CITY OF BERKLEY
CITY COUNCIL SPECIAL MEETING AGENDA
Thursday, January 23, 2020
7 P.M. – Berkley City Hall
Council Chambers
248-658-3300

CALL 38th COUNCIL TO ORDER
APPROVAL OF AGENDA
PUBLIC COMMENT
ORDER OF BUSINESS

Consent Agenda

1. **APPROVAL OF THE MINUTES:** Matter of approving the minutes of the 38th City Council meeting on Monday, January 6, 2020.

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

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

Regular Agenda

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

2. **MOTION NO. M-06-20**: Matter of consideration of approving a Restated and Amended Collaboration Agreement providing for the reconfiguration of and development of off-street parking at 1010-1046 Eaton.

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

ADJOURN

The City of Berkley will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon four working days' notice to the City. Individuals with disabilities requiring auxiliary aids or services should contact the City by writing or calling: Victoria Mitchell, ADA Contact, Berkley City Hall, 3338 Coolidge Highway, Berkley, MI 48072 (1-248-658-3310).

Official minutes of City Council Meetings and supporting documents for Council packets are available for public review in the City Clerk's Office during normal working hours.

THE FOURTH REGULAR MEETING OF THE THIRTY-EIGHTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, JANUARY 6, 2020 BY MAYOR TERBRACK

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

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

INVOCATION Pastor Adam Groh

CITIZENS COMMENTS

Sherry Wells, a Ferndale resident, discussed her history with genealogy with the City of Berkley. She discussed her personal history with the City. She discussed some of the City's history. She put together a finding aid of the area. She showed the surrounding areas and discussed that her maps show the historical museums in and around the Berkley area.

Charles Tyrell, A Berkley resident, stated there are two Coolidge Task force groups – north and south of 12 Mile Road. He stated he would like to discuss the south. He discussed the members of that task force and asked about the membership. He discussed the Open Meetings Act (OMA). He discussed the difference between advisory and non-advisory. He stated violations of the OMA could be a misdemeanor and discussed other consequences.

Dean Smith, a Berkley resident, spoke about the Coolidge Road Diet. He stated it's working from the perspectives of motorists, bicyclists and pedestrians. He said the Coolidge Road Diet is a good thing. He said thank you.

Consent Agenda

Councilmember Price moved to approve the following Consent Agenda, seconded by Councilmember Gavin:

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

MOTION NO. M-01-20: Matter of accepting the Berkley Public Library's annual report for FY 2018-19.

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

Regular Agenda

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

Berkley Public Library Director Matthew Church provided a presentation regarding the library's annual report for fiscal year 2018-19. Some of the highlights include that circulation increased by 7,252 items. He said the largest growth was in downloadable content. Mr. Church stated the library is seeing declines in other audiovisual content. He stated the library's social media presence continues to be strong. He stated media coverage increased. Mr. Church stated the overall usage of the library is very solid. He discussed how Berkley is part of the Library Consortium. He stated 19,500 items were borrowed as part of the Consortium. Mr. Church said more than 17,000 items were sent to the Berkley Public Library from other libraries. He stated library programs are strong. Mr. Church said he continues to be grateful to area organizations for support. Last year Friends of the Berkley Public Library provided over $10,000.

Mayor Terbrack thanked Mr. Church. He stated the Berkley Public Library continues to be a jewel of the city.

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

Community Engagement Officer Torri Mathes introduced the issues that are in front of the City regarding video playback and streaming services. She spoke on behalf of the team that was tasked with finding a resolution to video playback issues. The team consists of Mathes, Chief Innovative Officer Stan Lisica, and CMNtv Executive Director Chris Weagel.

Ms. Mathes explained at first testing and research was conducted regarding playback issues. This was followed by information gathering from different cohorts with different viewing methods. Ms. Mathes explained City officials then met with CMNtv to discuss options for a resolution.

Ms. Mathes discussed many of the findings reached. Determinations included that the video playback system is outdated. Also, Nexus and web stream are separate systems; IStream services do not directly integrate with the video playback system; the Ustream player had an older URL link on city webpage; users were experiencing different outcomes with the livestream; and public safety upgraded its in-car system from a local server system to a cloud-based, service system in November 2019 around the time glitching was being reported.

Ms. Mathes went over results and solutions including that the new service has to be seamlessly integrated with CMNtv since they oversee our broadcast production.

