.

5.65. Fences and Walls

(1) All **fences**, walls and other similar **structures** shall be located on private property and must not obstruct the sight distance of motorists from **driveways**, roads and intersections. **Fences** or walls in all districts, except Industrial, shall not exceed six (6) feet in height above **grade** when located in any portion of the **rear or side yard**. **Fences** located in the

front yard are permitted provided they are open wrought iron, picket, split rail and similar decorative **fences,** have a maximum opacity of fifty (50) percent and do not exceed three (3) feet above **grade**.

(2) All **fences** shall be constructed with the finished side exposed to the neighboring properties. Support posts shall be placed on the inside. The **fence** shall be properly maintained and its appearance shall be harmonious with the surrounding properties and neighborhood.



(3) Fence posts and decorative caps shall not extend greater than six (6) inches above the maximum allowed height. (See *Figure 5.65(3)*)

(4) **Fences** or walls in Industrial Districts shall not exceed nine (9) feet in height above **grade** in the **side** and **rear yards**. All other relevant provisions of this section shall apply.

(5) It shall be unlawful to erect or maintain a **fence**, wall or other similar **structure** equipped with or having barbed wire, spikes, razor wire or similar devices, or any electrical charge or current sufficient to cause shock. In Industrial Districts, however, a security **fence** may be installed with one (1) foot of barbed wire; provided, the barbed wire is at least eight (8) feet above the **adjacent grade**.

(6) **Fences** in the **front yard** shall have a minimum **setback** of twelve (12) inches from the property line.

(7) **Fences** shall not be allowed to be located directly over property lines, unless two (2) or more **adjoining** property owners submit a joint application to the **zoning administrator** for approval.

(8) Posts, cement, wood and any other **fence** materials shall not encroach onto **adjoining** properties, unless such encroachments are authorized under a joint application.

(9) An artificial **berm** with a **fence** placed on top of it is considered part of the **fence**, with the combination being subject to the height limits for **fences** established in subsection (1) above.

(10) The required **fence** height shall be maintained through the entire length on sloping properties. Grading and/or **filling** of materials to elevate the **grade** for a higher **fence** is prohibited.

(11) Walls constructed of stone, brick or similar materials shall be permitted in the **front yard** provided they do not exceed three (3) feet in height. The height limits in the side and rear yards shall not exceed six (6) feet. Walls shall be set back a minimum of two (2) feet from all property lines and must be constructed and maintained in the future as to not create safety concerns for **adjoining** property owners or the general public. The **planning commission** may approve walls not to exceed six (6) feet in height in the **front yard** for developments in the R4 zone. This section shall not apply to **retaining walls**, as defined by this ordinance or **screening walls** under Section 5.81.

5.66. Structure Height Calculations and Height Limits

Structure height calculations:

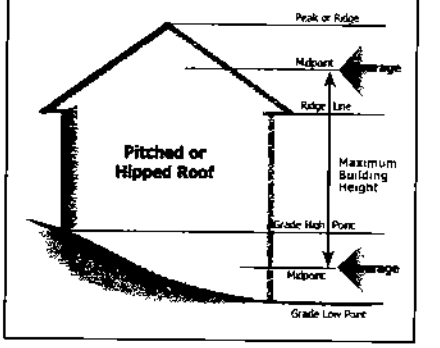
(1) The vertical distance measured to the highest point of the **building's roof** for flat roofs; to the deck line for mansard roofs; and to the mean height level between eaves and peak for gable, hip and gambrel roofs, from the existing **grade**. (See *Figure 5.66*)

(2) On **lots** with less than one (1) percent change in **grade**, **building height** shall be measured from the existing **grade** surrounding the building site.

(3) On **lots** having an average sloping **grade** of between one (1) and five (5) percent, **building height** shall be measured from the front of the building line of the proposed **structure**.

(4) On **lots** having an average sloping **grade** of more than five (5) percent, **building height** shall be measured from the average elevation between front and rear building lines or between side building lines, whichever dimension reflects the greater degree of slope. (See *Figure 5.66*)

Figure 5.66



(5) Height limits specified elsewhere in this ordinance shall not apply to:

(a) **Churches**, schools, **hospitals** and public **buildings** including, but not limited to: libraries, museums, art galleries, fire stations or public **buildings** owned or used by a public entity.

(b) Barns, silos or other **buildings** or **structures** on farms; church spires, belfries, cupolas and domes; monuments; transmission towers; windmills; chimneys; smokestacks; flagpoles; and radio towers, masts and aerials. These **structures** shall be limited to one hundred (100) feet in height in any case, unless otherwise permitted in this ordinance.

5.67. Illegal Dwellings

No **structure** shall be **used** for **dwelling** purposes that do not comply with the requirements of this, or any other city ordinance. **Garages** or other **accessory buildings**, trailer coaches, **basements**, partial or temporary **structures**, whether of fixed or portable construction, shall not be erected or moved onto a **lot** and **used** for any **dwelling** purposes, unless authorized by the issuance of a **zoning permit** by the **zoning administrator** and satisfying all of the conditions thereof.

5.68. Keeping of Animals

(1) The keeping of **household** pets, including dogs, cats, fish, birds, hamsters and other animals generally regarded as **household** pets is permitted as an **accessory use** in any **residential district**.

(2) Any area where **household** pets are kept shall be maintained in a safe and sanitary condition.

(3) The keeping of animals not normally considered **household** pets, including, but not limited to, horses, pigs, sheep, cattle, poultry and poisonous reptiles is prohibited in all **zoning districts**.

5.69. Projections Into Required Yards

(1) Certain architectural features, such as cornices, bay windows (or windows without foundations), gutters, chimneys, pilasters and similar features may project no further than three (3) feet into any **required yard**.

(2) An open, unenclosed and uncovered porch, terrace, **deck**, balcony or window awning may project no further than ten (10) feet into a required **front yard**; no further than fifteen (15) feet into a **required rear yard**; and shall not project into any required **side yard**. In no case, shall a porch, terrace, **deck**, balcony or awning be placed closer than five (5) feet to any **front** or **rear lot line** with the exception of the CBD district where a porch, terrace, **deck**, balcony or awning may extend to the property line.

(3) Any porch, terrace, **deck** or balcony which is enclosed or covered shall meet the minimum **setback** requirements of the **principal building** or **accessory building** to which it is attached.

5.70. Site Excavation

(1) The construction, maintenance or existence within the city of any unprotected, unbarricaded, open or dangerous **excavations**, holes, pits or wells, which, in the opinion of the **zoning administrator**, constitute or are likely to constitute a danger or menace to the public health, safety or welfare is hereby prohibited; provided, this section shall not apply to:

(a) any **excavation** for which a building permit or a temporary permit has been issued by the County Department of Building Safety and which is properly protected and warning **signs** posted;

(b) any mineral extraction site for which a special **use** has been approved, in accordance with *Article 13*; and

(c) streams, natural bodies of water or ditches, reservoirs and other such bodies of water created or existing by authority of the city or other governmental agency.

5.71. Setback Requirements

(1) *Front Setback on Corner Lots.* A **corner lot** shall have two **front lot lines**: a principal **front lot line** and a secondary **front lot line**. The principal **front lot line** shall be the location of the traditional front entrance of the **structure**. Where the **lot lines** are of equal length, and/or the principal **front lot line** is not evident, then the **zoning administrator** shall determine the principal **front lot line**.

(a) The required front **setback** shall apply to the principal **front yard**.

(b) The required **setback** for the secondary **front yard** shall be the lesser of the required front **setback** or the established **setback** for the **principal building** on the **abutting lot** that faces the same **street** as the secondary **front lot line**.

(c) The remaining **setbacks** shall be a **rear** and a **side setback**. The **rear setback** shall be measured from the **rear lot line**, which in the case of a **corner lot**, shall be the **lot line** opposite the principal **front lot line**.

(2) *Average Front Setback*. The minimum **front setback** requirements for a **principal building** in any **residential district** may be reduced in accordance with the following:

(a) Where two or more **lots,** entirely or partially within two hundred (200) feet of a subject **lot**, on the same side of the **street** and on the same block, are occupied by **principal buildings** of which the existing **front setback** is less than required by the **zoning district**, the average of the established **setbacks** for those **buildings** shall be the minimum required **front setback** for the subject **lot**.

(3) *Setback From Bodies of Water*. Notwithstanding other provisions of this Article, all **principal uses** located in the R1 and R4 districts shall have a **setback** of fifty (50) feet from the **ordinary high water mark** of Lake Michigan, Lake Charlevoix and Round Lake, as well as the Pine River Channel.

(4) *Fences*. **Fences** are exempt from the setback requirements of this section. (See *Section 5.65*.)

(5) *Intrusions Below Grade*. No portion of any **building** below **grade** containing usable space shall project into any **front, side** or **rear yard**.

5.72. Lot Coverage Requirements

Lot coverage requirements in all **zones** shall be calculated by dividing the total area of the **lot** by the total square footage of all **impervious surfaces**. Use of materials such as gravel or stone, pavers and similar permeable surfaces shall not be calculated in **lot coverage**. (See *Figure 5.72*)

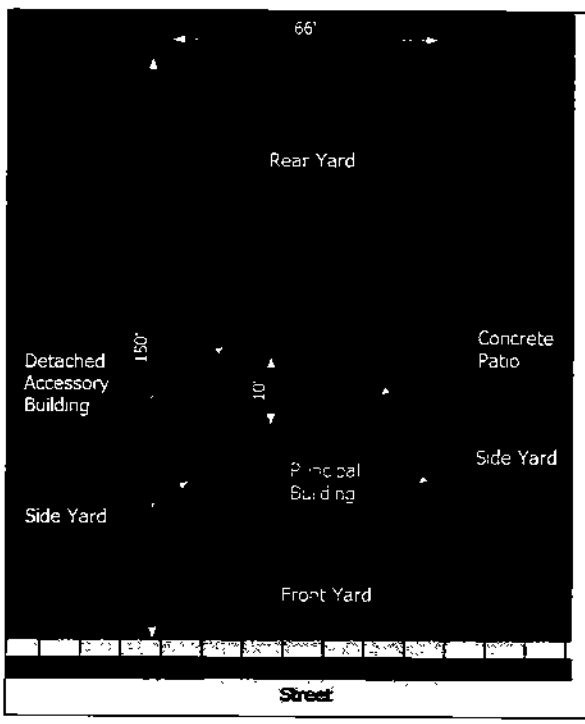


Figure 5.72

Lot Coverage Example

R2 Zone

Lot:	9,900 sq. ft.
-Rear Yard:	6,720 sq. ft.
Principal Structure Footprint:	990 sq. ft.
-Living Area:	1,485 sq. ft.
Detached Accessory Structure:	360 sq. ft.
Concrete Patio:	200 sq. ft.
Driveway:	730 sq. ft.
Walkways:	185 sq. ft.
Total Lot Coverage:	2,465 sq. ft./9,900 sq. ft. **=25% Coverage OK** Lot Coverage of less than 40% required in an R2 Zone.
Accessory Building Area -Principal Building:	360 sq. ft./1,485 sq. ft. **=24% of Principal Building Living Area OK** Area of accessory building must be less than 60% of the living area of the principal building.
-Rear Yard:	360 sq. ft./6,720 sq. ft. **=5% Coverage of Rear Yard OK** Area of an accessory building must be less than 25% of the rear yard area.

5.73. Outdoor Storage

Inoperable or unlicensed motor vehicles shall not be kept, parked or stored in any **residential district**, except within a completely enclosed **building**. The purpose of this provision is to prevent the accumulation of **junk motor vehicles** and, therefore, it shall not apply to any motor vehicle ordinarily used, but temporarily out of running condition. If the motor vehicle is being kept for actual use, but is temporarily unlicensed, the **zoning administrator** may grant the owner a reasonable time, not to exceed two (2) months, to procure a license.

Likewise, old, rusty and unsightly machinery, machines not suited for use upon the premises or quantities of used building materials not fit to be used to improve the premises shall not be kept or stored outside a **building**; provided, however, that building materials fit to be used to improve the premises may be kept on-site for one (1) year if they are piled off the ground so as not to become a harbor for vermin.

The open parking or storage of any **recreational vehicle** not owned by a resident or owner of the property on which it is located shall not be permitted for periods in excess of twenty-four (24) hours, except on property specifically approved for that purpose. The **zoning administrator**, however, may permit the temporary parking or storage of a **recreational vehicle** in a **rear yard** on private property for a period not to exceed two (2) weeks. In any case, no **recreational vehicle** located outside an approved **campground** shall be connected to sanitary facilities.

5.74. Temporary Buildings, Structures, Uses and Special Events

(1) Construction **buildings** and **structures**, including **trailers**, incidental to construction work on a **lot**, may be placed on the **lot**, subject to the following restrictions:

(a) Construction **buildings** and **structures** may be used only for the storage of construction materials, tools, supplies and equipment, for construction management and supervision **offices**, and for temporary on-site sanitation facilities related to construction activity on the same **lot**. An enclosed **structure** for temporary sanitation facilities shall be required on all construction sites.

(b) No construction **building** or **structure** shall be used as a **dwelling unit**.

(c) Construction **buildings** and **structures** shall be removed from the **lot** within thirty (30) days after an occupancy permit is issued for the permanent **structure** on the **lot**.

(2) Sales **offices** or model homes may be placed on a **lot**, subject to the following conditions:

(a) A permit shall be issued by the **zoning administrator** prior to installation of construction. The permit shall specify the location of the **office** and shall be valid for a period of one (1) year. A temporary permit may be renewed by the **zoning administrator** for up to two (2) successive one (1) year periods or less, at the same location if the **office** is still incidental and necessary.

5.75. Through Lots

(1) In all districts, both **yards abutting** a **street** on a **through lot** shall be considered **front yards**.

(2) **Through lots** are prohibited in any new developments, except where one **frontage** is a private road.

5.76. Voting Place

The provisions of this ordinance shall not be construed in any manner that would interfere with the **temporary use** of any property as a voting place in connection with a municipal, school or other public election.

5.77. Water Supply and Sewage Disposal Facilities

Every **building** erected, altered or moved upon any premises within the city shall be served with a safe and sanitary water supply system and with a means for collecting and disposing of all human and commercial, industrial and other wastes. For those areas of the city not served by public water and/or sanitary sewer, a permit from the district health department for on-site water and/or waste disposal facilities, as applicable, shall be obtained and submitted with an application for a **zoning permit** prior to commencing construction.

5.78. Renting of Residential Properties

Renting of residential properties, including but not limited to homes, condos, apartments, townhouses, and duplexes, as **transient housing**, regardless of the underlying **zoning district**, shall comply with the following standards:

(1) No exterior signage advertising the rental shall be allowed.

(2) **Accessory Structures** may not be rented to separate individuals or groups.

(3) Renting individual rooms to separate individuals or groups is prohibited and shall be considered a **bed and breakfast**, which requires special land use approval under *Article 13.*

ARTICLE 9 GENERAL SITE DEVELOPMENT REQUIREMENTS

5.80. Building Appearance

(1) *Purpose.* The purpose of this section is to provide quality exterior architectural **building** styles and material standards to enhance the visual environment of the main corridor entries to the city, thereby improving property values and stimulating investment in the business districts. The provisions of this section are intended to promote quality architecture to ensure that **buildings** retain their value, protect the investment of **adjacent** landowners, blend harmoniously into the streetscape and create a positive image for business and the City of Charlevoix.

(2) *Applicability.* This section shall apply to all new construction in the General Commercial (GC), Professional Office (PO) and Commercial Mixed Use (CM) districts on **lots** fronting US 31 (Bridge Street and Michigan Avenue) and M-66. This section shall not apply to single family detached and two family residential **structures.** Architecture shall be reviewed by the **zoning administrator** or **planning commission**, as applicable, as a part of site plan review under the requirements of *Article 12.*

(3) *Prohibited Building Materials.*

(a) Steel, or any other type of metal siding is prohibited.

(b) Exposed, plain concrete block is prohibited.

(4) *Design Standards.* **Buildings** shall have architectural variety, but enhance the overall cohesive community character. At a minimum, the following standards shall be met:

(a) **Buildings** shall provide architectural features, details, and ornaments such as archways, colonnades, cornices, peaked roof lines, hip returns, operable window shutters, transoms, gas lights or towers to accent and add interest.

(b) The use of flat and mansard roof types is prohibited. The use of a gabled or hip **roof** for the primary roof is required with a minimum roof pitch of 8:12 for new construction. Repair of existing structures may utilize the existing roof pitch and roof design at the time of application.

(c) Plazas, strip malls, or similar types of commercial or **office** developments where multiple businesses are located within the same **building** shall provide at least one dormer, archway or similar feature per business or store front.

(d) Building walls over one hundred (100) feet long shall be broken up with varying building lines, vertical architectural features, windows, architectural accents and **trees.**

(e) Building entrances shall utilize windows, canopies and awnings; provide unity of scale, texture and color; and clearly identify the entry.

(f) Building-mounted mechanical equipment shall be screened.

(5) *Site Elements.* **Signs** and other site features shall be designed and located so they are aesthetically consistent and harmonious with the overall development. **Sign** bases shall be constructed of material which is compatible with the **principal building**. Mechanical equipment shall be screened.

5.81. Landscaping

(1) *Intent.* This Section promotes the public health, safety and welfare by establishing minimum standards for the design, installation and maintenance of landscaping. Landscaping and landscaped **buffers** help protect and enhance land **uses** and the visual image of the community. They further preserve natural features, improve property values and can alleviate the impacts of noise, traffic and visual distractions. Landscaped **buffers** protect less intense **uses** from noise, lighting and other impacts associated with more intensive land **uses**. Specifically, the intent of these provisions is to:

(a) Improve the appearance of off-street parking and storage areas and property **abutting** public rights-of-way.

(b) Protect and preserve the appearance, character and value of the neighborhoods, which abut non-residential areas, **parking lots** and other potentially obtrusive **uses**.

(c) Reduce soil erosion and depletion.

(d) Increase soil water retention, thereby helping to prevent flooding, erosion and sedimentation and enhancing groundwater recharge.

(e) Remove air pollutants and reduce, eliminate or control glare, reflection and heat island effects.

(f) Assist in directing safe and efficient traffic flow and prevent vehicular and pedestrian circulation conflicts.

(2) *General requirements.* These regulations apply to all new **uses** and the expansion of existing **uses** requiring site plan approval.

(a) Landscaping shall be installed before occupancy, unless the **planning commission** authorizes occupancy prior to complete landscape installation, due to unforeseen weather conditions or other circumstances beyond the applicant's control. In such a case, a performance guarantee, per *Section 5.122*, shall be provided to ensure completion of the project as required. All landscaping shall be completed within one full growing season.

(b) All landscaping shall be maintained after planting and regularly watered, fertilized, pruned and kept free from disease. The owner or controlling party shall be responsible for maintenance.

(c) Diseased or dead **plants** shall be replaced within one growing season.

(d) All **plants** shall be hardy per climatic conditions in the City of Charlevoix.

(e) All landscaped areas shall be mulched and those not containing **trees** and **shrubs** must be planted with **ground cover**. Mulch of any type is not considered groundcover, nor is it a substitute for **ground cover**.

(f) The overall landscape plan shall not contain more than twenty-five (25) percent of any one plant species.

(g) **Trees** and **shrubs** shall not be placed closer than four (4) feet to a **fence**, wall, or property line.

(h) For a **corner lot** or a **lot** with more than one **frontage** where landscaping is required, all **frontages** shall be landscaped.

(i) **Berms** shall be designed to vary in height and shape to create a more natural appearance. An unbroken earth mound of uniform height shall be avoided. The maximum slope for a **berm** shall be one (1) foot vertical to three (3) feet horizontal, unless otherwise allowed by the **planning commission**.

(j) Landscaping shall not obstruct sight distance, per *Section 5.62*.

(k) Landscaping plans are subject to **planning commission** review and approval.

(l) The **planning commission** may allow a deviation from the requirements of this section under any of the following circumstances:

1. Existing vegetation or topographic features make compliance with requirements unnecessary or difficult to achieve.
2. The application of requirements will result in a significant loss of existing vegetation, or natural or cultural features.
3. Modification of requirements will clearly result in a superior design that could not be otherwise achieved.
4. Where the distance between a **building**, parking area or **use** is more than two hundred (200) feet from a **side** or **rear lot line**, the **planning commission** may reduce the **buffer** area requirements along the applicable **lot line**(s) by fifty (50) percent.
5. Where the required landscaping may interfere with view corridors, such as developments along water bodies, the **planning commission** may require planting of specific species in locations where the height or canopy will not compromise view corridors.
6. Where landscaping requirements may not be necessary for community aesthetics, such as within the Ance Industrial Park.

(m) The **planning commission** may impose conditions on landscaping as part of site plan review.

(n) Where a development is proposed in phases, each phase shall comply with all applicable landscaping requirements.

(o) Where landscaping requirements are based on a distance measured along a property line and result in a fractional requirement, the required landscaping for just that area shall be multiplied by the fraction. For example, when a fractional area is equal to thirty (30) percent of the required distance the number of required **plants** shall be multiplied by 0.30. A fraction less than twenty-five (25) percent may be disregarded.

(p) To ensure that all landscaping is installed, as a condition of approval a letter of credit or some other performance guarantee may be required in accordance with *Section 5.122* of this ordinance.

(q) Low impact design, such as use of native vegetation, rain gardens and vegetated swales is encouraged.

(3) *Buffer areas.*

(a) A **buffer** area may be required where any **use** in a business or industrial district is **adjacent** to residentially zoned land and where multiple family residential land **uses** are **adjacent** to land in the R1, R2, R2A and R4 districts.

(b) A **buffer** area is not required if the qualifying **adjacent zoning districts** are separated by a public right-of-way.

(c) A **buffer** area shall be parallel to and follow the property line tangent to the qualifying **zoning district**.

(d) A **buffer** area shall be required even when the **adjacent** property is undeveloped.

(e) Except for access drives or **private streets** determined by the **planning commission** to be necessary to provide safe access to a property, a **building**, **structure** or **parking lot** shall not encroach within a required **buffer** area.

(f) When **adjacent** to a PUD containing a residential land **use**, a **use** in a non-residential or multiple family **residential district** shall provide a **buffer** area along the property line **adjacent** to the residential **use**, in accordance with the requirements of *Table 5.81(3)(g)*. The **planning commission**, however, may waive or modify the required **buffer** if the setbacks and perimeter landscaping provided within the PUD meet the intent of *Section 5.81(1)*.