Ms. Mathes discussed budgetary considerations.

Ms. Mathes suggests TelVue. She described the reason why including it unites video broadcast and streaming in one system; is IP-based signal and control; uses multiple platforms; has a dedicated video-on-demand player that would provide the City with complete control over the user experience; would utilize the extensive experience CMNtv has with the system in government video. She stated the expandable platform would be accommodating.

Ms. Mathes provided an overview of the current system with the two services of Nexus and Ustream compared to TelVue, which would integrate WBRK, city website and social media.

Ms. Mathes reiterated it is a mixed-variant issue. Ms. Mathes went over additional solutions to maximize the viewing experience. She stated Communications and IT will create a troubleshooting sheet for residents and viewers.

Ms. Mathes reviewed a proposed timeline including that in January there would be approval of a budget reallocation. She stated in January/February installation and implementation would begin. Testing could begin in February. She stated they would then prepare for Phase 2 updates during budget season. She

said Communications and IT would work with Finance on maintaining a proper equipment replacement plan including a 7-year plan for TelVue hardware and a 5-year plan for monitoring and streaming. She went through additional points on the timeline. She also discussed consolidating CMNtv into one room.

Councilmember Baker asked for those that have AT&T, would they be able to watch. Mr. Weagel stated AT&T considers itself different from WOW and Comcast. He explained WOW and Comcast's responsibilities with cable television. He stated AT&T does not participate. He stated they could work with AT&T, although those customers could view programming on other streaming services than cable.

Mayor Pro Tem Dean thanked the team for such a robust presentation, jumping on this issue right away and doing their due diligence. She lauded the cooperation between the departments. She stated once the City realized there was an issue, this team jumped right on it.

Councilmember Hennen asked if there would be any annual fees or upgrade fees moving forward. Mr. Weagel stated the streaming and Video on Demand archive would have an annual fee. He stated depending on the capacity decided upon, the cost could range from $1,300-1,500 a year. Ms. Mathes said the annual fees would be in the budget.

Mayor Terbrack thanked the team . He said a number of residents have come to Council saying they were unable to watch the council meetings due to various issues. He thanked them for the presentation.

MOTION NO. M-02-20: Matter of amending the City of Berkley's Fee Schedule to increase the credit card payment fee from 2.75% to 3%.
Councilmember Hennen moved to approve Motion No. M-02-20
Seconded by Councilmember Blanchard
Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack
Nays: None
Motion Approved.

MOTION NO. M-03-20: Matter of approving the Intergovernmental Agreement between the City of Berkley and the City of Huntington Woods for Shared Resources and Services.
Councilmember Baker moved to approve Motion No. M-03-20
Seconded by Councilmember Blanchard
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack
Nays: None
Motion Approved.

MOTION NO. M-04-20: Matter of awarding the Sewer Maintenance Services Contract to LiquiForce/Granite Inliner located at 28529 Goddard Road, Romulus, Michigan for a five (5) year term. Funding of $350,000 has been allocated in the Fiscal 2019-2020 Budget under Account #592-940-974-000.
Councilmember Blanchard moved to approve Motion No. M-04-20
Seconded by Mayor Pro Tem Dean
Ayes: Price, Baker, Blanchard, Dean, Gavin, Hennen, and Terbrack
Nays: None
Motion Approved.

RESOLUTION NO. R-01-20: Matter of approving a resolution of the Council of the City of Berkley, Michigan approving the Marihuana Business License Application Evaluation Point System to be utilized in evaluating Marihuana Business License applications.
Mayor Pro Tem Dean moved to postpone Resolution No. R-01-20

Seconded by Councilmember Hennen
Ayes: Baker, Blanchard, Dean, Gavin, Hennen, Price, and Terbrack
Nays: None
Motion Postponed.

MOTION NO. M-05-20: Matter of approving Special Land Use request (SU-02-19) at 2485 Coolidge Highway for outdoor dining at the proposed restaurant to be located at the northwest corner of Coolidge Highway and Sunnyknoll Avenue.
Councilmember Gavin moved to approve Motion No. M-05-20
Seconded by Councilmember Baker
Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack
Nays: None
Motion Approved.

RESOLUTION NO. R-02-20: Matter of approving a resolution of the Council of the City of Berkley, Michigan correcting the charges for Non-Residential Surcharge to certain commercial water and sewer customers, effective with the January 2020 billing.
Councilmember Baker moved to approve Resolution No. R-02-20
Seconded by Councilmember Hennen
Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved.