(g) **Buffer** areas are required as shown in *Table 5.81(3)(g)*.

Table 5.81(3)(g): Buffer Area Requirements by District

Subject Zoning District	Adjacent District		
	R1	R2	Residential areas in Charlevoix Township
R4	3	3	NA
GC	1	1	1
CBD	2	2	NA
CH	1	1	NA
MC	1	1	NA
I	1	1	1

(h) *Table 5.81(3)(h)* shows landscaping requirements by **buffer** type:

Table 5.81(3)(h): Buffer Area Landscaping Requirements

Buffer Type	Minimum Width	Minimum Requirements	Intensity
1	10 feet	Two (2) canopy **trees**, *plus* one (1) evergreen **tree** or one (1) ornamental **tree**, *plus* twelve (12) **shrubs**, for each fifty (50) linear feet of **buffer** area	Most Intense
2	10 feet	One (1) canopy **tree**, *plus* one (1) evergreen **tree** or one (1) ornamental **tree**, *plus* eight (8) **shrubs**, for each fifty (50) linear feet of **buffer** area	↓
3	10 feet	One (1) canopy **tree** or one (1) evergreen **tree** *plus* one (1) ornamental **tree** or twelve (12) **shrubs**, for each fifty (50) linear feet of **buffer** area	Least Intense

(i) Buffer Area Alternatives

1. **Plants** may either be arranged formally, or be informally clustered for a more random, natural effect.

2. **Berms** may be constructed in a **buffer** area to supplement landscaping and add interest. Minimum landscaping requirements shall be reduced by fifty (50) percent where a **berm** at least three (3) feet tall is constructed for at least eighty-five (85) percent of the length of the **buffer** area.

3. A **screen wall** or **fence**, located within a **buffer** area, may be used in lieu of some landscaping.

   a. A **screen wall** or **fence** shall be six (6) feet tall and constructed of architectural block, brick, wood, vinyl or textured concrete.

   b. A **screen wall** or **fence** shall be located at least two (2) feet from a property line.

   c. To maximize the effectiveness of **screening**, openings shall not exceed twenty (20) percent of the surface of a wall or **fence**.

   d. When a **screen wall** or **fence** has both a finished and unfinished side, the finished side shall face either outward from the development site or to the side most visible to the general public, as determined by the **planning commission**.

   e. Landscaping requirements may be reduced by seventy-five (75) percent when a **screen wall** is constructed in a **buffer** area.

(4) *Minimum Plant Requirements.*

(a) The minimum plant size at the time of installation shall comply with *Table 5.81(4)(a):*

Table 5.81(4)(a): Minimum Plant Size at Installation

Plant Material	Minimum Caliper	Minimum Height	Minimum Spread
Canopy Tree	2.5"		
Ornamental Tree	1-3/4"		
Evergreen Tree		6'	
Shrubs			24"

(b) Existing healthy and desirable **trees** to be preserved may satisfy the landscaping regulations of this section, as shown in *Table 5.81(4)(b)*. Each credit may be applied toward fulfilling the requirements set forth in this Section (i.e., 1 credit equal to 1 equivalent **tree**).

Table 5.81(4)(b): Credit for Existing Landscaping

Tree Material	Minimum Caliper	Minimum Height	Credits
Canopy Tree	4 to 8 inches		1
	Greater than 8 inches		2

Ornamental Tree		6 to 10 feet	1
		Greater than 10 feet	2
Evergreen Tree		6 to 12 feet	1
		Greater than 12 feet	2

(5) *Residential Development.*

(a) For each **dwelling unit** in a residential subdivision, land division or **site condominium**:

1. One (1) canopy **tree** shall be planted between the right-of-way line and the **street.**

2. **Trees** shall be evenly spaced, except where site conditions warrant otherwise.

(b) For a multiple-family development, one (1) canopy or evergreen **tree** shall be provided for every four thousand, five hundred (4,500) square feet of gross **lot area**.

(c) In addition to the above requirements in *Section 5.81(4)* for a residential development **abutting** an arterial **street**, two (2) evergreen **trees** and one (1) canopy **tree** shall be planted within thirty (30) feet of the right-of-way for every fifty (50) feet of development **frontage** on the arterial **street**.

(d) **Berms** may also be used to **buffer lots** or **dwellings** from an **abutting** arterial **street**. Minimum landscaping requirements shall be reduced by fifty (50) percent where a **berm** at least three (3) feet tall is constructed for at least eighty-five (85) percent of the length of the street **frontage**.

(e) In the R4 Zone, the **planning commission** may require **berms**, fencing or vegetative **screening** (or any combination thereof) along property lines for reasons including, but not limited to, protection of public safety, preservation of neighborhood character or the creation of privacy **buffers** for single family zones.

(6) *Non-Residential and Mixed Use Districts and Non-Residential Uses in Residential Districts.*

(a) For all non-residential **uses** in any **zoning district** except the CBD District, for every one hundred (100) feet of **lot frontage** as measured along a public right-of-way, the following **front yard** landscaping requirements apply:

1. Three (3) canopy **trees** and one (1) evergreen or two (2) ornamental **trees** shall be provided.

2. The **planning commission** may allow landscaping anywhere within the **front yard**, except where a parking area is located along the **lot frontage**. In such instances landscaping shall be placed between the **parking lot** and the public right-of-way.

(b) **Berms** may be constructed in a **front yard** to supplement landscaping and enhance **buffering**. Minimum **front yard** landscaping requirements shall be reduced by fifty (50) percent where a **berm** at least three (3) feet tall is constructed between a **parking lot** located along a street **frontage** and the public right-of-way.

A **berm** may also be used to meet the **screening** requirement for **parking lots** as required in *Section 5.81(8)*.

(c) For any permitted non-residential **use** in a **residential district**, the **Buffer** Type 2 requirements, as specified in *Table 5.81(3)(h)*, shall apply to all side and rear property lines.

(7) *Outdoor Storage Areas.* Where permitted, **outdoor storage** areas shall be completely screened by **buildings**, **structures** or a continuous **buffer** at least five (5) feet wide. The **buffer** area shall include:

(a) A six (6) foot tall **screen wall** or **fence** along with any combination of the following to provide an effective **screen**, as approved by the **planning commission**:

1. **Berms**
2. Canopy, evergreen and ornamental **trees**
3. **Shrubs**

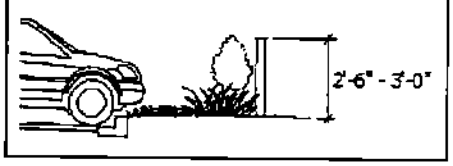
(b) If a **buffer** to an **adjacent zoning district** is required, per *Table 5.81(3)(g)*, it shall satisfy the requirements of this subsection.

(8) *Parking Lot Landscaping.*

(a) A **parking lot** containing more than ten (10) spaces shall be screened as follows:

1. Along any right-of-way or residential property line by a continuous two-and-one-half (2-1/2) to three (3) foot tall **screen**.

Figure 5.81(8)-1

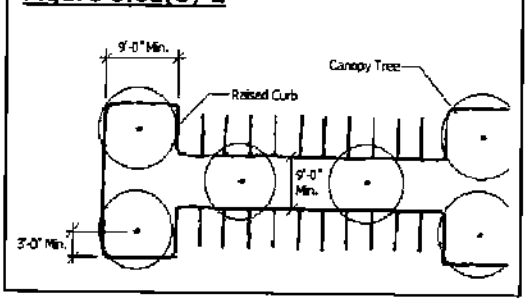


2. The **screen** shall consist of landscaping, **berms**, a **screen wall** or any combination of these elements.

(b) To provide shade and to break up the visual appearance of large paved areas, **parking lots** with more than ten (10) spaces shall be landscaped based on the following requirements:

1. One (1) canopy **tree** for every twelve (12) **parking spaces** shall be provided within a parking lot island or peninsula.

Figure 5.81(8)-2



2. Parking lot islands and peninsulas shall meet the following requirements:

a. All islands and peninsulas shall be protected by raised curbs; dub-downs are permitted to facilitate drainage, except in instances where the

grading and drainage plan demonstrates storm water runoff can be managed without the use of raised curbs.

b. An island or peninsula shall be at least nine (9) feet wide.

c. Islands or peninsulas may be combined for greater visual effect.

d. **Trees** shall be planted at least three (3) feet from the edge of the curb or pavement.

e. Landscaping shall not obscure traffic signs, fire hydrants or sight distance within the **parking lot** and at **driveway** entrances, in accordance with *Section 5.62*.

(9) *Fencing, Screening and Walls.*

(a) **Screening** shall be required around all trash dumpsters in all **zoning districts**, except as may be provided elsewhere in this section:

(b) Solid waste dumpsters may be located in required **buffers**; provided, they are screened in accordance with this subsection.

(c) **Screening** shall be required even if the surrounding area or **adjacent** properties are not developed.

(d) When a property changes to a more intense land **use**, a special land **use** or when site plan approval is required, **screening** shall be provided in accordance with this section.

(e) Screening Requirements.

1. Unless otherwise permitted in accordance with this section, a **screen** shall consist of a solid, sight-obscuring **fence** or wall that meets the following specifications:

a. Six (6) feet tall.

b. Enclosed on all sides and does not contain any openings other than an access gate, which shall be closed at all times when not being used. A **screen** around staging or loading/unloading areas may provide an opening that does not contain an access gate.

c. Constructed of masonry, treated wood or other materials approved by the **planning commission** and must be durable, weather resistant, rust proof and easily maintained.

d. A trash dumpster enclosure and gates shall be protected by bollards or other means to prevent vehicle damage.

2. If approved by the **planning commission**, a **screen** may consist of **berms** or landscaping either in combination or as a substitute for a **fence** or wall. It must be determined that the alternate design shall either provide the same degree, or enhanced **screening** as required by this section.

(f) Wall Requirements.

1. Walls must be no greater than eight (8) feet high.

2. Must be a minimum of two (2) feet back from the property line.
3. Placement cannot interfere with pedestrian or vehicular traffic.
4. Walls must be maintained and kept in good condition by the property owner.

(10) *Landscape Site Plan Requirements.*

(a) Proposed landscaping shall be shown on a separate drawing at the same scale as the **site plan**. To ensure that landscaping is not affected by, nor interferes with utilities, the plan shall indicate any existing or proposed utilities and **easements**.

(b) Planting plans shall show all landscaped areas and **plants** listed in a table by common and botanic name and show quantities, size at planting and anticipated mature height and spread. Anticipated mature height and spread shall be shown with circles indicating anticipated plant size at maturity.

(c) Text shall accompany the landscape plan, providing calculations for the proposed landscaping and describing how the plan successfully complies with the regulations of this Section.

(d) Existing natural and man-made landscape features and proposed **buildings** and **structures**, as required for the overall **site plan**, shall be clearly indicated

(e) Contours shall be shown at intervals no greater than two (2) feet.

(f) Irrigation systems shall be shown.

(g) All other site development plan review standards, as set forth in *Article 12* of this ordinance, shall be followed.

(11) *Treatment of Existing Plant Material.* The following regulations shall apply to existing **plants**:

(a) Preservation of Existing Plant Material. **Site plans** shall show all existing **trees** (four (4) inch caliper or greater) located in portions of the site that will be built upon or otherwise altered. **Trees** shall be labeled "To Be Removed" or "To Be Saved" on the **site plan**.

(b) Destruction or Removal of Healthy Trees. In the event healthy **plants** that are intended to meet the requirements of this section are cut down, damaged or destroyed during construction, they shall be replaced.

5.82. Lighting

The following lighting requirements shall apply to all **uses** requiring site plan review, as stated in *Article 12*.

(1) *Exemptions.* The following lighting applications are exempt from regulation under this section:

(a) Lighting for all agricultural, single and two family residential **uses**; provided, the level of illumination at any property line **adjoining** an agricultural **use** shall not exceed 0.1 footcandles.

(b) Pedestrian walkway lighting.

(c) Soffit lighting, provided the light source is recessed or flush with the soffit surface.

(d) Emergency lighting, provided the lights are designed to operate only under emergency or loss of power situations.

(e) Holiday decorations.

(f) Window displays.

(g) Lighting for temporary events, such as fairs, carnivals and similar temporary outdoor **uses**.

(h) Ornamental lighting that is incorporated into an architectural design, such as colored tubes, lighting of fountains, statuary or other outdoor art and other building elements (other than **signs**), provided that the light source is shielded to direct light onto the lighted element.

(2) *Prohibited Lighting*. The following lighting types and methods are prohibited:

(a) High intensity lights such as laser light sources, search lights or any similar high intensity light for outdoor advertisement or entertainment.

(b) Any lighting determined to be creating off-site glare that is a hazard to travelers on an **adjacent street** or road.

(c) Lighting that is flashing, moving or intermittent, including those associated with **signs** meeting the requirements of *Article 11* of this ordinance.

(d) Lighting that appears similar to that used for traffic control devices or for emergency vehicles.

(3) *Shielding and Glare*.

(a) All outdoor lighting shall be designed or shielded to reduce glare and shall be placed so a nuisance is not created for motorists, **adjacent uses** or residential **dwellings**.

(b) All outdoor lighting, with the exception of those ground-based lights for the purpose of illuminating government flags, shall be directed toward the ground or the article being illuminated and shall not impair the safe movement of automobile traffic on any **street**. Flag lighting shall be directed to illuminate the flag only and shall be placed so lighting or glare is not directed toward **streets** or **adjacent** properties.

(4) *General Requirements*.

(a) Lighting shall be provided throughout all non-residential **parking lots**. Lights to illuminate **parking lots** shall not be attached to any **building**.

(b) Street lighting meeting the requirements of the City of Charlevoix shall be required for all roads constructed as part of or in advance of any new development.

(5) *Specific Requirements*.

(a) Under-Canopy Lighting.

1. Canopy lighting shall be mounted flush with the canopy surface.

2. No light fixture shall protrude below the underside (fascia) of any canopy.

(b) Fixtures.

1. Lighting fixtures shall be a down-lighted type having one hundred (100) percent cut off.

   a. Protruding lenses shall be prohibited.

   b. Unless otherwise approved by the **planning commission**, light sources for area illumination (such as **parking lots** and **outdoor storage** areas) shall be high pressure sodium or metal halide. Approved exceptions shall use warm light or natural lamp colors.

2. Light fixtures shall have a maximum height of twenty (20) feet when located within a **residential district** and twenty-five (25) feet when the **use** is in a non-residential district, but **adjacent** to a **residential district**. In all other locations, light fixtures shall not exceed thirty (30) feet in height.

3. The height of a fixture shall be measured from the parking lot **grade** to the nearest portion of the light source. No portion of the fixture may extend more than one (1) additional foot higher than the maximum heights specified above.

(c) Signs. Lighting of **signs** shall be subject to the requirements of *Article 11*.

(d) Illumination Levels. Light levels on a site that is subject to site plan approval under this ordinance shall meet the requirements in *Table 5.82(5)(d)* for the developed portion of the site containing **buildings**, drives and **parking lots**.

Table 5.82(5)(d): Maximum Site Illumination	
Location on Site	**Maximum Footcandles**
Parking Lots, Loading Areas, Sidewalks & Building Entrances	10 fc[1]
Under Canopies Such as Gas Stations, Drive-Thru Bank Porte-Cochere	20 fc
Along Any **Lot Line Adjacent** to the Street **Frontage**	3 fc[2]
Along a **Lot line Adjoining** a Non-Residential **Use** or District	1 fc[3]
Along a **Lot line Adjoining** a Residential **Use** or District	0.5 fc

(6) *Lighting Plans.*

(a) Compliance with the lighting design criteria shall be demonstrated by submitting the following information for as part of the required **site plan**:

1. Lighting plan (as part of the site plan package) showing light fixture locations and type designations.

[1] For automobile dealerships and other types of approved outdoor sales areas the maximum illumination may be increased to fifteen (15) footcandles, provided the limits at the lot line are not exceeded.
[2] Shall not apply to ornamental street lighting, public street lights or driveway/intersection lighting necessary for pedestrian and traffic safety.
[3] The light level along a non-residential lot line may be increased to five (5) footcandles where there is shared access/vehicular connections or the adjacent use is a similar use.

2. Lighting equipment specifications and data sheets, including fixture height.

3. Any other materials or information required to convey the intent of the lighting design.

5.83. Trash Receptacles

(1) Trash receptacle enclosures shall be required for all **uses** except **single family detached** and **two family dwellings**, where an outdoor trash receptacle is stored. Trash receptacle enclosure locations and construction details meeting the requirements of this section shall be shown on **site plans**.

(a) Location. Trash receptacle enclosures shall be located in the **rear yard** or non-required **side yard**, unless otherwise approved by the site plan reviewing authority. Trash receptacle enclosures for commercial and industrial sites shall be as far as practical from an **adjoining residential district** boundary.

(b) Access. Access to the trash receptacles by refuse vehicles shall be designed to prevent damage to automobiles in designated **parking spaces**; provided the enclosure doors shall not be highly visible from traffic entering the site from a public road.

(c) Base. The trash receptacle base shall be at least nine (9) feet by nine (9) feet, constructed of six (6) inches of reinforced concrete pavement. The base shall extend six (6) feet beyond the dumpster pad or gate to support the front axle of a refuse vehicle. Where grease disposal receptacles are used, curbing shall be provided around the enclosure base to contain any spillage.

(d) Screening. Trash receptacles shall have a lid or cover and be enclosed by a wall on three sides with a wood gate on the fourth side. The enclosure shall be constructed of wood, plastic, vinyl, brick or split face block that matches the building color with a height of six (6) feet or at least one (1) foot higher than the dumpster, whichever is greater. Other decorative masonry material may be approved if it matches the material used on the **principal building**. Poured concrete with false brick design or plain concrete slag blocks are not permitted.

(2) *Exceptions.* The site plan reviewing authority may waive the requirement for a trash receptacle enclosure for businesses, such as banks, that store all waste material indoors or other **uses** that provide alternate means of handling waste disposal.

5.84. Mechanical Equipment

Ground-, building-, and roof-mounted mechanical equipment and utility **structures** including, but not limited to, heating units, cooling units, air handling units, refrigeration units, blowers, ventilating fans, water and gas meters, elevator housing, tanks, generators and utility transformers are subject to the following regulations:

(1) *Ground- and Building-Mounted Equipment.*

(a) Mechanical equipment and utilities visible to the public and located on or around any non-residential **building** shall be screened by landscaping or by decorative walls compatible with the material used on the **building**.

(b) Mechanical equipment may not be located within the required front yard **setback** area or within five (5) feet of any side property line, except as may otherwise be permitted by this ordinance. However, in a non-residential district, ground-mounted mechanical equipment shall not be located under any circumstances within twenty (20) feet of a **residential district** boundary.

(2) *Roof-Mounted Equipment.*

(a) All roof-mounted equipment shall be screened by parapet walls or a pitched roof integrated into the architectural design of the **building** of sufficient height to **screen** the rooftop equipment and provide sound attenuation. The location, height and **screening** methods shall be shown on the **site plan**.

(b) All roof-mounted mechanical units must be set back a minimum of twenty (20) feet from the front of the **building** and any side of the **building** facing an **adjacent residential district**.

ARTICLE 10 OFF-STREET PARKING, LOADING, ACCESS AND CIRCULATION

5.90. Description and Purpose

The purpose of this Article is to prescribe regulations for off-street parking of motor vehicles in residential and non-residential **zoning districts**, to ensure that adequate parking and access are provided in a safe and convenient manner and to afford reasonable protection for **adjacent** land **uses** from light, glare, noise, air pollution and other effects of parking concentrations. It is the further intent of these regulations to:

(1) Implement the goals and policies of the City of Charlevoix **Master Plan**;

(2) Reduce the impacts associated with **parking lots** through minimum and maximum parking requirements; and

(3) Accommodate shared parking to limit the extent of paved and **impervious surfaces**.

5.91. Applicability

(1) For all **buildings** and **uses** established after the effective date of this ordinance, off-street parking shall be provided as required by this section, except in the CBD Central Business District where all or part of the parking requirement may be fulfilled through the payment in lieu of parking fee option, pursuant to *Section 5.93(6)* of this ordinance. **Parking spaces** provided in this manner shall be unreserved and generally available to the public. Payments into the parking fund shall be made prior to the issuance of a **zoning permit**.

(2) If the intensity of the **use** of any **building** or site is increased by adding **floor area**, increasing seating capacity or employees, or by any other means, additional off-street parking shall be provided to the extent required by this Article.

(3) For off-street parking facilities that exist on the effective date of this ordinance, their capacity shall not be reduced below the requirements of this Article, nor shall the capacity of nonconforming parking facilities be further reduced or made more nonconforming.

(4) Required off-street parking shall not be changed to another **use** unless equal facilities are provided elsewhere, in accordance with the provisions of this Article.

(5) Changes in **use** or new **uses** of existing **buildings** or **floor area** shall require parking in accordance with this Article; except in the CBD Central Business District the requirement for additional parking due to a legal commercial **use** change shall be waived.

5.92. Parking Requirements and Limitations

(1) Off-street parking shall only be used for temporary vehicle parking related to the activities on the premise. The storage of merchandise, motor vehicles for sale, **recreational vehicles**, limousines, trucks and **trailers** is prohibited, except under the conditions of *Section 5.73*. Use of off-street parking to store or park wrecked or junked cars, or to repair vehicles is prohibited.

(2) When calculations for required **parking spaces** result in a fraction over one-half (1/2), one (1) full **parking space** shall be required.

(3) For a **use** not specifically included in *Table 5.92(8)*, off-street parking requirements shall be in accordance with a **use** determined by the **zoning administrator** to have comparable parking characteristics. For any **use** determined as not having a comparable parking requirement, it shall be determined by the **planning commission** based on recent and published parking research, or by accepting the findings of a parking study provided by the applicant in accordance with *Section 5.93(2)(f)*.

(4) For benches, pews or similar seating, each twenty-four (24) inches shall be counted as one (1) seat unless plans filed with the city specify a maximum seating capacity, which shall then be used to determine parking requirements.

(5) Unless otherwise indicated, **floor area** shall refer to **usable floor area** (UFA).

(6) Where parking requirements are established by maximum building seating or occupancy, capacity shall be based on the building and/or fire code, whichever is more restrictive.

(7) Minimum **parking space** requirements shall not be exceeded unless approved by the **planning commission** based on documented evidence that additional spaces are required to accommodate parking demand on a typical day. The **planning commission** may require any additional spaces to be constructed using alternate paving materials, such as pervious pavers or concrete. A required or requested use of alternative paving materials shall include a maintenance plan and agreement from the property owner deemed satisfactory to the **planning commission**.

(8) The minimum required number of off-street **parking spaces** shall be determined based on the requirements listed in *Table 5.92(8)*.

Table 5.92(8): Parking and Access Requirements by Use

Use	Number of Parking Spaces
Residential Uses	
Bed and breakfast	See *Section 5.46(3)*
Boarding or rooming house	One (1) space per two (2) beds, plus one (1) additional space for owner or employee use.
Dwellings above first floor businesses	One (1) space per **dwelling unit**.
Multiple family residential dwellings	One and one-half (1.5) spaces per **dwelling unit**.
Senior apartments and **senior independent living**	One-half (0.5) space per unit, and one (1) space per employee. Should units revert to general occupancy, the requirements for **multiple family residential dwellings** shall apply.
Single family and **two family dwellings**	Two (2) spaces per **dwelling unit**.
Institutional Uses	
Auditoriums, assembly halls, meeting rooms, theaters, and similar places of assembly	One (1) space per four (4) seats, based on maximum seating capacity in the main place of assembly, as established by the city's fire and building codes.
Day care facility, nursery school, child care center, family day care home, group day care home	One (1) per seven hundred (700) sq. ft. of UFA, plus one (1) per employee. Sufficient area shall be designated for drop-off of children or **adults** in a safe manner that will not result in traffic disruptions.
Elementary and middle schools	One (1) per teacher, employee or administrator.
Convalescent or Nursing Home	One (1) per three (3) beds or occupants and one (1) space per staff member or employee on the largest shift.

Table 5.92(8): Parking and Access Requirements by Use		
Use		**Number of Parking Spaces**
Hospitals and similar facilities for human care		One (1) per three (3) beds, plus one (1) per employee on the largest shift.
Churches and customary related **uses**		One (1) for every four (4) seats in the main place of assembly.
High schools; colleges and universities; business, trade, technical, vocational, or industrial schools; performing and fine arts schools		One (1) per teacher, employee or administrator, and one (1) for every ten (10) students.
Retail Uses		
Retail stores except as otherwise specified		One (1) for every five hundred (500) sq. ft. of UFA.
Multi-tenant shopping centers	with 60,000 sq. ft. or less of retail	One (1) for every three hundred fifty (350) sq. ft. of retail UFA.
	with over 60,000 sq. ft. of retail	One (1) for every three hundred (300) sq. ft. of retail UFA.
	with restaurants	If more than twenty (20) percent of the shopping center's **floor area** is occupied by restaurants or entertainment **uses**, parking requirements for these **uses** shall be calculated separately. Where the amount of restaurant space is unknown, it shall be calculated at twenty (20) percent.
Agricultural sales, greenhouses and nurseries or roadside stands		One (1) per employee, plus one (1) per three hundred (300) sq. ft. of permanent or temporary area devoted primarily to sales.
Animal grooming, training, day care and boarding		One (1) for every six hundred (600) sq. ft. of UFA.
Furniture and appliance, household equipment, show-room of a plumber, decorator, electrician, hardware, wholesale and repair shop, or other similar **uses**		One (1) for every one thousand (1000) sq. ft. of net UFA, plus one (1) additional space per employee.
Grocery store/supermarket		One (1) for every five hundred (500) sq. ft. of UFA.
Home improvement centers		One (1) for every six hundred (600) sq. ft. of UFA.
Open air businesses, except as otherwise specified		One (1) for every five hundred (500) sq. ft. of **lot area** for retail sales, **uses** and services.
Vehicle dealerships, including automobiles, RV's, motorcycles, snowmobiles, ATV's and boats		One (1) for every five hundred (500) sq. ft. of floor space of sales room, plus one (1) per employee.
Service Uses		
Banks and other financial institutions		One (1) per five hundred (500) sq. ft. of UFA for the public. Drive-up windows/drive-up ATMs shall be provided with two (2) stacking spaces per window or drive-up ATM.
Beauty parlor or barber shop		One (1) **parking space** per chair/station.
Dry cleaners		One (1) per five hundred (500) sq. ft. of UFA.
Laundromats		One (1) per four (4) combinations of washer-dryer machines, plus one (1) space per employee.
Mortuary, funeral home		One (1) for every two hundred (200) sq. ft. of assembly room or parlor floor space.

Table 5.92(8): Parking and Access Requirements by Use		
Use		**Number of Parking Spaces**
Motel, hotel or other commercial lodging establishment		One-half (0.5) space per unit, plus one (1) per employee during largest shift. In addition, spaces required for ancillary **uses** such as lounges, restaurants or places of assembly shall be provided and determined on the basis of the individual requirements for that **use**.
Motor **vehicle service stations** (gas stations and **truck stops**)		One (1) per employee, plus additional parking required for other **uses** within an automobile service station, such as the retail **floor area**, restaurants or vehicle repair stalls.
Vehicle repair establishment, major or minor		One (1) per service stall, plus (1) per employee.
Vehicle wash	Self-service (coin operated)	Four (4) spaces, plus two (2) stacking spaces for every washing stall.
	Full-service	Four (4) spaces, plus one (1) per employee. Three (3) stacking spaces for every washing stall or line.
Restaurants, Bars and Clubs		
Standard sit-down restaurants with liquor license		One (1) per three hundred (300) sq. ft. of UFA.
Carry-out restaurant (with limited or no seating for eating on premises)		Four (4) per service or counter station, plus one (1) per employee.
Open front restaurant/ice cream stand		Five (5) spaces, plus one (1) per employee and one (1) per six (6) seats.
Drive-through restaurant		One (1) for every two (2) employees, plus one (1) for every six (6) seats intended for patrons within the **building**, plus four (4) stacking spaces per food pickup window.
Bars, lounges, taverns, nightclubs (majority of sales consist of alcoholic beverages)		One (1) per two hundred (200) sq. ft. of UFA.
Private **clubs**, lodge halls or banquet halls		One (1) for every six (6) persons allowed within the maximum occupancy load as established by the city fire and building codes.
Recreation		
Athletic clubs, exercise establishments, health studios, sauna baths, martial art schools and other similar **uses**		One (1) per four (4) persons allowed within the maximum occupancy load as established by city fire and building codes, plus one (1) per employee.
Billiard parlors		One (1) per three (3) persons allowed within the maximum occupancy load as established by city building and fire codes, or one (1) per five hundred (500) sq. ft. of **gross floor area**, whichever is greater.
Bowling alleys		Four (4) per bowling lane plus additional for **accessory uses** such as bars.
Indoor recreation establishments including gymnasiums, tennis courts and handball, roller or ice-skating rinks, exhibition halls, dance halls and banquet halls		One (1) space for every six (6) persons allowed within the maximum occupancy load as established by the city fire and building codes.
Miniature or "par-3" courses		One (1) per two (2) holes plus one (1) per employee.
Commercial Marinas		One-quarter (.25) space for every boat slip based on the permitted slips by the Michigan Department of Natural Resources.

Table 5.92(8): Parking and Access Requirements by Use	
Use	**Number of Parking Spaces**
Offices	
Business offices, post offices or **professional offices** of lawyers, architects or similar professionals	One (1) for every three hundred (300) sq. ft. of UFA, but no less than five (5) **parking spaces**.
Medical offices of doctors, dentists, veterinarians or similar professions	One (1) for every three hundred (300) sq. ft. of UFA.
Industrial Uses	
Industrial establishments, including manufacturing, research and testing laboratories, creameries, bottling works, printing, plumbing or electrical workshops	One (1) for every two (2) employees or seven hundred (700) sq. ft. of UFA, whichever is greater.
Warehouses and storage **buildings**	One (1) per employee computed on the basis of the greatest number of persons employed at any one time during the day or night.
Mini **warehouses/self-storage**	Unobstructed parking area equal to one (1) for every ten (10) door openings, plus parking for other **uses** on site such as truck rental.
Truck terminal	One (1) per employee, plus two (2) truck spaces of ten (10) x seventy (70) ft. per truck berth or docking space.
Air freight forwarders/distribution facilities	One (1) per employee.

5.93. Parking Alternatives

(1) *Shared/Common Parking.*

(a) Two (2) or more **buildings** or **uses** may share a common parking facility provided the total number of **parking spaces** is equal to the required number of spaces for all the **uses** computed separately.

(b) Cumulative parking requirements for mixed-use developments or shared facilities may be reduced by the **planning commission** subject to one or more of the factors listed in *Section 5.93(2)*, below.

(c) Shared parking shall only be permitted if there is a shared parking agreement which provides for parking as required by this ordinance and which constitutes a written contract binding on the affected **lots** or **parcels** until such time as the parking requirements of this ordinance can be met without the shared parking agreement. The shared parking agreement shall be reviewed by the **zoning administrator**, who shall approve the agreement if it complies with the requirements of this ordinance.

(2) *Modification of Parking Requirements.* The **planning commission** may reduce the **parking space** requirements of this section for any **use**, based upon one or more of the following:

(a) Shared parking by multiple **uses** is expected due to the likelihood of numerous multipurpose visits, or if **uses** have peak parking demands during different times of the day or days of the week; subject to the following:

1. Sidewalks shall be maintained or established between the **uses**.
2. Pedestrian connections, both within and to the site, shall provide safe and convenient access to building entrances.
3. For separate properties, shared **parking lots** shall be **adjacent** to one another with vehicular and pedestrian access.
4. Unless the multiple **uses** are all under **single ownership** and within a unified business or shopping center, **office** park or industrial park, shared parking agreements shall be filed with the city clerk after approval by the **zoning administrator**.

(b) Convenient municipal off-street parking facilities or on-street spaces are located no further than six hundred (600) feet from the subject properties.

(c) An expectation of walk-in trade is reasonable due to the proximity of residential neighborhoods, downtown or employment areas that are interconnected with sidewalks.

(d) Other forms of travel such as bicycle or transit are available and are reasonable alternatives.

(e) The **planning commission** may require a parking study to document that the above criteria (a) – (d) have been addressed.

(f) Where the applicant has provided a parking study, it shall demonstrate that a standard other than that required by this Article would be more appropriate based on the number of employees, expected level of customer traffic, or actual counts at a similar establishment. Parking studies shall be prepared by a qualified expert, such as a professional transportation engineer or professional transportation planner, based upon standards, manuals and research published by professional organizations, such as the Institute of Transportation Engineers, the Transportation Research Board or Urban Land Institute. The **planning commission** may require parking studies of comparable **uses** in the general area as part of the study.

(3) *Deferred Parking*.

(a) Where a reduction in **parking spaces** is not warranted, but an applicant can demonstrate the parking requirements for a proposed **use** may be excessive given the particular circumstances of the **use** and property, the **planning commission** may defer some of the required parking. The **site plan** shall designate an area to accommodate its future construction, if and when it is needed, meeting the design standards and dimensional requirements of this Article. In the interim, the deferred parking area shall be landscaped and maintained and shall not occupy required **setbacks**, **buffers** or landscaped areas, or be **used** for any other purpose.

(b) Construction of the deferred **parking spaces** may be initiated by the owner or required by the city based on conditions affecting on-site parking needs or observations, and shall require administrative approval of an amended **site plan**.

(4) *Downtown Parking*. The minimum number of off-street **parking spaces** and Payment in Lieu of Parking (*Section 5.93(6)*) required by this section shall be waived for all **buildings** fronting Bridge Street between the Pine River Channel and Antrim Street.

(5) The **planning commission** may require parking in the side or rear of a **building** where possible, if a proposed development fronts a public street. In these instances the **planning commission** may waive or reduce landscaping or **screening** requirements in *Section 5.81(8).*

(6) *Payment in Lieu of Parking.* The creation of commercial or accessory residential floor space or **uses** in the Central Business District, unless exempt under *Section 5.93(4)*, shall require the provision for parking in accordance with this chapter; provided that the **planning commission** and **city council** may approve a **site plan** as required by *Section 5.118* as amended, if the property owner pays on a one-time basis to the City of Charlevoix Central Business District parking improvement fund the sum of three thousand (3,000) dollars adjusted on an annual basis in accord with the Consumer Price Index, based on the year 1991 for each **parking space** which cannot be provided on site. Such funds shall be used to benefit the provision of public parking in the Central Business District. **Parking spaces** thus provided shall be unreserved and generally available to the public. Payments into the parking fund shall be made prior to the issuance of a land use permit for the proposed project by the **zoning administrator**.

5.94. Off-Street Parking Facility Design

(1) *Off-Street Parking Location and Setbacks.*

(a) Side and Rear Yard Limitation. Off-street **parking lots** shall meet the side **setback** requirements as specified in the **zoning district** and shall not be closer than fifteen (15) feet from the rear property line.

(b) Front Yard Limitation. In the CBD, GC, PO and CM Districts, the required **front yard setback** shall not be used for off-street parking, loading or unloading and shall remain open, unoccupied and unobstructed except for landscaping or vehicle access drives.

(c) Proximity. Required off-street parking facilities for all **uses**, other than **single** and **two family dwellings**, shall be located on the same **lot** as the **use**, or within three hundred (300) feet of the **building**(s) or **use** they are intended to serve. Distance shall be measured from the nearest point of the **building** to the nearest point of the off-street **parking lot**.

1. Required off-street parking facilities for **single** and **two family dwellings** shall be located on the same property as the premises they are intended to serve and shall consist of a **driveway**, a parking apron and/or a **garage**.

2. In the CBD District, parking facilities shall be located within six hundred (600) feet of the **building** or **use** to be served. Distance shall be measured from the nearest point of the **building** to the nearest point of the off-street **parking lot**.

(2) *Parking Construction and Development.* The construction of a **parking lot** shall require an approved **site plan**, in accordance with *Article 12*. Construction shall be completed and approved by the **zoning administrator**.

(3) *Pavement.* Unless alternative materials are specifically permitted as provided in this subsection, all **parking lots** and vehicle and equipment storage areas shall be hard-surfaced using asphalt, concrete, or concrete or brick pavers and shall be appropriately graded and drained. The **planning commission** may approve permeable paving for all or

part of a **parking lot**. For storage areas, a substitute for hard surface paving may be allowed if the **planning commission** finds **adjoining** properties will not be adversely affected.

(4) *Curbs.* A **parking lot** shall be surrounded by a six (6) inch concrete curb, except for **driveway** openings, sidewalk dub-downs and approved drainage systems, to protect landscaped or pedestrian areas, **buildings** or **adjacent** property from potential vehicle encroachment. The **planning commission** may approve an alternative to a fully curbed parking facility as long as the intent of this subsection is achieved. To avoid conflicts with swinging car doors and overhanging bumpers, in such circumstances all **plants** shall be set back at least two (2) feet from the edge of pavement.

(5) *Dimensions. Table 5.94(6)* specifies applicable **parking space** and aisle dimension requirements.

(a) Angled parking between the specified ranges shall be to the nearest degree.

(b) The length of a parking stall may be reduced by up to two (2) feet if the parked vehicle can overhang an unobstructed landscaped area or sidewalk by not less than two (2) feet. In such instances a sidewalk shall be at least seven (7) feet wide.

(c) At least seven (7) feet shall be maintained between a **parking lot** and **building**.

(d) All **parking lots** shall be striped and maintained showing individual parking bays in accordance with the following dimensions:

Table 5.94(6) Dimensional Requirements (feet)

Parking Pattern	Parking Space		Maneuvering Lane Width	Total One Row of Parking and Maneuvering Lane	Total Two Rows of Parking and Maneuvering Lane
	Width	Length			
0°(parallel)	8	23	12	20	28
30° to 53°	9	20	12	32	52
54° to 74°	9	20	15	36.5	58
75° to 90°	9	18	24	42	60

(6) *Stacking Spaces.* Waiting/stacking spaces for a drive-through **use** (such as a bank, restaurant, car wash, pharmacy, dry cleaner or oil change establishment) shall be at least twenty-four (24) feet long and ten (10) feet wide and shall not block off-street **parking spaces**. Where the waiting/stacking lane is a single lane accommodating five (5) or more vehicles, an escape lane shall be provided for vehicles wishing to by-pass the drive-up window.

(7) *Ingress and Egress.* Clearly defined and limited **driveways** shall provide adequate vehicular access to a **parking lot**. Interior access and circulation aisles for all **parking spaces** shall be provided. A **public street** shall not be used as a maneuvering space for a vehicle to get into or out of an off-street **parking space**. Access drives serving a **parking lot** in a non-residential **zoning district** shall not cross a **residential district**, except when access is provided by means of an **alley** that forms a boundary between a residential and non-residential district.

(8) *Landscaping.* Off-street parking areas shall be landscaped in accordance with the requirements of *Section 5.81(8)*.

(9) *Fire Lanes*. All fire lanes shall be designated on a site and posted with **signs** prior to occupancy.

(10) *Barrier Free Parking*. Signed and marked barrier free **parking spaces** shall be provided at convenient locations in a **parking lot** in accordance with the State of Michigan barrier free parking requirements. Barrier free spaces shall be located as close as possible to building entrances.

(11) *Maintenance*. All **parking lots** and **structures** shall be maintained free of trash and debris and all surfaces, curbs, light fixtures and **signs** shall be maintained in good condition.

5.95. Off-Street Loading Requirements

(1) *Uses Requiring Loading Area*. To avoid interference with the use of **public streets**, **alleys** and **parking spaces**, adequate space for standing, loading and unloading shall be provided and maintained on the same **lot** as the premises.

(2) *Loading Area Requirements*. A **loading** and **unloading space** shall be paved, and unless otherwise provided, shall be ten (10) feet by forty (40) feet, with a fifteen (15) foot height clearance, according to *Table 5.95(2)*:

Table 5.95(2) Minimum Off-Street Loading Requirements

Building Net GFA	Minimum Truck Loading Spaces
0-1,400 sq. ft.	None
1,401-20,000 sq. ft.	One (1) space.
20,001-100,000 sq. ft.	One (1) space, plus one (1) space for each forty thousand (40,000) sq. ft. in excess of twenty thousand (20,000) sq. ft.
100,001-500,000 sq. ft.	Five (5) spaces, plus one (1) space for each forty thousand (40,000) sq. ft. in excess of one hundred thousand (100,000) sq. ft.

(3) *Orientation of Overhead Doors*. Overhead doors for a truck loading area shall not face a public right-of-way and shall be screened so they are not visible from a **public street** or an **adjacent residential district**.

ARTICLE 11 SIGNS

5.100. Purpose

The purpose of this article is to regulate **signs** designed to be visible to the public in a manner which does not restrict the content thereof while:

(1) Recognizing the mass communications needs of both businesses and other parties.

(2) Protecting property values and neighborhood character.

(3) Creating a more attractive business climate.

(4) Promoting pedestrian and traffic safety by reducing **sign** distractions, obstructions and other hazards.

(5) Promoting pleasing community environmental aesthetics.

(6) Discouraging visual competition among businesses.

5.101. Sign-Related Definitions

Awning. A permanent shelter constructed on a supporting framework, projecting from and supported by the exterior wall of a building.

Airborne Devices. A sign supported by aerodynamic forces or propelled through the air by force including, but not limited to, air filled balloons, signs animated by forced air and lighter than air signs.

Awning Sign. A sign painted, printed, attached flat against or integrated within the surface of an awning.

Banner. A sign made of a non-rigid material; however, not including pennants or flags.

Billboard-Highway Advertising Sign. An off-premises sign owned by a person, corporation or other legal entity that engages in the business of utilizing and/or selling the space on that sign for advertising. See *"Off-Premises Sign."*

Building Elevation. All of that part of a building façade(s) which would be included in an elevation view rendering of the building drawn parallel to, and for the entire length of, a lot line.

Business Center Sign. An on-premises sign which identifies or gives direction to a business complex or group of contiguous stores which may contain the names of the individual stores, businesses, institutions or other organizations located within the complex or group. *See "On-Premises Sign."*

Canopy (Building). A permanent rigid structure covered with fabric, metal, shingles or other material and supported by a building at one or more points.

Canopy (Freestanding). A permanent, rigid structure covered with fabric, metal or other material and supported by columns, posts or other forms of support not a part of a building.

Canopy Sign. A sign affixed, applied to or part of a canopy.

Construction Sign. An on-premises sign erected during a construction project which identifies the project, the owner or the developer of the site, the architect, engineer, contractor and subcontractors working on the project, and any funding sources for the project, but which does not act to advertise a product or service.

Development Identification Sign. An on-premises sign that contains the name of the development, neighborhood or residents residing on the premises where located.

Directional Sign. An on-premises sign which directs visitors or customers to a particular land use on the premises where located. *See "On-Premises Sign."*

Electronic Sign Face. That portion of a sign face capable of changing its message or image electronically.

Flag. A sign made of non-rigid material having a distinctive size, color and design used as a symbol or emblem.

Flashing Sign. Any illuminated sign on which the artificial light is not at all times stationary or constant in intensity and color.

Ground Sign. A sign supported by one (1) or more uprights, poles, braces or some other structure, placed in the ground surface and not attached to any building.

Home Occupation Sign. A non-illuminated, on-premises sign announcing a home occupation or professional service. *See "On-Premises Sign."*

Identification Sign. An on-premises sign that identifies the type of business and contains the name and/or street address.

Illuminated Sign. A sign that includes artificial light by either emission, reflection or refraction.

Informational Sign. A non-advertising sign used to identify architectural features of a land use such as building entrances, drop boxes, restrooms, handicapped ramps and similar features.

Ingress-Egress Sign. A directional sign located adjacent to the entrance or exit drives of a development to identify the points of vehicular ingress and egress.

Internally Lighted Sign. A sign having an internal lighting source which allows light to be visible through the sign face.

Marquee. A permanent structure of rigid materials supported by and extending from, or above, the façade of a building

Marquee Sign. Any sign attached to or supported by a marquee.

Non-Commercial Speech Sign. Legal speech, in written form, by an individual or group of individuals expressing thoughts, ideas, opinions, etc. to the public.

Off-Premises Sign. A sign which contains a message related to a business or profession or to a commodity, service or activity sold or offered for sale on property other than the premises where such sign is located.

On-Premises Sign. A sign which contains a message related to a business or profession or to a commodity, service or activity sold or offered for sale on the property where such sign is located.

Pennant. A small, often triangular, flag used in multiples as a device to call attention to a land use or activity.