ORDINANCE NO. O-01-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to Add New Article III, Snow Emergencies, to Chapter 38, Civil Emergencies, of the City of Berkley Code of Ordinances to Establish Snow Emergency Procedures and Parking Prohibition.
Councilmember Gavin moved to approve Ordinance No. O-01-20
Seconded by Councilmember Price
Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack
Nays: None
Motion Approved.

ORDINANCE NO. O-02-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to Add New Article V, Small Cell Wireless Facilities, to Chapter 118, Telecommunications, of the City of Berkley Code of Ordinances to Provide for the Regulation of Small Cell Wireless Infrastructure and the Activities of Wireless Infrastructure Providers and Wireless Services Providers Regarding the Placement and Siting of Wireless Facilities, Support Structures, and Utility Pole Attachments.
Councilmember Blanchard moved to approve Ordinance No. O-02-20
Seconded by Councilmember Baker
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack
Nays: None
Motion Approved.

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

Councilmember Baker moved to approve Ordinance No. O-03-20
Seconded by Councilmember Price
Ayes: None
Nays: Price, Baker, Blanchard, Dean, Gavin, Hennen, and Terbrack
Motion Failed.

ORDINANCE NO. O-04-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to Repeal and Replace Section 2-40 of Article II of Chapter 2, Officers and Employees, of the City of Berkley Code of Ordinances to Adopt a New Code of Ethics for City Officers, Officials and Employees.
Councilmember Baker moved to approve Ordinance No. O-04-20
Seconded by Councilmember Hennen
Ayes: Baker, Blanchard, Dean, Gavin, Hennen, Price, and Terbrack
Nays: None
Motion Approved.

ORDINANCE NO. O-05-20: Matter of considering the first reading of an Ordinance of the City Council of the City of Berkley, Michigan to add Division 1, Attendance and Training, to Article V of Chapter 2, Administration, of the City of Berkley Code of Ordinances, and to Amend City Code Sections 2-273, 66-21, 86-36, and 90-20 to Adopt Minimum Attendance and Training Requirements and to modify removal from office procedures for Appointed Boards and Commissions.
Councilmember Hennen moved to approve Ordinance No. O-05-20
Seconded by Councilmember Baker
Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack
Nays: None
Motion Approved.

Councilmember Baker moved to suspend the rules for the council meeting past 10 p.m.
Seconded by Mayor Pro Tem Dean
Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack
Nays: None
Motion Approved

MOTION NO. M-06-20: Matter of consideration of approving a Restated and Amended Collaboration Agreement providing for the reconfiguration of and development of off-street parking at 1010-1046 Eaton.
Councilmember Blanchard moved to postpone Motion No. M-06-20
Seconded by Councilmember Hennen
Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack
Nays: None
Motion Postponed.

MOTION NO. M-07-20: Matter of consideration of approving a proposed Consent Judgement to settle and resolve pending litigation, namely, 27799 Woodward LLC v City of Berkley, Oakland County Circuit Court Case No. 2017-159355-CZ.
Mayor Pro Tem Dean moved to postpone Motion No. M-07-20
Seconded by Councilmember Baker
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack
Nays: None
Motion Postponed.

COMMUNICATIONS:

COUNCILMEMBER PRICE: reminded everyone about the chess and origami clubs on Mondays at the Berkley Public Library. She stated there are also story times throughout the week and the story time room was recently renovated. Councilmember Price said the Citizens Engagement Advisory Committee will meet 7 p.m. Thursday, January 9th. She stated project priorities for 2020 is on the agenda. Councilmember Price thanked the city departments, churches, businesses and donors who participated in the MOMs Club of Berkley diaper drive. She stated she is hosting a Community Conversation 10:30 a.m. -noon Saturday, January 25th at the Berkley Public Library.

COUNCILMEMBER BLANCHARD: stated The Berkley Educational Foundation Off to the Races will take place 6-11 p.m. February 1st at Club Venetian. He said it is a fun time and he hopes everyone will go.