Political Sign. A sign relating to the election of a person to public office, to a political party or to a proposition to be voted on at a scheduled election.

Portable Sign. A freestanding sign usually having a changeable message that is not permanently anchored or secured to either a building or the ground.

Projecting Sign. A sign which is affixed to any building or structure other than a marquee or canopy and projects in such a way that the sign face is not parallel to the wall to which it is attached.

Real Estate Development Sign. A sign placed on the premises of a subdivision or other real estate development to indicate the proposed start of the development project or to inform the public that property within the development is available.

Real Estate Sign. A sign containing the message that the real estate on which the sign is located (including buildings) is for sale, lease or rent, together with information identifying the owner or agent.

Roof Sign. Any sign or part of a sign which is erected on, or as a part of, the roof of a building.

Sign. A structure, including its base, foundation and erection supports upon which is displayed any words, letters, figures, emblems, symbols, designs or trademarks by which any message or image is afforded public visibility from outdoors on behalf of, or for the benefit of, any product, place, activity, individual, firm, corporation, institution, profession, association, business or organization.

Sign Face. That portion of a sign excluding its base, foundation and erection supports on which identifications, descriptions, illustrations, displays or devices are placed pertaining to an idea, opinion, product, use, occupancy, function, service or activity.

Streamers. A long narrow wavy strip resembling or suggesting a banner floating in the wind.

Temporary Sign. A sign, banner or advertising display, with or without a structural frame, intended for a limited period of display, including displays for holidays or public events.

TOD Sign – TODS. Michigan Tourist Oriented Directional Sign Program sign.

Wall Sign. A sign which is attached directly to, or painted upon, a building wall, the exposed face of which is essentially in a plane parallel to the building wall or structure.

Window Sign. A sign, picture, symbol or combination thereof designed to communicate information about any idea, activity, business, commodity, event, sale or service that is placed on a window pane or glass with the intent to be visible from the outdoors.

5.102. Prohibited Signs

ALL ZONE DISTRICTS: The following **signs** shall not be allowed in any district:

(1) **Signs** that are not consistent with the standards of this chapter.

(2) **Signs** that are not clean, i.e. are covered with materials that obscure the message, in whole or in part. **Signs** that are not in good repair, i.e. having broken foundation, base or support **structures**, lighting fixtures, etc., and/or having a faded appearance.

(3) **Signs** that are not securely affixed to a substantial **structure** that will hold the **sign** in a fixed position under normal weather conditions.

(4) **Signs** that are attached to any natural growth, such as **trees**, **shrubs** or other natural foliage.

(5) **Signs**, which by reason of their location, shape, size or color appear to regulate, warn or direct the movement of traffic on public thoroughfares or interfere with or resemble an official traffic sign, signal or device.

(6) **Signs** other than utility company **signs** affixed to power utility poles or other utility **structures** or fixtures.

(7) **Signs** located so as to interfere with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from **public streets** or private roads. (See *Section 5.62 Corner Clearance.*)

(8) **Signs** in public rights-of-way other than those allowed by the City Highway Banner Program.

(9) External neon **signs** other than in the GC, CBD, or MH Districts where the wording specifically states "Open," "Closed," "Vacancy" or "No Vacancy." These specific **signs** shall be no larger than two (2) square feet.

(10) All types of **flags, feathers, banners** (except those authorized under *Section 5.104(8)*), **pennants**, **streamers** and **airborne devices** attached to the ground or **buildings** ("Over Highway Banners" are allowed only by the City Highway Banner Program by permit from the City Manager and MDOT.)

(11) **Billboard-highway advertising signs**.

(12) **Internally lighted signs**.

(13) **Off-premises signs**.

(14) **Roof signs**.

(15) All types of signage on sidewalks, roads or ground.

(16) **Sign** containing an **electronic sign face**.

5.103. Signs Excluded From Permits

The following **signs** are permitted in any district without a Sign Permit, but shall conform to the applicable requirements of this chapter and the applicable building codes.

(1) One (1) **identification sign** not exceeding two-and-one-half (2.5) square feet in **sign** face area used to identify a residential or non-commercial **use**.

(2) **Signs** not exceeding two-and-one-half (2.5) square feet in **sign face** area on mailboxes or newspaper tubes, or posted on private property relating to private parking or warning the public against trespassing or danger from animals.

(3) **Signs** erected by, on behalf of, or pursuant to the authorization of a governmental body, including legal notices, identification and **informational signs**, street **signs**, historical markers, traffic, regulatory and **directional signs**, public displays for holidays and public events.

(4) Official **signs** of a noncommercial nature erected by public utilities.

(5) **Flags** or insignia of any governmental or nonprofit organization when not displayed in connection with a commercial promotion or as an advertising device.

(6) Integral decorative or architectural features of **buildings** or works of art, so long as such features or works do not contain letters, trademarks, moving parts or lights.

(7) **Signs** directing and guiding traffic on private property that do not exceed four (4) square feet each and that bear no advertising matter.

(8) **Informational signs** not exceeding one-and-one-half (1.5) square feet in **sign face** area.

(9) Any **sign** wholly located within a **building** and not visible from outside the **building**.

(10) **Window signs** less than or equal to six (6) square feet. **Window signs**, whether inside or outside of a **building**, exceeding six (6) square feet are considered **wall signs** and are subject to this chapter.

(11) **Non-commercial speech signs** placed on private property, outside of any street right-of-way, not exceeding four (4) square feet in **sign face** area.

(12) External neon **signs** no larger than two (2) square feet in **sign face** area in the GC, CBD or MH Districts, which specifically state "Open," "Closed," "Vacancy" or "No Vacancy."

(13) Public **signs** or **signs** sanctioned by a public body on public land are not subject to this chapter.

(14) One (1) commercial **flag** per business in the CBD, no larger than fifteen (15) square feet, which only states "Open." The "Open" flag shall be placed in a location where it does not interfere with pedestrian traffic.

5.104. Certain Temporary Signs – Permit Exemptions and Additional Exemptions

The following **signs** related to **temporary land uses** are permitted in any district without a sign permit. However, such **signs** shall conform to the requirements set forth herein as well as all other applicable requirements of this chapter.

(1) *Construction Signs.* One (1) **construction sign** not to exceed twenty (20) square feet is permitted. In the place of one (1) large **sign**, a maximum of four (4) individual smaller **signs** may be erected, one (1) along each street **frontage** upon which the property faces on the site, upon the condition that each smaller **sign** shall not exceed four (4) square feet in **sign face** area per **sign**.

(2) *Political Signs.* **Political signs** are allowed in connection with elections or political campaigns. Such **signs** shall be removed within three (3) days following the election or conclusion of the campaign. **Political signs** must meet the height and area requirements of *Table 5.108* based on type of **sign**.

(3) *Real Estate Development Signs.* One (1) **real estate development sign** is permitted for each street **frontage** upon which the property faces. Such **sign**(s) may be present only for the duration of the development's construction. Such duration is limited to developer having majority ownership in saleable **lots**.

(4) *Real Estate Signs.* One (1) real estate listing **sign** is permitted for each street **frontage** upon which the property faces. Such **sign**(s) shall be removed within ten (10) days after sale, lease or rental.

(5) *Special temporary events.* One (1) **sign** not exceeding twenty-four (24) square feet in **sign face** area indicating a special temporary event such as a carnival, circus, festival or similar event is permitted on the **lot** where the activity is to take place. Such **signs** may be erected not more than one (1) month before the event and must be removed not later than three (3) days after the event.

(6) *Yard sales and similar events.* **Signs** for yard sales or other similar temporary activities not covered in the foregoing categories are permitted. Not more than one (1) **sign** may be located on any **lot**. No **sign** may exceed four (4) square feet in **sign** face area. **Signs** may be erected not more than three (3) days prior to the event and shall be removed immediately following the event.

(7) *Other temporary signs.* **Temporary signs** not listed in *Section 5.104* shall be regarded and treated in all respects as permanent **signs**.

(8) *Temporary Banners.* Temporary banners are only allowed in two (2) specific locations within the city, **adjacent** to the city golf course and near the intersection of M-66 and US 31. Banners advertising community events may be placed in those locations by non-profit or for-profit businesses or entities when the **zoning administrator** determines that those events will provide a substantial benefit to the City of Charlevoix and the event will not create any unfair competition among local businesses. Banners shall not exceed thirty (30) square feet in area, may be erected not more than two (2) weeks before the event and must be removed within two (2) days after the event.

5.105. Sign Standards for All Signs

(1) *Number and square footage requirements.*

(a) Each business shall be allowed a maximum of two (2) types of **signs** per any single building elevation that has public **frontage** as specified in *Section 5.108, Table of Use Districts*. (For example a business may have a wall **sign** and a ground **sign** for each **frontage**, but cannot have two of the same type of **signs** on one elevation.)

(b) For the purpose of determining the number of **signs** where graphic material is displayed in a random manner without an organized relationship of elements, each element shall be considered a single **sign**. A number of small **signs** randomly placed on a wall cannot be construed to be a single **sign**.

(c) A two-sided or multi-sided **sign** shall be regarded as one (1) **sign** so long as the interior angle of a "V" type **sign** does not exceed thirty (30) degrees and the two (2) sides are at no point separated by a distance that exceeds five (5) feet; and the distance between the backs of each face of a double-faced (back-to-back) **sign** does not exceed three (3) feet.

(d) **Canopy signs** and **marquee signs** are allowed the same square footage as a wall **sign**.

(e) All **signs** in the US 31 highway right-of-way are regulated by the Michigan Department of Transportation (MDOT) at locations approved by and installed in accord with the State of Michigan TODS program.

(f) **Window signs** are allowed provided they do not exceed twenty-five (25) percent of the total area of each window pane and do not exceed six (6) square feet.

(g) A **development identification sign** shall contain no other advertisement display.

(h) An **identification sign** shall contain no other advertisement display, except that the **identification sign** for a business may identify the type of business being conducted on the premises.

(2) *Computation of sign area.*

(a) The **sign face** area of a **sign** shall be computed by including the entire area within a single, continuous perimeter of a circle, triangle, rectangle or parallelogram enclosing the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the **sign** from the backdrop or **structure** against which it is placed, but not including any supporting framework or bracing that is clearly incidental to the display itself.

(b) If the **sign** consists of more than one (1) section or module, all of the area, including that between sections or modules, shall be included in the computation of the **sign face** area.

(c) Subject to the provisions of *Section 5.105(1)(c)*, the **sign face** area of two-sided, multi-sided or three-dimensional **signs** shall be computed by including the total of all sides designed to attract attention or communicate information that can be seen at any one time by a person from one vantage point.

(3) *Height, setback and projection requirements.*

(a) No **sign** may extend above any parapet or be placed upon any roof surface, except that for purposes of this chapter, roof surfaces constructed at an angle of seventy-five (75) degrees or more from horizontal shall be regarded as wall space. This subsection shall not apply to displays, including lighting, erected in connection with the observation of holidays on the roofs of residential **structures**.

(b) No **wall sign** attached to a **building** may project more than twelve (12) inches from the building wall. In those instances where a **wall sign** is affixed to the wall of the **structure** which lies on a right-of-way line, the bottom of the **wall sign** may be no closer than eight (8) feet from the ground.

(c) No part of a **ground sign** may exceed a height of sixteen (16) feet, measured from ground level.

(d) No part of a **ground sign** may be closer than four (4) feet to the right-of-way line.

(e) No part of a **projecting sign** may extend more than eight (8) feet over private property or a public right-of-way nor be less than eight (8) feet from ground level.

(f) Except for **awning signs** hanging entirely over private property, no part of an **awning sign** may be closer than eight (8) feet from ground level.

(4) *Illumination/Lighting.*

(a) All electrical wiring to a **sign** shall be placed underground when applicable.

(b) **Signs** must be lighted indirectly and not internally. Indirect lighting shall be directed either downward or upward onto the **sign face** and shielded so that it illuminates only the **sign face** and does not shine directly into a public right-of-way or residential premises. **Signs** may be illuminated using a high intensity reflective surface or lettering.

(c) No **sign** may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity.

(5) *Sign Materials.*

(a) **Signs** shall be constructed of durable materials.

(b) Natural or natural-like materials are encouraged. Earth tone colors are to be encouraged.

(c) It is recommended that the **sign** be constructed of materials compatible with the existing **structure**.

5.106. Standards for Portable Signs

Portable Signs:

(1) Shall be not more than forty-eight (48) inches in height and thirty (30) inches in width, and cannot exceed six (6) square feet in **sign face** area;

(2) Shall be located on private property;

(3) Shall not block pedestrian access;

(4) Shall be constructed of durable materials and be clearly portable in terms of size, weight and placement; and

(5) Shall only be displayed between the hours of 7:00 a.m. and 12:00 a.m.

5.107. Sign Standards for Specific Uses

(1) All **signs** must comply with *Table 5.108*, unless otherwise provided.

(2) **Signs** relating to automobile gasoline service stations, including any business selling gasoline.

(a) In addition to the **signs** allowed by *Section 5.105(1),* automobile gasoline service stations, including any business selling gasoline, may display one (1) other **sign** with a **sign face** not exceeding eighteen (18) square feet for the purpose of advertising the price of gasoline or other accessory products sold on the premises, including information regarding accepted credit cards. For purposes of this subsection, the **sign** advertising the price of gasoline or fuel may be an electronic **sign face**. **Signs** on pump canopies may be considered secondary to a station's primary **sign** should the primary **sign**, for example, be a **ground sign**.

(b) **Directional signs** or lettering displayed over individual entrances or service bays shall be permitted, provided they consist only of the words, "washing," "lubrication," "repairs," "mechanic on duty" or similar words directly relating to motor vehicle services offered on the premises. Not more than one (1) such **sign** per bay shall be permitted and each **sign** shall not exceed four (4) square feet in total **sign face** area.

(3) **Major Home Occupations** may have one (1) **wall sign** no larger than four (4) square feet.

(4) Except for the **signs** permitted under *Sections 5.103* and *5.104,* no other **signs** are permitted in residential areas of a PUD **Zone District**, but are allowed in the commercial areas of a PUD **Zone District**.

(5) *Multi-Tenant, Business Center Sign.* Notwithstanding Section *5.105(1)(a),* in the case of a shopping center or other integrated group of stores or commercial **buildings,** one (1) freestanding **business center sign** may be erected. The maximum area for such a **sign face** shall be equal to one-half (0.5) square foot of **sign face** area for each foot of building **frontage**, or sixty (60) square feet, whichever is less.

5.108. Table of Use Districts

Sign face in Square footage / Setback from Right-of-Way / Height

Table 5.108: Sign Requirements by Use District

ZONING DISTRICT	AWNING	GROUND	PROJECTING	WALL & WINDOW	DIRECTIONAL	NO PARKING/EXIT	CONSTRUCTION	REAL ESTATE	REAL ESTATE DEV.	TEMPORARY	BUSINESS CENTER	INFO SIGN	POLITICAL	DEVELOPMENT	IDENTIFICATION
R1, R2, R2A, PC, SR	-	16/4/16	-	-	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	-	1.5/4/0	8/0/4	16/4/8	2.5
R4	-	16/4/16	-	-	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	-	1.5/4/0	8/0/4	16/4/8	2.5
PUD	-	16/4/16	36/0/8	30/0/0 5.105(1)(f)	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	-	1.5/4/0	8/0/4	16/4/8	2.5
GC	16/0/8	20/4/16	36/0/8	30/0/0 5.105(1)(f)	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	5.107(5)	1.5/4/0	8/0/4	-	2.5
CM	16/0/8	16/4/16	36/0/8	-	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	5.107(5)	1.5/4/0	8/0/4	-	2.5
CBD	16/0/8	16/4/16	16/0/8	30/0/0 5.105(1)(f)	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	5.107(5)	1.5/4/0	8/0/4	-	2.5
PO	16/0/8	16/4/16	36/0/8	30/0/0 5.105(1)(f)	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	5.107(5)	1.5/4/0	8/0/4	-	2.5
I	16/0/8	16/4/16	36/0/8	30/0/0 5.105(1)(f)	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	5.107(5)	1.5/4/0	8/0/4	-	2.5
MC	16/0/8	16/4/16	36/0/8	30/0/0 5.105(1)(f)	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	5.107(5)	1.5/4/0	8/0/4	16/4/8	2.5
CH	-	20/4/16	36/0/8	30/0/0 5.105(1)(f)	4/4/8	2/4/4	20/4/8	8/0/8	36/4/8	6/4/8	-	1.5/4/0	8/0/4	-	2.5

5.109. Nonconforming Signs

(1) Subject to the remaining restrictions of this Section, nonconforming **signs** that were otherwise lawful on the effective date of this chapter may be continued, repaired and maintained as is necessary to keep in a sound condition.

(2) No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming **sign**. In addition, no person may add illumination.

(3) A nonconforming **sign** may not be moved or replaced except to bring the **sign** into greater conformity with this chapter.

(4) If a nonconforming **sign** is destroyed to the extent it is impractical to be restored using a majority of its existing major components, it may not thereafter be repaired, reconstructed or replaced except in conformity with all the provisions of this chapter, and the remnants of the former sign **structure** shall be cleared from the land.

(5) The message of a nonconforming **sign** may be changed so long as this does not create any new non-conformity.

5.110. Permit Required for Signs

(1) Except as otherwise provided in *Sections 5.103* and *5.104*, no **sign** may be constructed, erected, moved, enlarged, illuminated or otherwise altered unless a sign permit has been issued in accordance with the provisions of this chapter. Repainting or changing the message of a **sign** shall not in and of itself be considered an **alteration**.

(2) Application for a sign permit shall be submitted to the **zoning administrator** on appropriate forms supplied by his/her office. Said application shall contain the following information:

   (a) Name, address and telephone number of applicant.

   (b) Written permission of property owner on whose property the **sign** will be located.

   (c) Type of **sign** as defined in this chapter.

   (d) Scaled drawing showing **sign** size, height, type of support (if applicable), **zone district** in which the **sign** will be located, location of **sign** on property including front and **side yard setback** distances and any other information required herein.

   (e) Street address of the property upon which the **sign** will be located.

   (f) The name of the sign contractor, who shall erect the **sign** and/or sign **structure**.

(3) No permit shall be issued for the erection of any **sign** or **signs** until such **sign**(s) have been reviewed and approved by the **zoning administrator** and without first having paid a permit fee as established by the **city council**.

(4) Any person aggrieved by a decision of the **zoning administrator** may appeal that decision to the **zoning board of appeals**.

5.111. Unsafe Signs

(1) No person, corporation, business organization or other legal entity shall own or maintain any **sign** or advertising device that is structurally unsafe. For purposes of this section, the term "structurally unsafe" shall mean being in a state of disrepair or being designed and/or constructed so as to pose a likely threat of a total or partial collapse.

(2) The **zoning administrator** and/or other officials designated by the **zoning administrator** shall have the right to inspect **signs** and advertising devices to determine whether they are structurally unsafe. The **zoning administrator** and/or other officials designated by the **zoning administrator** may exercise this right of inspection by consent of the owner of the **sign** or advertising device and the owner of the property on which the **sign** or advertising device is located or by administrative search warrant.

(3) If the **zoning administrator** finds that a **sign** or advertising device is structurally unsafe, he or she shall serve on the owner of the **sign** or advertising device and the owner of the property on which the **sign** or advertising device is located a written notice, which specifies all of the following:

(a) The location of the **sign** or advertising device that is structurally unsafe.

(b) The nature of the unsafe condition.

(c) The date, no less than twenty (20) days after the written notice was served, before which the owner of the **sign** or advertising device or the owner of the property on which the **sign** or advertising device is located shall remedy the unsafe condition.

(d) A statement that if the owner of the **sign** or advertising device or the owner of the property on which the **sign** or advertising device is located fails to remedy the unsafe condition within the time specified in the written notice, the city may enter onto the property to remedy the unsafe condition and charge the costs of such action, including reasonable attorney fees, to the owner of the **sign** or advertising device and/or the owner of the property on which the **sign** or advertising device is located.

(e) A statement that the owner of the **sign** or advertising device and the owner of the property on which the **sign** or advertising device is located has the right before the expiration of the deadline contained in the written notice to request a hearing before the **city council** regarding whether the **sign** or advertising device is structurally unsafe.

(4) The service required by this subsection shall be personal service or service by certified mail, restricted delivery, return receipt requested. For purposes of this section, the phrase "remedy the unsafe condition" shall mean repairing the **sign** or advertising device so that it does not pose a serious threat of a total or partial collapse or removing the **sign** or advertising device from the property.

(5) If the owner of the **sign** or advertising device or the owner of the property on which the **sign** or advertising device is located requests a hearing before the **city council** as provided in this section, the city shall take no action to remedy the unsafe condition until, after notice and hearing, the **city council** finds that the **sign** or advertising device is structurally unsafe. A notice of the time, date and place of the hearing before the **city council** shall be served on the owner of the **sign** or advertising device and on the owner of the property on which the **sign** or advertising device is located no less than fourteen (14)

days before the scheduled hearing. The service of this notice may be made by first class mail. The owner of the **sign** or advertising device or the owner of the property on which the **sign** or advertising device is located may appeal an adverse decision by **city council** to the circuit court as provided by law.

(6) In exercising its right under this section to remedy the unsafe condition, either with or without a hearing before the **city council**, the city shall remove the **sign** or advertising device from the property if the repairs necessary to remedy the unsafe condition exceeds fifty (50) percent of the value of the **sign** or advertising device.

(7) The costs of remedying the unsafe condition by the city, including reasonable attorney fees, may be collected in a lawsuit against the owner of the **sign** or advertising device or the owner of the property on which the **sign** or advertising device is located.

5.112. Abatement of Dangerous Signs

(1) To protect the health, safety and general welfare of the inhabitants of the City of Charlevoix, the **zoning administrator** is hereby authorized and empowered to order city officials to enter onto private property to remove, repair or otherwise make safe any dangerous **sign** or advertising device without notice to the owner of the **sign** or advertising device or the owner of the property on which the **sign** or advertising device is located. For purposes of this section, the phrase "dangerous sign or advertising device" means a **sign** or advertising device that is in such a state of disrepair or has such a design and/or construction flaw that it poses an imminent threat of total or partial collapse such that following the procedures of *Section 5.111* would result in a substantial likelihood of injury to persons or property.

(2) If the **zoning administrator** exercises the authority granted in *Section 5.112(1)* above, he or she shall cause a written notice of such action to be served on the entity who benefits from the **sign** or advertising device and on the owner of the property on which the **sign** or advertising device is located as soon as possible after the action is taken. The service required by this subsection shall be by personal service or by first class mail. Service shall be deemed completed when the notice is mailed. Acceptance of the certified mail is not required.

(3) The costs incurred by the city in removing, repairing or otherwise making a dangerous **sign** or advertising device safe under this section, including reasonable attorney fees, may be collected in a lawsuit against the owner of the **sign** or advertising device or the owner of the property on which the a **sign** or advertising device is located.

PART IV: APPROVAL PROCEDURES

Article 12	Site Plan Review
Article 13	Special Land Use Review
Article 14	Planned Unit Developments (PUDs)
Article 15	Nonconformities

ARTICLE 12 SITE PLAN REVIEW

5.115. Intent

The purpose of this Article is to establish uniform requirements for the planning and design of developments within the city in order to achieve the following objectives:

(1) to determine compliance with the provisions of this ordinance;

(2) to promote the orderly development of the city;

(3) to prevent depreciation of land values;

(4) to ensure a consistent level of quality throughout the community;

(5) to ensure a harmonious relationship between new development and the existing natural and manmade surroundings;

(6) to achieve the goals and recommendations of the city **master plan**; and

(7) to promote consultation and cooperation between applicants and the city in order that applicants may accomplish their objectives in the utilization of land, consistent with the public purposes of this ordinance and the **master plan**.

5.116. Applicability

Site plan review shall be required, as applicable, under the following conditions, unless exempted by *Section 5.117:*

(1) *Level "A" Review*. The **zoning administrator** shall review **site plans** in connection with the creation of a **use** or the erection of a **building** or **structure** in any of the following circumstances:

(a) Any **use permitted by right** within any **zoning district**, if the proposed **building** is less than two thousand (2,000) square feet.

(b) **Additions** to existing **buildings** in any **zoning district**; provided, the **addition** is not larger than twenty (20) percent of the area of the **building** prior to the expansion or more than two thousand (2,000) square feet in area, whichever is less.

(c) Changes in the **use** of any existing **building** in any **zoning district**; provided the **use** is permitted by right in that **zoning district**.

(d) When, in the opinion of the **zoning administrator**, a project which otherwise qualifies for level "A" site plan review may have a significant impact on surrounding properties or the city, the **zoning administrator** may, at their sole discretion, submit the **site plan** to the **planning commission** for review. In such cases, the **planning commission** shall follow the review procedure for level "B" **site plans** and may require any additional information needed to make an informed decision.

(2) *Level "B" Review*. The **planning commission** shall act upon all **site plans**, other than those provided for level "A" review, in connection with the creation of a **use** or the erection of a **building** or **structure** in any of the following circumstances:

(a) Any "permitted" **use** within any **zoning district** occupying a **building** of two thousand (2000) square feet or more.

(b) Any special **use** in any district.

(c) Any Planned Unit Development.

(d) As otherwise required by this ordinance.

5.117. Exemptions

Site plan review shall not be required for a **single** or **two family dwellings** on a **lot** on which there exists no other **principal building** or **use** or for any **home occupation** or **accessory building** in a **single family residential district**.

5.118. Site Plan Review Procedures

The process of reviewing a **site plan** shall be as follows:

(1) Level "A" reviews shall be performed by the **zoning administrator** as follows:

(a) Three (3) copies of a complete **site plan** and an electronic version, in a format specified by the city, shall be submitted along with an application for that purpose and a fee, as established by the **city council**.

(b) The **zoning administrator** shall review the **site plan** for completeness and shall obtain comments, as deemed necessary, from city departments or consultants.

(c) The **zoning administrator** shall consider the **site plan**, any comments received and the applicable standards of this ordinance and shall either approve the **site plan**, as submitted, if all applicable requirements and the standards of *Section 5.120* have been met; approve the **site plan** with conditions; or deny approval of the **site plan**, if applicable requirements and standards have not been met.

(d) The reasons for the **zoning administrator's** action, along with any conditions that may be attached, shall be stated in writing and provided to the applicant.

(e) If approved, two (2) copies of the final **site plan** shall be signed and dated by the **zoning administrator** and the applicant. One (1) copy, along with the digital version, shall be kept on file with the city and one (1) copy shall be returned to the applicant or their designated representative. If the plan is approved with conditions, a revised plan shall be submitted reflecting those conditions and signed by the applicant and **zoning administrator** prior to issuance of any permits.

(2) Level "B" reviews shall be performed by the **planning commission** as follows:

(a) Eighteen (18) copies of a complete **site plan** and an electronic version, in a format specified by the city, shall be submitted to the **zoning administrator** along with an application for that purpose and a fee, as established by the **city council**.

(b) The **zoning administrator** shall review the **site plan** for completeness, and shall obtain comments, as deemed necessary, from the city departments or consultants.

(c) Once the **site plan** is determined to be complete, the **zoning administrator** shall notify and seek comment from **adjoining** property owners within three hundred (300) feet of the subject property by US mail ten (10) days prior to the **planning commission** meeting.

(d) Once the **zoning administrator** determines that the **site plan** is complete, they shall transmit the **site plan** to the **planning commission** for consideration at its

next meeting. Comments, if any, from city departments and consultants shall be transmitted to the **planning commission** prior to its review of the plan.

(e) The **planning commission** shall consider the **site plan** and shall either recommend approval of the **site plan**, as submitted, if all applicable requirements and standards have been met; recommend approval of the **site plan** with conditions; or recommend denial of the **site plan** if applicable requirements and standards have not been met. The **planning commission** review shall be based on the requirements of this chapter, comments received from city departments and consultants, and, specifically, the review standards of *Section 5.120*.

(f) After the **planning commission** decision has been made under *Section 5.118(2)(e)*, the zoning administrator shall forward the recommendation to **city council** for review, including all relevant documentation. **City council** shall consider the **site plan** and shall either approve the **site plan**, as submitted, if all applicable requirements and standards have been met; approve of the **site plan** with conditions; or deny approval of the **site plan** if applicable requirements and standards have not been met. The **city council** review shall be based on the requirements of this chapter, comments received from city departments and consultants, and, specifically, the review standards of *Section 5.120*.

(g) If approved, two (2) copies of the **site plan** shall be signed and dated by the chairperson of the **planning commission** and the applicant. One (1) copy, plus the digital copy, shall be kept on file with the city and one (1) copy shall be returned to the applicant or their designated representative. If the plan is approved with conditions, a revised plan shall be submitted reflecting those conditions and signed by the applicant and the **planning commission** chairperson, prior to issuance of any permits.

5.119. Submittal Requirements

(1) *Required Content.* Each **site plan** submitted shall contain the information detailed in *Table 5.119(1)*, as applicable:

Table 5.119(1): Required Site Plan Content		
Required Information	**Level A**	**Level B**
General Information		
Date, north arrow and scale	X	X
Name and firm address of the professional individual responsible for preparing the **site plan**	X	X
Name and address of the property owner or petitioner	X	X
Location sketch	X	X
Legal description of the subject property	X	X
Size of subject property in acres or square feet	X	X

Table 5.119(1): Required Site Plan Content		
Required Information	"A"	"B"
Boundary survey	X	X
Preparer's professional seal		X
Revision block (month, day and year)	X	X
Existing Conditions		
Existing zoning classification of subject property	X	X
Property lines and required **setbacks** (dimensioned)	X	X
Location, width and purpose of all existing **easements**		X
Location and dimension of all existing **structures** on the subject property	X	X
Location of all existing **driveways**, parking areas and total number of existing **parking spaces** on subject property	X	X
Abutting street right-of-way width	X	X
Location of all existing **structures**, **driveways** and parking areas within three hundred (300) feet of the subject property's boundary		X
Existing water bodies (rivers, creeks, wetlands, etc.)		X
Existing landscaping and vegetation on the subject property		X
Size and location of existing utilities		X
Location of all existing surface water drainage facilities	X	X
Proposed Development		
Location and dimensions of all proposed **buildings**	X	X
Location of all proposed drives (including dimensions and radii), acceleration/deceleration lanes, sidewalks, walls, **fences**, **signs**, exterior lighting, curbing, parking areas (including dimensions of a typical **parking space** and the total number of spaces to be provided) and unloading areas	X	X
Setbacks for all **buildings** and **structures**	X	X
Recreation areas, common use areas, dedicated **open space** and areas to be conveyed for public use		X
Flood plain areas and **basement** and finished floor elevations of all **buildings**		X
Landscape plan (showing location of proposed materials, size and type)		X
Layout and typical dimensions of proposed **parcels** and **lots**		X
Number of proposed **dwelling units** (by type), including typical floor plans for each type of unit		X

Table 5.119(1): Required Site Plan Content		
Required Information	**Level A**	**Level B**
Number and location (by code, if necessary) of efficiency and one, two and three or more bedroom units		X
All deed restrictions or covenants		X
Brief narrative description of the project including proposed **use**, existing **floor area** (sq. ft.), size of proposed expansion (sq. ft.) and any change in the number of **parking spaces**	X	X
Engineering		
Proposed method of handling sanitary sewage and providing potable water	X	X
Location and size of proposed utilities, including connections to public sewer and water supply systems and/or size and location of on-site systems	X	X
Location and spacing of fire hydrants		X
Location and type of all proposed surface water drainage facilities	X	X
Grading plan at no more than two (2) foot contour intervals		X
Proposed **streets** (including pavement width, materials and **easement** or right-of-way dimensions)		X
Building Details		
Typical elevation views of all sides of each **building**		X
Gross and **usable floor area**	X	X
Elevation views of building **additions**	X	X
Building height	X	X

(2) *Information Waiver*. Specific requirements of either a Level "A" or "B" **site plan** may be waived by the **zoning administrator** where it is determined that such information is not applicable to the request.

(3) *Additional Reports/Study:* The **zoning administrator** or **planning commission** may require additional studies, reports or written opinions from qualified consultants to determine compliance with this ordinance or to ensure negative impacts to public health, safety and welfare are avoided or mitigated. These reports/studies may include, but are not limited to, traffic studies, transportation plans, geotechnical reports, flood hazard evaluations or environmental assessments. The **zoning administrator** or **planning commission** shall have the authority to choose the individual consultant, firm or company. The costs of additional study shall be paid for by the applicant.

5.120. Standards for Site Plan Approval

A **site plan** shall be approved only upon a finding of compliance with the following standards:

(1) The **site plan** must comply with all standards of this Article and all applicable requirements of this ordinance, as well as with all other applicable city, county, state and federal laws and regulations.

(2) The site must be designed in a manner that is harmonious, to the greatest extent possible, with the character of the surrounding area.

(3) The site must be designed to minimize hazards to **adjacent** property and to reduce the negative effects of traffic, noise, smoke, fumes and glare to the maximum extent possible.

(4) Unless a more specific design standard is required by the city through a different ordinance or regulation, all **uses** and **structures** subject to **site plan** review shall comply with the following design standards:

(a) Traffic Circulation. The number, location and size of access and entry points, and internal vehicular and pedestrian circulation routes shall be designed to promote safe and efficient access to and from the site, as well as circulation within the site. In reviewing traffic features, the number, spacing and alignment of existing and proposed access points shall be considered relative to their impact on traffic movement on **abutting streets** and **adjacent** properties.

(b) Storm Water. Storm water retention and drainage systems shall be designed so the removal of surface water will not adversely affect neighboring properties or public storm water drainage systems. Unless impractical, storm water shall be removed from all roofs, canopies and paved areas by an underground surface drainage system. Low impact design solutions such as rain gardens and green roofs are encouraged.

(c) Landscaping. The landscape shall be preserved in its natural state, insofar as practical, by minimizing unnecessary **tree** and soil removal. Any **grade** changes shall be in keeping with the general appearance of neighboring developed areas. Provision or preservation of landscaping, **buffers** or **greenbelts** may be required to ensure the proposed **uses** will be adequately **buffered** from one another and from surrounding property.

(d) Screening. Where non-residential **uses** abut residential **uses**, appropriate **screening** shall be provided in accordance with *Section 5.81(9)* to shield residential properties from noise, headlights and glare.

(e) Lighting. Lighting shall be designed to minimize glare on **adjacent** properties and **public streets**. As a condition of site plan approval, reduction of lighting during non-business hours may be required.

(f) Utility Service. All utility service shall be underground, unless impractical due to engineering difficulties.

(g) Exterior Uses. Exposed storage areas, machinery, heating and cooling units, **service areas**, loading areas, utility **buildings** and **structures**, and similar accessory areas shall be located to have a minimum negative effect on **adjacent** properties and shall be screened, if reasonably necessary, to ensure compatibility with surrounding properties.

(h) Emergency Access. All **buildings** and **structures** shall be readily accessible to emergency vehicles.

(i) Water and Sewer. Water and sewer installations shall comply with all city specifications and requirements.

(j) Signs. Permitted **signs** shall be located to avoid creating distractions, visual clutter and obstructions for traffic entering or exiting a site.

5.121. Conditions of Site Plan Approval

Conditions which are designed to ensure compliance with the intent of this ordinance and other regulations of the City of Charlevoix may be imposed on site plan approval. Conditions imposed shall be based on the following criteria:

(1) Ensure compliance with the intent of regulations contained in this ordinance that are applicable to the **site plan**.

(2) Ensure compliance with the intent other city ordinances that are applicable to the **site plan**.

(3) Be designed to protect natural resources; the health, safety and welfare; and the social and economic well-being of those who will use the land **use** or activity under consideration, including residents and landowners immediately **adjacent** to the subject property, and the community as a whole.

(4) Ensure compatibility with **adjacent** uses of land.

(5) Ensure that public services and facilities affected by the proposed land use and site plan will not be adversely affected.

5.122. Performance Guarantee

To assure compliance with this ordinance and any conditions of approval, performance guarantees may be required. The **city council** may require that a performance guarantee be furnished to ensure compliance with the requirements and conditions imposed under the city's Zoning Ordinance. The amount of the performance guarantee shall be set forth by the **city council**, and shall be an amount acceptable to the city in covering the estimated cost of improvements associated with the project for which zoning approval is sought. This performance guarantee may be in the form of a cash deposit, certified check, irrevocable bank letter of credit, or a surety bond, and shall be deposited with the treasurer of the city. The performance guarantee shall be deposited at the time of issuance of the permit authorizing the activity or project. The city shall not require the deposit of the performance guarantee before the date on which the city is prepared to issue the permit. The city shall rebate any cash deposits in reasonable proportion to the ratio of work completed on the required improvement as work on the required improvements progresses.

5.123. Amendment to Approved Plans

Changes to an approved **site plan** shall be permitted only under the following circumstances:

(1) The holder of an approved **site plan** shall notify the **zoning administrator** of any proposed change to an approved **site plan**.

(2) Changes to a Level "A" **site plan** may be approved by the **zoning administrator**.

(3) Minor changes to a Level "B" **site plan** may be approved by the **zoning administrator** upon determining that the proposed revision(s) will not alter the basic design or any specified conditions imposed as part of the original approval. Minor changes shall include the following:

(a) Reduction in building size or increase in building size up to five (5) percent of total approved **floor area**.

(b) Movement of **buildings** or other **structures** by no more than ten (10) feet.

(c) Replacement of plant material specified in the landscape plan with comparable materials of an equal or greater size.

(d) Changes in building materials to a comparable or higher quality.

(e) Changes in floor plans which do not alter the character of the **use**.

(f) Changes required or requested by a city, county, state or federal regulatory agency in order to conform to other laws or regulations.

(4) A proposed change to a Level "B" **site plan**, determined by the **zoning administrator** to not be a minor change, shall be submitted to the **planning commission** as a site plan amendment and shall be reviewed in the same manner as the original application.

5.124. Expiration

Site plan approval shall expire twelve (12) months after the date of approval, unless substantial construction has been commenced and is continuing. The **zoning administrator**, in the case of a Level "A" **site plan**, or the **planning commission**, in the case of Level "B" **site plan**, may grant one extension of up to twelve (12) additional months; provided the applicant requests an extension in writing prior to the date of expiration of the **site plan**. The extension shall be approved if the applicant presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the applicant and the project will proceed within the extension period. If the above provisions are not fulfilled or the extension has expired prior to construction, the site plan approval shall become null and void.

ARTICLE 13 SPECIAL LAND USE REVIEW

5.130. Intent

Special **uses** are **uses** of land specifically permitted within a **zoning district** only by the approval of the **planning commission,** following a review of the **use** and its potential impact on its surroundings.[36] Special **uses** are generally consistent with the purpose of the **zoning district** in which they are permitted but, due to unique operational characteristics, may not be desirable or compatible in all locations within the district. Factors such as traffic, hours of operation, noise, odor or similar potential nuisance effects require that the special **use** be evaluated relative to its appropriateness on a case-by-case basis. This article establishes the review procedure for special **uses** and the general standards that must be met for all special **uses**. In addition, more specific standards and requirements, as found in *Article 7*, are established for certain individual **uses** to mitigate their potential negative impacts.

5.131. Procedures

The following application and review procedures shall be followed for all special **uses**:

(1) Application for a special land use permit shall be made to the **zoning administrator** and shall include the following:

(a) A complete **site plan**, in accordance with the requirements of *Article 12*.

(b) A completed application form.

(c) Payment of an application fee in an amount as established from time to time by resolution of the **city council**.

(2) Upon receipt of an application for a special land use permit, the **zoning administrator** shall cause notice to be given of a public hearing, in accordance with the Michigan Zoning Enabling Act, as follows:

(a) The notice of public hearing shall be published in a newspaper of general circulation in the city and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons whom real property is assessed within three hundred (300) feet of the boundary of the property in question and to the occupants of all **structures** within three hundred (300) feet. If the name of the occupant is not known, the term "occupant" may be used in making notification.

(b) The required notices shall be given not less than fifteen (15) days before the application will be considered.

(c) The notice shall:

1. Describe the nature of the special **use** request.

2. Indicate the property which is the subject of the request.

3. State when and where the request will be considered.

[36] The Planning Commission shall review special land use applications unless otherwise specified in this ordinance, in which case city council shall review special land use applications. City council shall follow the same procedures as the planning commission.

4. Indicate when and where written comments will be received concerning the request

(3) Following notice, the **planning commission** shall hold a public hearing on the special land use application.

(4) The **planning commission** may approve, approve with conditions or deny the special land use request based upon review and consideration of materials submitted with the application, comments received at the public hearing and the applicable standards of *Section 5.133*.

(5) The **planning commission** may request that any information submitted be reviewed by the city staff or consultants, with that cost of consultant review to be borne by the applicant.

5.132. Conditions of Approval

Reasonable conditions may be imposed on the approval of a special land use in order to achieve the following:

(1) Ensure public services and facilities affected by the proposed **use** or activity will be capable of accommodating increased service and facility loads necessitated by the proposed **use**.

(2) Ensure that the **use** is compatible with **adjacent** land **uses** and activities.

(3) Protect natural resources, the health, safety, welfare and 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.

(4) Relate to the valid exercise of the police power and purposes which are affected by the proposed **use** or activity.

(5) Meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land **use** or activity under consideration and be necessary to ensure compliance with those standards.

5.133. Review Standards

A special land use shall only be approved if all the following general standards are satisfied, in addition to any applicable requirements for specific special land uses, as found in *Article 7*:

(1) The **use** is designed and constructed, and will be operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; will be compatible with **adjacent uses** of land; and will not change the essential character of the area in which it is proposed.

(2) The **use** is, or as a result of the special land use approval, will be served adequately by public services and facilities, including, but not limited to, **streets**, police and fire protection, drainage **structures**, refuse disposal, water and sewer facilities, and schools.

(3) The **use** will not involve activities, processes, materials and equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of traffic, noise, smoke, fumes, glare or odors.

(4) The **use** will be compatible with the natural environment and will be designed to encourage conservation of natural resources and energy.

(5) The **site plan** proposed for the **use** demonstrates compliance with the special land **use** specific design standards and all other applicable requirements of this ordinance.

(6) The special land **use** will be consistent with the intent and purposes of this ordinance and the most recent updates to the **master plan**.

5.134. Expiration of Permit

A special land use permit shall expire one (1) year after it is granted, unless construction is complete or commencement of the **use** has substantially begun. The **planning commission** may, upon written request by the applicant, extend the term of the special land use by one (1) additional period of up to twelve (12) months upon a finding that there have been no changed conditions in the area which would require reconsideration of the special land use application or **site plan**. A request for an extension of the initial permit period shall be submitted in writing prior to the expiration of the special land use permit.

5.135. Revocation of an Approved Special Land Use

If a violation of any of the conditions or standards imposed on a special land use is found to exist, the **zoning administrator** shall notify the owner of the premises and the approving body that a violation exists and that the permit will be revoked within fifteen (15) days of notification. If the violation is not corrected within fifteen (15) days, the approving body shall revoke the permit. Furthermore, the violation is hereby declared to be a violation of the zoning ordinance, subject to all of the remedies and penalties provided for in this ordinance.

5.136. Appeals

The **zoning board of appeals** shall have no jurisdiction or authority to accept, or consider an appeal from, any special land use determination or decision, or any part thereof, nor shall the **zoning board of appeals** have authority to grant **variances** for, or with respect to, a special land use.

5.137. Restrictions on Resubmittal of a Special Land Use Request

A petition for special land use approval which has been denied, wholly or in part, shall not be resubmitted for a period of one (1) year from the date of denial, except on grounds of newly discovered evidence or proof of changed conditions found to be sufficient to justify reconsideration by the **planning commission**.

ARTICLE 14 PLANNED UNIT DEVELOPMENTS (PUDs)

5.140. Intent

The Planned Unit Development (PUD) District is established as an optional development tool to permit flexibility in the regulation of land development; to encourage innovation in land **use**, form of ownership and variety of design, layout and type of **structures** constructed; to achieve economy and efficiency in the **use** of land; to preserve significant natural, historical and architectural features and **open space**; to promote efficient provision of public services and utilities; to minimize adverse traffic impacts; to provide better housing, employment and business opportunities particularly suited to residents; to encourage development of convenient recreational facilities; and to encourage the **use** and improvement of existing sites when the uniform regulations contained in other **zoning districts** alone do not provide adequate protection and safeguards for the property and surrounding areas. It is the further intent of the PUD regulations to promote a higher quality of development than can be achieved from conventional zoning requirements in furtherance of the vision and goals of the adopted Charlevoix **Master Plan**.

5.141. Qualifying Conditions

In order to qualify for PUD approval, the project must satisfy the conditions of this section. It is the applicant's responsibility to demonstrate in writing that each of the following criteria is, or will be, met by the proposed PUD:

(1) *Recognizable Benefit*. A PUD shall achieve recognizable and substantial benefits that would not be possible under the existing zoning classification(s). At least three (3) of the following benefits shall be accrued to the community as a result of the proposed PUD:

(a) preservation of significant natural features;

(b) a complementary mix of land **uses** or housing types;

(c) extensive **open space** and recreational amenities;

(d) connectivity of **open space** with **adjacent** greenway corridors;

(e) enhancement of small town appeal;

(f) improvements to **public streets** or other public facilities that mitigate traffic and/or other development impacts;

(g) coordinated development of multiple small **parcels**; or

(h) infill development and/or removal or renovation of blighted **buildings**, sites or contamination clean-up.

(2) *Size*. Each PUD shall contain a minimum of twenty-one thousand, seven hundred eighty (21,780) square feet; provided sites containing less than twenty-one thousand, seven hundred eighty (21,780) square feet may be considered for rezoning to PUD, if the **city council** determines that the site will advance the purposes of the PUD District. When determining the appropriateness of areas less than the applicable minimum required, the **city council** shall determine that:

(a) rezoning the area to PUD will not result in a significant adverse effect upon nearby or **adjacent** lands;

(b) the proposed **uses** will complement the character of the surrounding area;

(c) the purpose and qualifying conditions of the PUD District can be achieved within a smaller area; and

(d) the PUD is not being used as a means to circumvent conventional zoning requirements.

(3) *Utilities.* The PUD shall be served by public water and sanitary sewer.

(4) *Ownership.* The PUD application shall be filed by the property owner, lessee or other person with legal interest in the property and written consent by the owner. The proposed development shall be under unified ownership or control so one person or entity has proprietary responsibility for the full completion of the project. The applicant shall provide sufficient documentation of ownership or control in the form of agreements, contracts, covenants and/or deed restrictions indicating that the development will be completed in its entirety as proposed.

(5) *Master Plan.* Proposed **use**(s) and design of the PUD shall be substantially consistent with the city's adopted **master plan**.

(6) *Pedestrian Accommodation.* The PUD shall provide for integrated, safe and abundant pedestrian and bicycle access and movement within the PUD and to **adjacent** properties.

(7) *Architecture.* Building forms, relationships and styles shall be harmonious and visually integrated through the use of common materials, colors, treatment and scale.

(8) *Traffic.* The PUD shall provide for safe and efficient vehicular movement within, into and out of the PUD site. Traffic calming techniques, parking lot landscaping and other sustainable design solutions shall be employed to improve traffic circulation, storm water management, pedestrian safety and aesthetic appeal.

(9) *Eligible Districts.* Land within any **zoning district** may qualify for PUD zoning.

5.142. PUD Requirements

(1) *Permitted Uses.* Any **use permitted by right** or special **use** approval in any **zoning district** may be permitted within a PUD, subject to the provisions of *Section 5.141 Qualifying Conditions* and the requirements of this section.

(2) *Minimum Lot Size and Zoning Requirements.* **Lot area** and **width**, **setbacks**, height, **lot coverage**, minimum **floor area**, parking, landscaping, lighting and other requirements for the district applicable to the proposed **use**, as provided in *Table 5.142(2)*, shall be applicable for all such **uses** within a PUD unless modified in accordance with *Section 5.142(3)*. In the case of a mix of **uses**, the zoning requirements applicable to each **use** category shall apply to that **use**.

Table 5.142(2): Minimum Zoning Requirements

Land Use	Applicable Zoning District
Single family	R1; R2
Two family	R2A
Townhome	R4
Multiple family	R4

Retail, office, service business	GC
Industry	I
Institutional	GC

(3) *Modification of Minimum Requirements.* District regulations applicable to a land **use** in the PUD may be altered from the requirements specified in *Table 5.142(2)*, including, but not limited to, modification from the **lot area** and **width**, building **setbacks**, height, **lot coverage**, **signs** and parking. The applicant for a PUD shall identify in writing all intended deviations from the zoning requirements. Modifications may be approved by the **city council** during the preliminary development plan review stage, after **planning commission** recommendation. These adjustments may be permitted only if they will result in a higher quality and more sustainable development consistent with the purposes of PUD expressed in *Section 5.140*. The modifications shall also satisfy at least four (4) of the following criteria:

(a) preserve the best natural features of the site;

(b) create, improve or maintain **open space** for the residents, employees and visitors beyond the minimum required by *Section 5.142(5);*

(c) commit that at least ten (10) percent of all **dwelling units** in the PUD will be affordable units;

(d) provide a mix of residential types such as single family, townhouse and/or multiple family;

(e) employ practices in site layout, building construction and materials that will result in a measurable reduction in energy consumption;

(f) introduce new development concepts, such as cohousing:

(g) include a mix of residential and non-residential **uses**; and

(h) incorporate pathways for pedestrians and bicycles within the PUD and connectivity to **adjacent uses**.

(4) *Density Bonus.* In addition to the modification of minimum requirements permitted in *Section 5.142(3),* the **city council**, after **planning commission** recommendation, may permit an increase in the total number of residential units allowed within a PUD where it is demonstrated that at least three (3) of the following amenities will be included in the development:

(a) more than twenty (20) percent of the total units within the PUD will be committed as affordable units;

(b) forty (40) percent or more of the PUD site will be dedicated as **open space**;

(c) low impact development design principles will be employed to minimize storm water runoff;

(d) the proposed development will be an infill or redevelopment project; and/or

(e) the project clearly contributes, in a meaningful way, to the furtherance of the city's vision, goals and smart growth principles as stated in the **master plan**.

(5) *Open Space*. At least twenty-five (25) percent of the area of a PUD site shall be preserved as **open space**, in accordance with the following requirements. For purposes of this requirement, "green roofs" shall be counted as **open space**.

(a) Areas Not Considered Open Space. The following land areas shall not be counted as required **open space** for the purposes of this section:

1. the area within any public street right-of-way or private street **easement**;
2. any **easement** for overhead utility lines, unless **adjacent** to qualified **open space**;
3. fifty (50) percent of any flood plain, wetland, water body or steep slope (fifteen (15) percent or greater) area and fifty (50) percent of the area of any golf course;
4. the area within a platted **lot** or **site condominium unit**, unless the **lot** has been dedicated to **open space** via conservation **easement** or other means of ensuring that the **lot** is permanent **open space**; and
5. **parking** and **loading areas**.

(b) Specifications for Required Open Space. Required **open space** areas shall meet the following specifications:

1. shall be for **use** by all residents, employees and visitors of the PUD, subject to reasonable rules and regulations. In the case of a golf course, stable or similar facility, membership shall be available to all residents of the PUD, subject to charges, fees or assessments for **use**;
2. if the site contains a river, stream or other body of water, the city may require that a portion of the required **open space** abuts the body of water;
3. leaves scenic views and vistas unblocked or uninterrupted, particularly as seen from public street rights-of-way;
4. protects the roadside character by establishing **buffer** zones along scenic corridors and improves public safety and vehicular carrying capacity by avoiding development that fronts directly onto existing roadways;
5. shall be configured so the **open space** is reasonably usable by residents of the PUD;
6. shall be of sufficient size and dimension and located, configured or designed in such a way as to achieve the applicable purposes of this chapter and enhance the quality of the development. The **open space** shall neither be perceived nor function simply as an extension of the **rear yard** of those **lots abutting** it;
7. to the extent practical, **open space** areas shall be linked with **adjacent open spaces**, public parks, bicycle paths or pedestrian paths;
8. pedestrian access points to the required **open space** areas from the interior of the PUD shall be provided and clearly identified by **signs** or a visible improved path for safe and convenient access;
9. grading shall be minimal, with the intent to preserve existing topography and landscaping where practical; and

10. may contain ball fields, tennis courts, **swimming pools** and related **buildings**, community **buildings**, golf courses and similar recreational facilities. However, no more than fifty (50) percent of the required **open space** may contain any of these **uses**.

5.143. General Provisions

(1) *Conditions*. Reasonable conditions may be imposed upon the PUD approval by the **planning commission** and/or **city council**. The conditions imposed shall be recorded in the minutes of the approval action and shall remain unchanged except upon amendment of the PUD in accordance with the procedures of *Section 5.147*. Conditions may include, but are not limited to, those necessary to:

(a) ensure public services and facilities will be capable of accommodating increased loads;

(b) protect the natural environment and conserve natural resources and energy;

(c) ensure compatibility with **adjacent uses** of land;

(d) meet the intent and purpose of this ordinance;

(e) be related to the standards established in the ordinance for the proposed PUD;

(f) ensure compliance with the final development plan and the provisions of this ordinance.

(2) *Performance Guarantees*. The **city council** or **planning commission** may require reasonable performance guarantees in accordance with *Section 5.122* of this ordinance to ensure completion of specified improvements within the PUD.

(3) *Interior Streets*. **Public or private streets** may be required to be extended to exterior **lot lines** in order to allow connection to existing or planned **streets** on **adjacent parcels** in order to provide for secondary access, continuity of the circulation system and to reduce traffic on **collector streets**.

(4) *Time Limits*. Each PUD shall be under construction within twelve (12) months after the date of approval of the final development plan. If this requirement is not met, the **city council** may, in its discretion, grant one extension not exceeding up to twelve (12) additional months; provided that prior to the expiration of the initial twelve (12) month period, the applicant shall submit reasonable evidence in writing to the effect that unforeseen difficulties or special circumstances have been encountered, causing delay in commencement of the PUD. If the PUD has not been commenced within the initial twelve (12) month approval period, or within an authorized extension thereof, any building permits issued for the PUD or any part thereof shall be of no further effect. At the expiration of the applicable period of time, the **planning commission** or **city council** may initiate proceedings for the rezoning of the property to some other **zoning district**.

5.144. PUD Review Procedures

The following procedures shall be followed in the establishment of any PUD:

(1) *Pre-Application Conference*. Prior to filing a formal application for a PUD, the applicant shall meet with the **zoning administrator** and others, as the **zoning administrator** determines, in order to review the general character of the proposed development, i.e., its

scope, nature and location. At this time, the applicant shall be advised of the PUD review procedures and the various information, studies, etc., which may be required as part of the review process.

(2) *Preliminary PUD Application*. An application for rezoning to PUD shall be submitted to the **zoning administrator** on a form for that purpose, along with an application fee in accordance with the schedule of fees established by the **city council**. In addition, the application shall include the following:

(a) Parallel Plan. Residential **density** shall be determined through the preparation of a conventional development plan illustrating how the site could be developed in accordance with the basic requirements of this ordinance. A concept layout shall be prepared to scale showing, as applicable, single family and two family **lots**, townhome and multiple family **buildings**, parking, **setbacks** and street right-of-ways. The number of units that could be accommodated under the base zoning shall serve as maximum number permitted, unless a **density** bonus is approved in accordance with *Section 5.142(4)*. Live/work units located above main floor businesses shall not be counted toward the maximum number of **dwellings**.

(b) Preliminary Development Plan. A preliminary development plan containing the following information shall be submitted:

1. a general location map;
2. a legal description of the subject property;
3. a title block, date, north arrow, scale, name and contact information of applicant and name and contact information of plan preparer;
4. a current topographical map clearly showing existing topographic conditions, including contour intervals of no more than two (2) feet based on field survey or photogrammetric methods;
5. a map showing the existing flood plains as indicated by the Federal Emergency Management Agency;
6. a property boundary survey;
7. the location of existing natural features including woods, streams, ponds, wetlands and steep (fifteen (15) percent or greater) slopes;
8. existing land **uses** within the development site and surrounding areas for a distance of three hundred (300) feet, including the approximate location of all **buildings**, **structures**, **lots** and **streets** (an aerial photo may suffice);
9. the location and identification of existing and proposed public, semi-public or community facilities such as schools, parks, trails, **churches**, public **buildings** and dedicated **open space**;
10. existing zoning on all **abutting** properties;
11. the approximate location of existing and proposed utilities, including a preliminary utility and drainage concept plan;
12. **uses** proposed within the PUD;
13. number and type of **dwelling units** proposed, including the number and type of committed affordable units, if any;

14. conceptual layout;

15. the general location of proposed interior **streets** and access points to **abutting streets**;

16. the general location of off-street parking facilities and number of spaces proposed; and

17. perspective drawings or photographs of representative building types, indicating the proposed architectural style and appearance.

(c) Summary of Intent. A written statement containing the following information shall be submitted with the preliminary development plan:

1. a statement of how the proposed PUD meets each of the qualifying conditions of *Section 5.141*;

2. a statement of the present ownership of all land within the proposed development;

3. an explanation of the character of the proposed development including a summary of acres or square footage by type of **use**, number and type of **dwelling units**, gross **density** calculation for **dwelling units** and minimum standards for **floor area**, lot size and **setbacks**;

4. a complete description of any requested deviations from the applicable spatial or other requirements applying to the property, in accordance with *Section 5.142(3)*.

5. a general statement of the proposed development schedule and progression of each phase or stage; and

6. intended agreements, provisions and covenants to govern the **use** of the development, building materials or architectural styles and any common or **open space** areas, including the provisions which will organize, regulate and sustain the property owners association, if applicable.

(3) *Preliminary PUD Plan and Rezoning.*

(a) Planning Commission Review. Upon receipt of the PUD application and related materials, the **planning commission** shall conduct a work session with the applicant to review the development concept and determine the need for additional information, if any, prior to conducting a public hearing.

(b) Additional Information. If required by the **planning commission**, the applicant shall submit additional information and/or studies to support the request such as, but not limited to: impact assessment, traffic analysis, storm water study or a market feasibility study.

(c) Public Hearing. Upon completion of its initial review and following receipt of any additional materials, the **planning commission** shall conduct a public hearing, notice of which shall be in accordance with the requirements of *Section 5.192*.

(d) Recommendation. Following the public hearing, the **planning commission** shall review the PUD request and the preliminary development plan based on conformance with the standards of *Section 5.145* and shall make a

recommendation to the **city council** to approve, deny or approve with modifications the request for PUD zoning and the preliminary development plan.

(e) City Council Action. Upon receipt of the **planning commission** recommendation, the **city council** shall conduct a public hearing, notice of which shall comply with the requirements of the Zoning Enabling Act, and review the preliminary development plan and the record of the **planning commission** proceedings. Based on the standards of *Section 5.145* and the recommendation of the **planning commission**, the **council** shall approve, deny or approve with modifications the preliminary development plan and rezoning request.

(f) Zoning Map. If the PUD zoning is approved, the **zoning administrator** shall cause the zoning map to be changed to indicate the planned unit development. If the preliminary development plan is approved with modifications, the applicant shall file with the **zoning administrator** written notice of consent to the modifications and a properly revised preliminary development plan prior to the map being changed.

(4) *Final Development Plan*. Within twelve (12) months of the **city council**'s approval of the preliminary development plan and PUD rezoning, the applicant shall submit a final development plan for the entire PUD or one or more phases to the **zoning administrator**, in accordance with the requirements for Level B site plan review, as contained in *Table 5.119(1)* of this ordinance. If determined to be complete by the **zoning administrator**, copies of the plan shall be forwarded to the **planning commission**.

(a) Phased Projects. If the PUD is to be developed in phases, the final development plan may be submitted for one or more phases of the overall PUD. A tentative schedule for the completion of each phase and commencement of the next phase shall also be submitted for **planning commission** approval.

(b) Extension of Time Limit. One extension of the time period for submitting the final development plan may be granted by the **planning commission** for up to an additional twelve (12) months if a request is submitted by the applicant in writing prior to the expiration of the original twelve (12) month approval period. If an application for final development plan approval has not been submitted prior to the expiration of the original twelve (12) months or an approved extension, the preliminary development plan shall be null and void. In addition, the **planning commission** or **city council** may initiate a rezoning of the property to another **zoning district**.

(c) Subdivision Plat. For any PUD requiring subdivision **plat** or **site condominium** approval, the subdivision **plat** or **site condominium** shall be submitted simultaneously with the final development plan and reviewed concurrently as part of the PUD.

(d) Review and Action. The **planning commission** shall review the final development plan in relation to its conformance with the preliminary development plan and any conditions or modifications attached to the PUD rezoning by the **city council**. If it is determined that the final plan does not substantially conform to the preliminary development plan, the review process shall be conducted as a preliminary development plan review, in accordance with *Section 5.144(3)*. If the final development plan is consistent with the approved preliminary development plan, the **planning commission** shall review the final plan in accordance with the standards for site plan review, *Section 5.120* and the PUD standards of *Section*

5.145. The **planning commission** shall prepare a record of its findings and shall approve, deny or approve with modifications the final development plan.

5.145. Review Standards

In considering the PUD request, the reviewing body must find that the proposed development meets all of the following general standards:

(1) The PUD will promote the intent and purpose of this Article.

(2) The PUD will comply with the standards, conditions and requirements of this Article.

(3) The proposed project will be compatible with **adjacent uses** of land, the natural environment and the capacities of public services and facilities affected by the proposed project.

(4) The proposed project will be consistent with the public health, safety and welfare needs of the city.

(5) Granting the PUD rezoning will result in a recognizable and substantial benefit to ultimate users of the project and to the community which would not otherwise be feasible or achievable under the conventional **zoning districts**.

(6) The PUD will not result in a significant increase in the need for public services and facilities and will not place a significant burden upon surrounding lands or the natural environment, unless the resulting adverse effects are adequately provided for or mitigated by features of the PUD as approved.

(7) The PUD will be consistent with the city's **master plan** and the following planning principles, as applicable:

(a) Redevelopment and infill locations should be favored over greenfield development;

(b) Natural features and resources should be preserved or at least conserved;

(c) Future development/redevelopment shall strengthen the physical character of the city;

(d) Quality design is emphasized for all **uses** to create an attractive, distinctive public and private realm;

(e) Places are created with an integrated mix of **uses** that contribute to the city's identity and vitality;

(f) Diverse housing choices are offered, including relatively high **density** and affordable units;

(g) Parks, **open space** and recreational areas are incorporated into future development; and

(h) Places are connected and accessible throughout the community by transportation methods other than automobiles.

(8) The PUD will respect or enhance the established or planned character, use and intensity of development within the area of the city where it is to be located.

5.146. Development Agreement

(1) Prior to issuance of any building permits or commencement of construction on any portion of the PUD, the applicant shall enter into an agreement with the city in a recordable form, that sets forth the applicant's obligations with respect to the PUD.

(2) The agreement shall describe all improvements to be constructed as part of the PUD and shall incorporate, by reference, the final development plan with all required modifications, other documents which comprise the approved PUD and all conditions attached to the approval by the city.

(3) A phasing plan shall also be submitted, if applicable, describing the intended schedule for start and completion of each phase and the improvements to be undertaken in each phase.

(4) The agreement shall also establish the remedies of the city in the event of default by the applicant in carrying out the PUD and shall be binding on all successors in interest to the applicant.

(5) All documents shall be executed and recorded in Charlevoix County.

5.147. Deviations From Approved Final PUD Site Plan

Changes to an approved PUD shall be permitted only under the following circumstances:

(1) *Notify Zoning Administrator.* The holder of an approved PUD final development plan shall notify the **zoning administrator** of any desired change to the approved PUD.

(2) *Minor Change Determination.* Minor changes may be approved by the **zoning administrator** upon determining that the proposed revision(s) will not alter the basic design and character of the PUD, nor any specified modifications imposed as part of the original approval. Minor changes shall include the following:

(a) reduction of the size of any **building** and/or **sign**;

(b) movement of **buildings** and/or **signs** by no more than ten (10) feet;

(c) landscaping approved in the final development plan that is replaced by similar landscaping to an equal or greater extent;

(d) changes in floor plans which do not alter the character of the **use** or increase the amount of required parking;

(e) internal rearrangement of a **parking lot** that does not affect the number of **parking spaces** or alter access locations or design; or

(f) changes required or requested by the City of Charlevoix or any other county, state or federal regulatory agency in order to conform to other laws or regulations.

(3) *Major Change Determination.* A proposed change not determined by the **zoning administrator** to be minor shall be submitted as an amendment to the PUD and shall be processed in the same manner as the original PUD application for the final development plan. While not required, the **planning commission** may elect to hold a public hearing in which case the notification requirements of *Section 5.144(3)(c)* shall be followed.

5.148. Appeals and Variances

The **zoning board of appeals** shall have no jurisdiction or authority to accept or consider an appeal from any PUD determination or decision, or any part thereof, nor shall the **zoning board of appeals** have authority to grant **variances** for or with respect to a PUD or any part thereof.

ARTICLE 15 NONCONFORMITIES

5.150. Intent

(1) It is recognized that there exists within **zoning districts** certain **lots**, **buildings**, **structures** and **uses** which were lawful before this ordinance was passed or amended, but are now prohibited, regulated or restricted under the terms of this ordinance. It is the intent to permit these legal nonconformities to continue until they are removed, but not to encourage their survival.

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

(3) Nothing in this ordinance shall be deemed to require a change in the plans, construction or designated **use** of any **building** on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual **building** construction has been diligently conducted.

(4) Nothing in this ordinance shall be interpreted as authorization for, or approval of, the continuance of the **use** of a **structure** or premises in violation of the zoning regulation in effect at the time of the adoption of this ordinance.

5.151. Nonconforming Lots of Record

(1) Where a legally established **lot of record** in existence at the time of adoption or amendment of this ordinance does not meet the minimum requirements for **lot width** or **lot area**, the **lot of record** may be **used** for any permitted or special land use in the district in which the **lot** is located, provided that any **building** or **structure** constructed on the **lot** complies with all other requirements for the **zoning district**, except as subject to the following:

(a) Required minimum **front** and **rear yard setbacks** and the maximum **building height** limitations shall be met as required in the **zoning district** in which the **lot** is located.

(b) The required minimum **side yard setback** for a **lot** which is nonconforming by reason of **lot width** shall be ten (10) percent of the width of the **nonconforming lot**, but in no event shall the required minimum **side yard setback** for such a **nonconforming lot** be less than five (5) feet on each side.

(2) If two (2) or more vacant **lots of record** or a combination of **lots** and portions of **lots of record** in existence at the time of the passage of this ordinance, or an amendment thereto, with continuous **frontage** and under **single ownership** do not meet the requirements established for **lot width** or **lot area**, the lands involved shall be considered to be an undivided **parcel** for the purposes of this ordinance, and no portion of that **parcel** shall be **used** or divided in a manner which diminishes compliance with **lot width** and area requirements established by this ordinance.

5.152. Nonconforming Uses

(1) A **nonconforming use** shall not be enlarged or increased, nor extended to occupy a greater area of land or building area than was occupied at the effective date of adoption or amendment of this ordinance.

(2) No part of any **nonconforming use** shall be moved unless that movement eliminates or reduces the nonconformity.

(3) If a **nonconforming use** is abandoned for any reason for a period of more than twelve (12) months, any subsequent **use** shall conform to the requirements of this ordinance. A **nonconforming use** shall be determined to be abandoned if one or more of the following conditions exists, and which shall be deemed to constitute an intent on the part of the property owner to abandon the **nonconforming use**:

- (a) Utilities, such as water, gas and electricity to the property, have been disconnected;
- (b) The property, **buildings** and grounds have fallen into disrepair;
- (c) **Signs** or other indications of the existence of the **nonconforming use** have been removed;
- (d) Equipment or fixtures necessary for the operation of the **nonconforming use** have been removed;
- (e) Other actions which, in the opinion of the **zoning administrator**, constitute an intention on the part of the property owner or lessee to abandon the **nonconforming use**.

(4) A **nonconforming use** may be changed to another **nonconforming use** provided all of the following determinations are made by the **zoning board of appeals**:

- (a) The proposed **use** shall be as compatible or more compatible with the surrounding neighborhood than the previous **nonconforming use**, considering factors such as hours of operation, traffic, noise and similar external impacts.
- (b) The proposed **nonconforming use** shall not be enlarged or increased, nor extended to occupy a greater area of land or building area than the previous **nonconforming use**.
- (c) That appropriate conditions and safeguards are provided that will ensure compliance with the intent and purpose of this ordinance.

(5) **Uses** consisting of **lots** occupied by storage yards, used car lots, auto wrecking, **junk yards**, golf driving ranges, miniature golf courses and similar open **uses**, where the only **buildings** on the property are ancillary to the open **use** and where the **use** is nonconforming shall be subject to the following restrictions, in addition to all other applicable provisions of this article.

- (a) When a **nonconforming use** has been changed to a conforming **use**, it shall not be used again for any other **nonconforming use**.
- (b) Nonconforming open **uses** of land shall only be converted to a conforming **use**.
- (c) A nonconforming open **use** of land shall not be enlarged to cover more land than was occupied by that **use** when it became nonconforming.

(d) When any **nonconforming use** is discontinued for a period of more than six (6) months, any future **use** of the land shall be limited to those **uses** permitted in the **zoning district** under which the property is governed. Vacancy and/or nonuse of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

5.153. Nonconforming Buildings or Structures

(1) Where a lawful **building** or **structure** exists at the effective date of this ordinance, or an amendment thereto, that does not comply with the requirements of this ordinance because of restrictions such as **lot area**, **lot coverage**, width, height or **setbacks**, that **building** or **structure** may continue to be occupied and used so long as it remains otherwise lawful, subject to the following provisions:

(a) No **nonconforming building** or **structure** may be enlarged or altered in a way that increases its nonconformity, except in cases in which the **setback** of a **building** or **structure** is nonconforming by fifty (50) percent or less of the distance required by this ordinance. Only in these cases may the nonconforming **setback** be extended along the same plane as the existing nonconforming **setback**, provided that in doing so the **setback** itself is not further reduced.

(b) In the event that a **nonconforming building** or **structure** is destroyed to an extent of more than fifty (50) percent of its replacement value, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this ordinance; provided that the **zoning board of appeals** may, upon application, permit the reconstruction of the **nonconforming building** or **structure** if all of the following conditions are met:

1. The prior nonconforming condition(s) shall not be increased.
2. All building materials and architectural details shall conform to the requirements of *Article 9*.
3. The new **building** or **structure** shall be placed on the original foundation, unless the **building** or **structure** could be so located as to reduce the extent of its nonconformity on the **lot**.
4. The application to reconstruct the **nonconforming building** or **structure** shall be filed with the **zoning administrator** within six (6) months of the event in which the **building** or **structure** was damaged or destroyed.
5. The reconstruction of the **building** or **structure** shall not be detrimental to **adjacent** property and the surrounding neighborhood.

(c) If a **nonconforming building** or **structure** is moved for any reason and for any distance, it shall be moved to a location which complies with the requirements of this ordinance.

(2) None of the provisions of this section are meant to preclude normal repairs and maintenance on any **nonconforming building** or **structure** that would prevent strengthening or correcting any unsafe condition of the **building** or **structure**.

5.154. Unlawful Nonconformities

Any **lot**, **use**, **building** or **structure** established in violation of the provisions of this ordinance or any prior zoning ordinance or amendment shall not be considered a legal nonconformity and shall not be entitled to the provisions, remedies and safeguards of this Article.

PART V: ADMINISTRATIVE PROVISIONS

Article 16	Administration and Enforcement
Article 17	Zoning Board of Appeals (ZBA)
Article 18	Amendments to Ordinance
Article 19	Enactment Provisions

ARTICLE 16 ADMINISTRATION AND ENFORCEMENT

5.160. Administrative Officer

The city manager shall appoint a **zoning administrator** who shall be authorized to enforce the provisions of this chapter. Such official shall, for the purpose of this chapter, have the powers of a police officer.

5.161. Zoning Permits

(1) No **building** or **structure** shall be erected or installed on any **lot** unless, or until, a **zoning permit** has been issued by the city for such **building** or **structure**. No permit shall be issued by the City of Charlevoix or any official thereof for the construction, erection, **alteration**, placing or moving of any **building** or **structure** on any **parcel** of land unless such **building** or **structure** is designed and the proposed location on its **lot**, or its intended **lot**, is arranged to conform with the provisions of this chapter, except that no permit shall be required for **alterations** which do not result in change in height, **floor area**, **lot coverage**, location of walls or other structural **alterations**.

(2) All applicants for **zoning permits** shall pay the city treasurer a fee according to the schedule as shall be prescribed by the **city council**.

(3) The **zoning administrator** may require applicants to post approved **zoning permits** in a location easily visible to the public and **adjoining** property owners based on one or more of the following conditions:

(a) The permit authorizes a construction project requiring substantial **excavation**.

(b) The permit authorizes a construction project that has been controversial in the area it is located in or with the general public.

(c) The permit authorizes a major construction project.

(d) The permit authorizes a construction project for a new primary building or use.

(4) Exempted from the **zoning permit** requirements are facial **alterations**, installation of siding, windows, doors, shingles, and replacements of existing or deteriorated materials and ordinary maintenance repairs made on all **dwellings** and their related outbuildings. This exemption does not eliminate the necessity for compliance with other county, state or federal permitting requirements.

(5) **Zoning permits** shall expire two (2) years from the date of issuance, unless substantial construction has begun.

5.162. Project Staking and Inspection

(1) Prior to the issuance of a **zoning permit**, the applicant or their representative shall accurately stake the location of the **parcel** property lines and the location of the proposed construction such that the **zoning administrator** may, by use of a tape measure and horizontal measurements, confirm that the construction as staked is as represented on the applicant's **site plan** which accompanies their application. On sloping sites, the lowest finished **grade** level shall be established on a grade stake which is offset from the construction such that it remains undisturbed during the course of the construction and

may be used to check the final **grade** by the **zoning administrator** by means of a string line level.

(2) After issuing a **zoning permit**, the **zoning administrator** shall from time to time conduct inspections of construction for which a permit has been issued, as may be required to determine compliance with the permit.

(3) Prior to commencing any construction of improvements which are a part of a project approved with a special use permit such improvements shall be staked both horizontally and vertically such that the **zoning administrator** may verify that the improvements are located as shown on the approved site plan.

(4) At a minimum, inspections may be required at the following times:

(a) Prior to issuance of a **zoning permit**.

(b) Prior to commencement of construction of any site improvements which are a part of a special use permit.

(c) After site preparation, but prior to construction of any foundation system.

(5) It shall be the duty of the applicant or its agent to notify the **zoning administrator** when work is ready for inspection. Such inspection shall be made within a reasonable time following notification giving due consideration to the **zoning administrator**'s work schedule and work load. Required inspections shall be deemed a requirement of a **zoning permit** or a special **use** permit even though the inspection requirement is not listed on the permit document.

(6) In the event the **zoning administrator** is unable to determine if **parcel** boundaries are accurately located or that proposed or actual construction is properly located on a **parcel**, the administrator may require that the applicant have a survey of the **parcel** of proposed or actual work prepared by a registered land surveyor, at the applicant's cost. Such survey shall be submitted to the **zoning administrator** for review and as a part of the applicant's zoning file.

(7) Inspections on the part of the **zoning administrator** shall in no way absolve the applicant of responsibility for properly locating and undertaking construction in a manner which meets the requirements of this section of any permit issued in accord with this section nor making any corrections to the construction which are necessary to meet the requirements of this section.

5.163. Enforcement

(1) Any land, **dwellings**, **buildings** or **structures used**, erected, altered, razed or converted in violation of this chapter or in violation of any regulations, conditions, permits or other rights granted, adopted or issued pursuant to this chapter are hereby declared to be a nuisance per se.

(2) Any person, partnership, corporation or association who creates or maintains a nuisance per se as defined in *Section 5.163(1)* above or who violates or fails to comply with this chapter or any permit issued pursuant to this chapter shall be responsible for a municipal civil infraction punishable by a fine of no more than five hundred (500.00) dollars as determined by the court. Every day that such violation continues shall constitute a separate and distinct offense under the provisions of this chapter. Nothing in this section shall exempt the offender from compliance with the provisions of this chapter.

(3) Upon the request of the **zoning administrator**, the city police chief or any city police officer is authorized to issue municipal civil infraction citations directing alleged violators of this chapter to appear in court.

(4) In addition to enforcing this chapter through the use of a municipal civil infraction proceedings, the city may initiate proceedings in the circuit court to abate or eliminate the nuisance per se or any other violation of this chapter.

(5) If during an enforcement action an alleged zoning violator files a request for a **variance**, the enforcement action may be adjourned until a hearing is held on the **variance** request.

5.164. Fees and Escrow

(1) To defray costs, which can reasonably be anticipated to exceed those normal costs covered by the application fee, related to the processing of applications for any type of discretionary decision authorized by this ordinance, an escrow account with the city must be established and funded as provided in this section. Examples of these discretionary decisions include, but are not limited to, special use permits, planned unit developments, appeals to or requests for interpretations by the **zoning board of appeals**, rezoning requests from individual property owners, variance applications and **site plan** review. Applications initiated by an employee or any board, commission or branch of the city shall not be subject to this section.

(2) If the **zoning administrator** determines that the application fee will not cover the actual costs of processing the application to a final decision or if the body reviewing the application determines that review of the application and/or participation in the review process or appeal by qualified professional planners, engineers, attorneys or other professionals is necessary, then the applicant shall deposit with the city treasurer such additional zoning fees in an amount determined by the **zoning administrator** equal to the estimated additional costs. Any determination regarding whether additional zoning fees are needed shall consider the following factors:

(a) the complexity of the application, including all documents submitted with the application;

(b) the complexity of the subject matter of the application;

(c) whether the application involves interpretations of this ordinance for which there is no established interpretation;

(d) whether the application involves legal issues or is of a complexity such that the assistance of legal council would be reasonably prudent;

(e) whether the application involves planning, engineering, traffic or other issues such that the assistance of a qualified professional would be reasonably prudent.

(3) The additional zoning fees shall be held in escrow in the applicant's name and shall be used solely to pay these additional costs. If the amount held in escrow becomes less than ten (10) percent of the initial escrow deposit, or less than ten (10) percent of the latest additional escrow deposit, and review of the application or decision on the appeal is not completed, then the **zoning administrator** shall require the applicant to deposit additional fees into escrow in an amount determined by the **zoning administrator** to be equal to the estimated costs to complete processing the application to a final decision. Failure of the applicant to make any escrow deposit required under this ordinance shall be deemed to make the application incomplete or the appeal procedurally defective and thereby cause

the denial of the application or the dismissal of the appeal. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application or the final decision on the appeal. Any actual costs incurred by the city in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the issuance of any permit or the release of a final decision on an appeal. The applicant, who has placed funds in escrow pursuant to this section, shall be entitled to an accounting of the expenditure of funds from the escrow account if an additional escrow deposit has been requested, if any, and at the time of the return of any unexpended funds. The request for an accounting shall be made in writing to the city treasurer. The accounting shall consist of a listing of all expenditures made from the escrow fund and shall include the name of the payee, a summary of the services or costs included in the expenditures and the date of the services.

ARTICLE 17 ZONING BOARD OF APPEALS

5.175. Creation and Membership

(1) A **zoning board of appeals** (also referred to hereafter as "**ZBA**") is hereby established, having the powers authorized by the **Zoning Act**, as amended, and in accordance with the City Charter.

(2) *Membership.* The **ZBA** shall consist of seven (7) members appointed by the **city council**, one (1) of whom may be a member of the **planning commission**, and two (2) alternate members.

(3) *Terms.* Members shall be appointed for a term of three (3) years, except that the terms for the **planning commission** members shall be the same as that for their office. All vacancies for unexpired terms shall be filled for the remainder of the term.

(4) *Alternates.* The **city council** shall appoint two (2) alternate members to serve on the **ZBA**, appointed by the **city council** to serve a three (3) year term. The alternate members shall have the same voting rights as a regular member of the **ZBA** and shall:

(a) Sit as regular members of the **ZBA** in the absence of a regular member or for the purpose of reaching a decision on a case in which the regular member has abstained due to conflict of interest.

(b) Once an alternate has been called to serve in a particular case, he/she shall continue to participate in that case until a decision has been rendered.

(5) *Removal.* Members of the **ZBA** or alternates shall be removable by the **city council** for malfeasance, misfeasance or nonfeasance in office, upon filing of written charges and after a public hearing.

(6) *Conflict of Interest.* A member shall disqualify themselves from a vote in which the member has a conflict of interest. Failure of a member to disqualify themselves from a vote in which the member has a conflict of interest constitutes malfeasance in office. Any planning commissioner or **city council** member on the **ZBA** shall abstain from any vote on an issue which they have previously voted upon as a member of the **planning commission**. **ZBA** members shall also follow the city's adopted Ethics and Conflict of Interest Policy, as amended.[1]

5.176. Officers

The board shall elect from its membership a chairman, a vice-chairman and such other officers as it may deem necessary.

5.177. Rules of Procedure

The board shall adopt rules and regulations. Copies of such regulations shall be made available to the public at the Office of Planning and Zoning.

(1) Meetings of the board shall be held once each month, and at such additional times as the board may determine. The time of regular meetings shall be specified in the rules and regulations. There shall be a fixed place of meeting, and all meetings shall comply with the Open Meetings Act, Act 267 of the Public Acts of 1976, as amended.

[1] The ZBA shall also be required the follow the Ethics and Conflict of Interest Policy adopted by city council.

(2) The presence of four (4) members shall constitute a quorum. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of the **zoning administrator**, or to decide in favor of the applicant on any matter upon which it is required to pass by this ordinance, or to grant variation from the requirements of the ordinance, except that a concurring vote of five (5) members shall be necessary to grant a land use **variance**.

(3) The **ZBA** shall keep minutes of its proceedings showing the action of the board and the vote of each member upon each question or, if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be filed promptly with the office of the city clerk and shall be public record.

(4) The **ZBA** may call on other city departments or contracted city consultants for assistance in the performance of its duties and it shall be the duty of such other city departments or consultants to render such assistance to the board as may be reasonably required.

(5) The **ZBA** may appoint an investigating committee of not more than three (3) members of the board to review an application and the affected site(s).

(6) Applications submitted to the **ZBA** shall consist of the following, as applicable:

(a) Signed and dated application form, as provided by the city.

(b) A scaled drawing with sufficient detail to indicate the nature and necessity of the request.

(c) Payment of a fee, as may be prescribed from time to time by the **city council**, by resolution.

(d) The city or **ZBA**, in furtherance of decisions related to the application, may request other materials deemed necessary including, but not limited to, traffic impact studies, market studies or environmental assessments.

5.178. Powers and Duties

The **ZBA** shall have jurisdiction and powers granted by the **Zoning Act**, jurisdiction and powers prescribed in other articles of this ordinance and the following specific jurisdiction and powers:

(1) *Powers.*

(a) The **ZBA** shall not have the power to alter or change the **zoning district** classification of any property, nor to make any change in the terms of this ordinance.

(b) The decision of the **ZBA** shall be final. However, a person having an interest affected by this ordinance may appeal to the circuit court for review pursuant to the **Zoning Act**.

(c) In granting a **variance** the **ZBA** may attach thereto such conditions regarding the location, character and other features of the proposed **uses** as it may deem reasonable in furtherance of the purpose of this ordinance.

(2) *Appeals of Administrative Decisions.*

(a) The **ZBA** shall hear and decide appeals where it is alleged by the appellant that there is error in any order, interpretation, requirement, permit, decision or refusal made by any administrative official or body in enforcing any provision of this ordinance. Appeals may be taken by a person aggrieved or by an officer, department, board or bureau of the state or city. In order to be aggrieved by a decision of the city, the person or other entity making the appeal must have a property interest and sufficient standing as recognized under the law to challenge the decision.

(b) Filing and Hearing of Appeal.

1. Appeals shall be filed with the **zoning administrator** within thirty (30) days of the action being appealed.

2. The **zoning administrator** or designee and any person from whom the appeal is taken shall transmit to the **ZBA** all of the documents and records related to the appeal.

3. The **ZBA** shall fix a reasonable time for the hearing of the appeal and shall provide notice as required by the **Zoning Act**.

4. The applicant, or their duly authorized agent, must appear in person at the hearing in order for the **ZBA** to take action. Failure to appear may result in tabling or denial of the application.

(c) Decisions on Appeal.

1. An appeal to an administrative decision may be reversed by the **ZBA** only if it finds that the action or decision appealed meets one (1) or more of the following requirements:

   a. was arbitrary or capricious;

   b. was based on an erroneous finding of a material fact;

   c. constituted an abuse of discretion;

   d. was based on an erroneous interpretation of the Zoning Ordinance or zoning law.

2. If a determination is made that the administrative official or body making the decision did so improperly, the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make an order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative official or body from whom the appeal was taken.

(3) *Interpretation.* Upon request of the **planning commission**, **city council**, **zoning administrator** or designee, or applicant, the **ZBA** may interpret and clarify the meaning of ordinance text. The **ZBA** may also be requested to interpret boundaries of **zoning districts** where the **zoning district** classification cannot be clearly discerned on the zoning map.

(4) *Special Land Uses and Planned Unit Developments (PUDs).*

(a) The **ZBA** may grant dimensional or other **site plan** related **variances** for special land **uses**; however, the **ZBA** shall not have the power to reverse or modify the

planning commission's decision to approve or deny a special land use permit nor grant **variances** to any conditions placed on special land use approval.

(b) The **ZBA** shall not have the authority to grant **variances** to the PUD regulations of *Article 14, Planned Unit Developments (PUDs)* or any requirements placed on PUD approval. However, the **ZBA** shall have the authority to hear and decide appeal requests by individual lot owners for **variances** from other sections of this ordinance following final approval of the PUD, provided such **variances** do not affect the terms or conditions of the original PUD approval or constitute a **variance** to the PUD regulations of *Article 14*.

(5) *Approvals*. To hear and decide requests for other decisions that this ordinance specifically authorizes the **ZBA** to pass.

(6) *Dimensional Variances*.

(a) The **ZBA**, after holding a public hearing in accordance with the requirements of the **Zoning Act**, shall have the power to grant requests for dimensional **variances** from the provisions of this ordinance where it is proved by the applicant that there are practical difficulties in the way of carrying out the strict letter of this ordinance relating to the construction, equipment or **alteration** of **buildings** or **structures**, or of storm water management requirements so that the spirit of this ordinance shall be observed, public safety secured and substantial justice done.

(b) A dimensional **variance** may be allowed by the **ZBA** only in cases where the applicant has shown a practical difficulty in the official record of the hearing. The applicant must prove that all of the following conditions have been met:

1. Extraordinary Circumstances. There are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same **zoning district**. Exceptional or extraordinary circumstances or conditions may include:

a. exceptional narrowness, shallowness, small size or shape of a specific property on the effective date of this ordinance;

b. exceptional topographic conditions or other extraordinary situation on the land, **building** or **structure**;

c. the **use** or development of the property immediately **adjoining** the property in question, whereby the literal enforcement of the requirements of this ordinance would involve practical difficulties.

2. Substantial Justice. Compliance with the strict letter of the restriction's governing area, **setbacks**, **frontage**, height, bulk, **density** or other dimensional provisions would unreasonably prevent the **use** of the property. Granting of a requested **variance** or appeal would do substantial justice to the applicant as well as to other property owners in the district and such **variance** is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same **zoning district** and in the vicinity. Any **variance** granted shall be the minimum necessary to allow the preservation of these substantial property rights. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a **variance**.

3. Impact on the Surrounding Neighborhood. The **variance** will not be detrimental to **adjacent** property and the surrounding neighborhood or interfere with or discourage the appropriate development, continued **use** or value of **adjacent** properties and the surrounding neighborhood as compared to other **uses** in the neighborhood.

4. Public Safety and Welfare. The granting of the **variance** will not impair an adequate supply of light and air to **adjacent** property or unreasonably increase the congestion in **public streets**, or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the inhabitants of the city.

5. Not Self-Created. The immediate practical difficulty causing the need for the **variance** request was not self-created by the applicant or previous owners of the subject property.

(7) *Use Variances.*

(a) Application Requirements. In addition to the information required for other **variance** requests, an application for a use **variance** shall include a plan drawn to scale detailing the specific **use** and improvements proposed by the applicant and a summary of the facts which support each of the following conclusions:

1. Applicant's property cannot be **used** for the purposes permitted in the **zoning district**.

2. Applicant's plight is due to unique circumstances peculiar to his property and not to general neighborhood conditions.

3. Applicant's suggested **use** would not alter the essential character of the area.

4. Applicant's problem has not been self-created; and,

5. Unavailability of administrative relief which may afford reasonable **use** of the applicant's property.

6. At the end of each statement (1) through (5) above, identify all persons who will testify at the hearing with respect to each of the facts and, separately, identify all persons who will testify at the hearing relative to the respective conclusion (and if any person is to be offered as an expert witness, include with the application a resume which shows the education and experience of such person within the particular area of expertise).

(b) Use Variance — Pre-Hearing Conference.

1. Prior to the scheduling of a hearing, the applicant shall contact the **zoning administrator** or designee for the purpose of scheduling a pre-hearing conference.

2. The purposes of the pre-hearing conference shall be to:

a. Review the procedure for the hearing and identify all persons who will testify (directly or through affidavit) and the evidence to be offered on behalf of the applicant.

b. Attempt to secure a statement of agreed-upon facts to be used to narrow the matters of dispute and shorten the hearing.

c. Explore a means of providing relief to the applicant by way of a non-use **variance** from the **ZBA**, or other relief which may require action by persons or bodies other than the **ZBA** which will afford an adequate remedy for the applicant.

d. Discuss the need, desirability and the terms of providing a verbatim record of the hearing.

3. The **zoning administrator** or designee shall determine who should be present at the pre-hearing conference based upon the application submitted and taking into consideration the discussion with the applicant or the applicant's representative.

4. The pre-hearing conference shall be scheduled and conducted on an expeditious basis so as to avoid unreasonable delay to the applicant. Sufficient time shall be taken, however, to achieve the purposes of the pre-hearing conference stated above.

(c) Use Variance — Hearing Procedure.

1. The applicant will have the burden of proof. In order to be entitled to relief, the applicant must demonstrate each of the five factors in *Section 5.178(7)(a)*.

2. Manner of Presentation.

a. Community representatives shall present an overview of the zoning regulations involved. This may include an indication of the objectives sought to be achieved in the **zoning district**, and any planning, engineering, financial, environmental or other considerations which are generally relevant within the **zoning district** and/or in the general area of the property at issue.

b. The applicant may present witnesses, including the applicant, or may submit affidavits for the purpose of attempting to prove facts or conclusions. The applicant shall be provided with the opportunity to present all testimony and evidence proposed to be presented at the pre-hearing conference, either through witnesses or affidavits; however, the chairperson of the **ZBA** may restrict testimony and evidence which would result in unreasonable duplication. In addition, by motion made on its own or at the request of a person at the hearing, the **ZBA** may require the presence of any witness who has offered either testimony by affidavit on a material question of fact or testimony of an expert nature, with the view of permitting members of the **ZBA** to ask questions of such witnesses.

c. At the conclusion of the applicant's presentation, interested persons attending the hearing shall be provided with the opportunity to present testimony and evidence in the same manner, and subject to requiring the presence and questioning of witnesses as provided above for the applicant.

3. When interested persons have completed their presentations, at the same meeting and/or at an adjourned meeting date, testimony and evidence may be presented on behalf of the community in the same manner, and subject to requiring the presence and questioning of witnesses, as provided above for the applicant. The purpose of such presentation shall be to ensure that a full picture, including all relevant information, is before the **ZBA** for consideration as it relates to the specific application presented.

4. If testimony or evidence has been offered by or on behalf of interested persons and/or the community, the applicant shall have the opportunity to make a responsive presentation, restricted to answering the points raised by interested persons and community representatives. The manner of presenting witnesses, and requirement of their presence and questioning, shall be the same as provided above for the applicant's principal case.

5. If a hearing is not completed at a given meeting within the time period allowed by the **ZBA**, the board shall adjourn the hearing to a date certain for continuation.

(d) Use Variance — Decision of the Zoning Board of Appeals.

1. The **ZBA** may deem it appropriate in any given case to provide an opportunity for anyone presenting testimony or evidence to submit proposed findings of facts and conclusions.

2. At the conclusion of the hearing, the **ZBA** may make its decision at that meeting, or it may adjourn the hearing to a new date for the purpose of reviewing the testimony and evidence, and reviewing proposed findings and conclusions submitted by hearing participants in preparation for making its decision.

3. If the **ZBA** determines to grant **variance** relief, it shall be the minimum relief required to allow reasonable **use** of the property while maintaining the essential character of the area. Such relief may be in the form of one or more non-use **variances** and/or in the form of a **use variance**. The motion may include conditions that are authorized by law.

4. If the **ZBA** adopts a motion to grant **variance** relief, such a motion may be made as a tentative grant of relief, subject to review by the **planning commission**, **zoning administrator**/consultant, engineer or other person or official with expertise with a view of obtaining recommendations on any conditions that may be relevant and authorized by law, and for the further purpose of ensuring that the grant of relief would not violate applicable law. If such a tentative grant of relief is approved, the **ZBA** shall request the completion of all reviews by other boards or persons by a specific date so that relief may be expeditiously finalized.

5. *Use Variance Standards for Review*. A **use variance** may be allowed by the **ZBA** only in cases where the applicant has shown an unnecessary hardship in the official record of the hearing. The applicant must prove that all of the following conditions have been met:

   a. Hardship. The applicant has demonstrated that the site cannot reasonably be **used** for any of the **uses** allowed within the current

zoning district designation. The **ZBA** may require professionals or certified experts to submit documents to substantiate this finding.

b. Unique Circumstances. That the condition or situation of the specific **parcel** of property or the intended **use** of such property for which the **variance** is sought is unique to that property and not commonly present in the general vicinity or in the **zone district**. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the **zone** and that these features make it impossible to reasonably use the property.

Such unique conditions or situations include:

i. exceptional narrowness, shallowness, small size or shape of a specific property on the effective date of the ordinance from which this chapter is derived;

ii. exceptional topographic conditions or other extraordinary situation on the land, **building** or **structure**;

iii. the **use** or development of the property immediately **adjoining** the property in question;

iv. any other physical situation on the land, **building** or **structure** deemed by the **ZBA** to be extraordinary.

c. Character of Neighborhood. The **use variance** will not alter the essential character of the neighborhood or the intent of the comprehensive development plan, or be a detriment to **adjacent** properties.

d. Capacity of Roads, Infrastructure and Public Services. The capacity and operations of public roads, utilities, other facilities and services will not be significantly compromised.

e. Not Self-Created. The immediate practical difficulty causing the need for the **variance** request was not self-created by the applicant or previous owners of the subject property.

5.179. Procedure

The following procedures shall be followed:

(1) An application for decision for all matters delegated to the board by this ordinance, or for interpretation of the provisions herein, or of the zoning map, may be filed with the **zoning administrator** for a hearing by the **ZBA**.

(2) The appeal or application shall be accompanied by the required fees, established by resolution of the **city council**, payable to the city treasurer.

(3) A request for a **variance** that has been denied by the board shall not be re-submitted within one (1) year of the decision by the board, unless the applicant can show that conditions have changed to the extent that reconsideration is merited, and the **ZBA** agrees to rehear the case.

5.180. Decision of the Board

After a final hearing the **ZBA** shall make a decision on an application or appeal. A copy of the board's decision shall be transmitted to the applicant or appellant. Such a decision shall be binding upon the **zoning administrator** and observed by them, and they shall incorporate its terms and conditions in a permit to the applicant or appellant whenever a permit is authorized by the board.

5.181. Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from unless the **zoning administrator** or designee certifies to the board after notice of appeal shall have been filed with them, that by reason of fact stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may, with due cause shown, be granted by the board or by the circuit court, on application, after notice to the **zoning administrator**.

5.182. Hearings

When an application for a hearing or appeal has been filed with the required data in proper form, and the fee paid, the **zoning administrator** shall immediately schedule the application or appeal for a hearing and serve notices stating the time, date, place and purpose of the hearing. The notice shall be given to all property owners and to the occupants of residential **dwellings** within three hundred (300) feet of the subject property. The names of owners shall be determined from the last assessment roll. If a tenant's name is not known, the term "occupant" may be used. The notices shall be served by first-class mail or by personal delivery and shall be served at least three (3) days prior to the hearing. Any interested party may appear and be heard at the hearing in person or by agent or attorney. The board may adjourn the hearing in order to obtain additional information, or to provide further notice as it deems proper. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the resumption of the hearing.

ARTICLE 18 AMENDMENTS TO ORDINANCE

5.190. Initiation of Rezoning and Zoning Ordinance Text Amendments

The city may from time to time amend, modify, supplement or delete any provision of this Ordinance (text amendment) or change the **zoning district** boundaries shown on the Official Zoning Map (rezoning) pursuant to the provisions of the Michigan Zoning Enabling Act (Public Act 110 of 2006).

(1) *Initiation of Rezoning.* An amendment to the **zoning district** boundaries contained on the Official Zoning Map (rezoning) may be initiated by the **city council**, the **planning commission**, the owner or owners of property or with permission of the owner which is the subject of the proposed amendment.

(2) *Initiation of Text Amendment.* Amendments to the text provisions of this ordinance may be initiated by the **city council**, the **planning commission** or by petition of one (1) or more residents or property owners of the city.

5.191. Application Procedure

A rezoning or text amendment request, 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 to cover publication, administrative costs and fees for any consultant reviews. Such fees and escrow amounts shall be established from time to time by resolution of the **city council**.

(1) *Application for Rezoning.* The following information shall accompany the rezoning application form:

(a) A legal description and street address of the subject property.

(b) A map identifying the subject property in relation to surrounding properties.

(c) The name, signature and address of the owner of the subject property; a statement of the applicant's interest in the subject property if not the owner in fee simple title, and proof of consent from the property owner.

(d) The existing and proposed **zoning district** designation of the subject property.

(e) A site analysis at a scale not less than 1" = 100' or aerial photography illustrating existing conditions on the site and **adjacent** properties such as woodlands, wetlands, soil conditions, topography, drainage patterns, existing **buildings**, **adjacent** land **uses**, any sight distance limitations and access points on both sides of the **streets** within two hundred (200) feet of the subject site.

(f) A written evaluation to support that the request addresses consistency with the city's **master plan**, demonstrates all **uses** in the requested **zoning district** will be compatible with the surrounding area and other similar factors.

(g) *Traffic Impact Analysis.* The **planning commission** and/or **city council** may require a traffic impact analysis for a rezoning that results in potential **uses** that would be expected to have fifty (50) or more peak hour directional trips or five hundred (500) or more vehicle trips daily.

(2) *Application for Text Amendment.* An application for a text amendment shall include a general description and indication of the purpose of the proposed amendment.

5.192. Rezoning and Zoning Ordinance Text Amendment Procedure

(1) *Pre-Application Conference (Optional).* An optional pre-applicant conference with the **zoning administrator** to review the amendments, discuss the level of environmental information, land **uses** and the need for a traffic study may be requested by the applicant.

(2) *Public Hearing.* Upon initiation of a rezoning or zoning ordinance text amendment, a public hearing on the proposed amendment shall be scheduled before the **planning commission**. Notice of the hearing shall be provided in accordance with the **Zoning Act**.

(3) *Planning Commission Review and Recommendation.* Following the public hearing, the **planning commission** shall identify and evaluate all factors relevant to the petition and shall report its findings and recommendation to the **city council**. In the case of a rezoning request, the **planning commission** shall consider the criteria in making its finding and recommendation.

(4) *City Council Review and Action.* Following receipt of the findings and recommendation of the **planning commission**, the **city council** shall consider the proposed amendment.

   (a) In the case of a rezoning request, the **city council** shall approve or deny the request, which may be based on the consideration of the criteria for Amendment of the Official Zoning Map (Rezoning).

   (b) In the case of a text amendment, the **city council** may modify or revise the proposed amendment prior to enactment.

(5) *Notice of Adoption.* Following adoption of a zoning map amendment (rezoning) or text amendment by the **city council**, a notice will be published in accordance with the provisions of the **Zoning Act** and the City of Charlevoix.

(6) *Resubmittal.* A petition for a rezoning or zoning ordinance text amendment that has been denied by the **city council** shall not be resubmitted for a period of one (1) year from the date of denial except on the grounds of new evidence or proof of changed conditions relating to all of the reasons noted for the denial found to be valid by the **planning commission**.

5.193. Criteria for Amendment of the Official Zoning Map (Rezoning)

(1) In considering a rezoning application, the **planning commission** and the **city council** shall consider the following criteria in making their findings, recommendations and decisions:

   (a) Consistency with the goals, policies and future land **use** map of the Charlevoix **Master Plan**, including all applicable subarea and corridor studies. If conditions have changed since the **master plan** was adopted, then consistency with recent development trends in the area shall be evaluated.

   (b) Whether development under current zoning is impractical or less reasonable than the requested or desired **zoning district** given factors such as development trends.

(c) Capability of the site's physical, geological, hydrological and other environmental features to accommodate the potential **uses** allowed in the proposed **zoning district**.

(d) Compatibility of all the potential **uses** allowed in the proposed **zoning district** with surrounding **uses** and zoning in terms of land suitability, impacts on the environment, noise, **density**, nature of **use**, traffic impacts, aesthetics, infrastructure, impact on the ability to develop **adjacent** properties under existing zoning and potential influence on property values.

(e) Capacity of city infrastructure and services sufficient to accommodate the **uses** permitted in the requested district without compromising the health, safety and welfare of the city.

(f) The apparent need for the types of **uses** permitted in the requested **zoning district** in the city in relation to the amount of land in the city currently zoned to accommodate that need.

(g) Other factors as determined by the **planning commission** and the **city council**.

(2) Where a rezoning is reasonable given the above criteria, a determination shall be made that the requested **zoning district** is more appropriate than another or by amending the list of permitted or special land **uses** within a district.

5.194. Amendments Required to Conform to Court Decree

An amendment for the purpose of conforming to a decree of a court of competent jurisdiction shall be adopted by the **city council** and published without necessity of a public hearing or a referral to any other commission or agency.

(1) *Conditional Zoning Agreement.* An applicant requesting a rezoning may voluntarily offer a conditional zoning agreement along with an application for rezoning before, or following, the public hearing for a proposed rezoning. A decision to submit a conditional zoning agreement shall be pursuant to the **Zoning Act** and this article.

(2) The conditional zoning agreement shall be in writing, executed by the applicant and the city and recorded with the Charlevoix County Register of Deeds.

(3) The conditional zoning agreement may include limitations on the **uses** permitted on the property in question, specification of lower **density** or less intensity of development and **use**; may impose greater restrictions on the location, size, height or other measure for **buildings**, **structures**, improvements, **setbacks**, landscaping, **buffers**, design, architecture and other features; or may provide for financing and installation of public works necessary to serve the proposed project.

(4) *Compliance with the Ordinance Requirements.*

(a) The conditional zoning agreement shall not authorize **uses** or developments of greater intensity or **density**, or **uses** and developments that are not permitted in the proposed **zoning district**.

(b) The conditional zoning agreement may not permit variations from height, area, **setback** or similar dimensional requirements that are less restrictive than the proposed **zoning district**; however, any **variance** approved by the **zoning board**

of appeals in accordance with *Article 17* may be allowed as part of a **conditional rezoning** agreement.

(c) If a special land **use** or site plan review is required by this ordinance for the **use** proposed or subject to conditions within the rezoning agreement, the **use**(s) shall comply with the review and approval requirements as applicable prior to establishing or commencing the **use**(s).

(5) The conditional zoning agreement shall include conditions that bear a reasonable and rational relationship and/or benefit to the property in question. The conditional zoning agreement may include conditions related to the **use** and development of the property that are necessary to:

(a) Serve the property with improvements including, but not limited to, the extension, widening or realignment of **streets**; construction or extension of utilities and other infrastructure improvements serving the site; or the construction of recreational facilities serving the site or **uses** thereon;

(b) Minimize the impact of the development on surrounding properties and the city overall; or,

(c) Preserve natural features and **open space** beyond what is normally required.

(6) *Content of Agreement.* In addition to any limitations on **use** or development of the site, preservation of site features or improvements described above, the conditional zoning agreement shall also include the following:

(a) An acknowledgement that the conditional zoning agreement was proposed voluntarily by the applicant.

(b) A statement that the property shall not be developed or **used** in any manner that is not consistent with the conditional zoning agreement.

(c) A statement that the approval of the rezoning and the conditional zoning agreement shall be binding upon and inure to the benefit of the property owner and the city, and also their respective heirs, successors, assigns, receivers or transferees. Where the applicant for rezoning is acting on behalf of the landowner through some form of purchase agreement or other mechanism, then the landowner must also consent and sign the agreement.

(d) A statement that, if a rezoning with a conditional zoning agreement becomes void in accordance with this section, that no further development shall take place and no permits shall be issued unless and until a new **zoning district** classification for the property has been established.

(e) A statement that no part of the conditional zoning agreement shall permit any activity, **use** or condition that would otherwise violate any requirement or standard that is otherwise applicable in the new **zoning district**.

(f) A legal description of the land to which the agreement pertains.

(g) Any other provisions as are agreed upon by the parties.

(7) *Process.* The conditional zoning agreement shall be reviewed concurrently with the petition for rezoning following the process in *Section 5.192* and the following:

(a) The conditional zoning agreement may be submitted prior to or following the **planning commission** public hearing. If the agreement is provided following the public hearing it must be reviewed by the **planning commission** prior to the **planning commission** making its recommendation on the rezoning to the **city council**. The conditional zoning agreement shall be reviewed by the city attorney to determine that the conditional zoning agreement conforms to the requirements of this section and the **Zoning Act** and shall confirm that the conditional zoning agreement is in a form acceptable for recording with the Charlevoix County Register of Deeds.

(b) Following the public hearing for a proposed zoning amendment, the **planning commission** shall make a recommendation to the **city council** based upon the criteria listed in *Section 5.193(1).* In addition, the **planning commission** shall consider whether the proposed conditional zoning agreement:

1. Is consistent with the intent of this section;
2. Bears a reasonable and rational connection or benefit to the property being proposed for rezoning;
3. Is necessary to ensure that the property develops in such a way that protects the surrounding neighborhood and minimizes any potential impacts to **adjacent** properties;
4. Is necessary to allow the rezoning to be approved, in that the property could not or would not be rezoned without the proposed conditional zoning agreement;
5. Leads to a development that is more compatible with **abutting** or surrounding **uses** than would have been likely if the property had been rezoned without a conditional zoning agreement or if the property were left to develop under the existing zoning classification; and,
6. Is clearly in the public interest and not inconsistent with the recommendations of the City of Charlevoix **Master Plan**.

(c) If a conditional zoning agreement has been offered by the applicant and recommended for approval by the **planning commission**, the **city council** may approve the conditional zoning agreement as a condition to the rezoning if it meets all requirements of *Section 5.194(7)(b)* above. The conditional zoning agreement shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the **city council** to accomplish the requested rezoning.

(d) If the rezoning and conditional zoning agreements are approved, the zoning classification of the rezoned property shall consist of the district to which the property has been rezoned and a reference to the conditional zoning agreement. The Official Zoning Map shall specify the new district, plus a parenthetical "CZ" to indicate that the property is subject to a conditional zoning agreement (i.e.,"R1 *(CZ)"*). The city clerk shall maintain a listing of all properties subject to conditional zoning agreements and shall provide copies of the agreements upon request.

(e) The approved conditional zoning agreement shall be recorded with the Charlevoix County Register of Deeds.

(f) Any **uses** proposed as part of a conditional zoning agreement that would otherwise require approval of a special land **use** or site plan approval shall be subject to the applicable review and approval requirements of *Articles 12* and *13*.

(8) *Expiration.*

(a) The rezoning and conditional zoning agreement shall expire one (1) year after adoption of the rezoning and conditional zoning agreement, unless substantial construction on the approved development of the property pursuant to building and other required permits issued by the city commences within the one (1) year period and proceeds diligently to completion, unless extended by the **city council** for good cause.

(b) In the event that substantial construction on the approved development has not commenced within one (1) year, the conditional zoning agreement shall be void.

(c) Should the conditional zoning agreement become void, all development on the subject property shall cease and no further development shall be permitted. Until action satisfactory to the city is taken to bring the property into compliance with the conditional zoning agreement, the city may withhold or, following notice to the applicant and being given an opportunity to be heard, revoke permits and certificates, in addition to, or in lieu of, any other lawful action to achieve compliance.

(d) Notwithstanding the above, if the property owner applies in writing for an extension of the conditional zoning agreement at least thirty (30) days prior to the expiration date, the **city council** may grant an extension of up to one (1) year. Further extensions may be granted by the **city council**, although the number of previous extensions granted to a particular conditional zoning agreement shall be considered in relation to the diligent effort of the land owner to satisfy the conditions of the agreement.

(9) *Reversion of Zoning.* If the rezoning and conditional zoning agreement becomes void as previously outlined, then the land shall revert back to its prior zoning classification as set forth in the **Zoning Act**. The **zoning administrator** or designee shall initiate the rezoning to the prior zoning classification and notify the land owner and/or developer of the reversion of zoning by registered letter.

(10) *Continuation.* Provided that all development and/or **use** of the property in question is in compliance with the conditional zoning agreement, an authorized **use** or development may continue indefinitely, provided that all terms of the conditional zoning agreement continue to be met.

(11) *Amendment.* The conditional zoning agreement may be amended by the city with the landowner's consent in the same manner as was prescribed for the original rezoning and **conditional rezoning** agreement.

(12) *Subsequent Rezoning of Land.* Nothing in the conditional zoning agreement, nor any statement or other provision shall prohibit the city from later rezoning all or any portion of the property that is the subject of the conditional zoning agreement to another

zoning classification. Any rezoning shall be conducted in compliance with this ordinance and the **Zoning Act**.

(13) *Failure to Offer Conditions.* The city shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect the owner's rights under this ordinance.

(14) *City Not Obligated.* The city is not required or obligated to accept any or all conditions offered by a developer on a rezoning application. In no way is an offer of a conditional zoning agreement the basis for requiring the city to approve a rezoning application.

ARTICLE 19 ENACTMENT PROVISIONS

5.200. Validity

If any part, parts, section, sections, provision, clause or portion of this Ordinance shall be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of the Ordinance as a whole or of any other part, section, clause, provision or portion of this Ordinance.

5.201. Repeal

The existing zoning regulations of the City of Charlevoix, Ordinance 369 adopted March 6, 1978 are hereby repealed. The adoption of this Ordinance, however, shall not affect nor prevent any pending or future prosecution of, or action to abate, any existing violation of said Zoning Ordinance, as amended, if the violation is also a violation of the provisions of this Ordinance.

5.202. Effective Date

This Ordinance shall be in full force and effect from and after the __day of Month, 2013. Enacted by the Charlevoix **City Council** at a regular meeting held on Monday, Month day, 2013 at 7:00 p.m.