COUNCILMEMBER BAKER: stated the Downtown Development Authority will meet on Wednesday, January 8th. He said the Technology Advisory Committee will meet on Wednesday, January 16th. Councilmember Baker said the Historical Committee meets 4 p.m. Sunday, January 12th. He stated the group thanks everyone who purchased a holiday ornament and mug. He announced one of the members of the Historical Committee has a new book out on famed architectural sculpture Corrado Parducci. Mr. Parducci did the bear fountain at the zoo and carving over the Coolidge entrance of the La Salette property among many other notable works. Councilmember Baker said there will soon be a display at the Historical Museum on Berkley's more than 50 kit homes. He stated the museum is open 10 a.m.-1 p.m. Wednesdays and 2-4 p.m. Sundays. Councilmember Baker closed with a quote from Carl Bard. "Although no one can go back and make a brand new start, everyone can start from now and make a brand new ending." He stated for those who make resolutions, he hopes they keep the ending in mind.

MAYOR PRO TEM DEAN: reminded everyone that Saturday, February 1st is Winterfest. She said tickets are still available for the Daddy-Daughter Dance, Mother-Son Dance, and vacation camps. She said the Parks & Recreation Department is also offering many new, fun programs. She encourages everyone to contact the Community Center for more information on all of these events. Mayor Pro Tem Dean said she is hosting the first of many Open Door Talks on Tuesday, January 21st at the library.

COUNCILMEMBER HENNEN: stated the Zoning Board of Appeals will meet 7 p.m. Monday, January 13th at City Hall. The Board will hear two cases. He said the Tree Board meets 7 p.m. the same night at the library. Councilmember Hennen said he will be hosting Talk with Dennis 6-8 p.m. Tuesday, February 4th at the library.

COUNCILMEMBER GAVIN: said the Environmental Advisory Committee will meet 6:30 p.m. on January 23rd on the second floor of the public safety department. He stated the Coolidge Committee that has been meeting for a couple of years will meet 8 a.m. Thursday, January 9th on the second floor of the public safety department. Councilmember Gavin stated the Planning Commission will meet 7 p.m. January 28th in the Council Chambers.

CITY MANAGER BAUMGARTEN: had nothing to report.

CITY ATTORNEY STARAN: had nothing to report.

MAYOR TERBRACK: wished everyone a Happy New Year and may everyone's resolutions last well past March.

ADJOURNMENT:

Mayor Pro Tem Dean moved to adjourn the Regular Meeting at 11:55 p.m.

Seconded by Councilmember Hennen
Ayes: Baker, Blanchard, Dean, Gavin, Hennen, Price, and Terbrack
Nays: None
Motion Approved.

AN ORDINANCE

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

THE CITY OF BERKLEY ORDAINS:

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

ARTICLE III. – SNOW EMERGENCIES

Sec. 38-1. Short title.

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

Sec. 38-2. Definitions.

The following definitions apply in this article:

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

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

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

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

It shall be unlawful for a person to park or leave any vehicle on a street or municipal parking lot in the City of Berkley after a snow emergency has been declared by the Public Safety Director and publicly announced in accordance with Section 38-4 below.

Sec 38-4. Public announcement of snow emergency.

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

Sec. 38-5. Termination of parking prohibition.

After a snow emergency has been declared, the parking prohibition under this article shall remain in effect until terminated by public announcement by the City~~, except that the prohibition~~

~~does not apply to any street or municipal parking lot that has been substantially cleared of snow and ice from curb to curb for the length of the entire block or parking lot~~.

Sec. 38-6. Stalled or disabled vehicles.

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

Sec. 38-7. Violations and penalties.

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

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

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

Sec. 38-9. Impoundment of vehicle.

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

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Effective Date

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

SECTION 4: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

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

Passed on Second Reading at a Special City Council Meeting on January 23, 2020.

_____
Daniel J. Terbrack
Mayor

Attest:

_____
Victoria Mitchell
City Clerk

AN ORDINANCE

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

THE CITY OF BERKLEY ORDAINS:

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

ARTICLE V. – SMALL CELL WIRELESS FACILITIES DEPLOYMENT

Sec. 118-01. – Title and purpose.

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

Sec. 118-02. – Definitions.

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

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

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

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

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

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

(g) "Rate" means the City's annual charge per site.

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

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

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

(1) A private right-of-way;

(2) A limited access highway; or

(3) Land owned or controlled by a railroad as defined in section 109 of the Railroad Code of 1993, MCL 462.109.

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

(1) Each antenna is not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet; and

(2) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

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

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

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

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

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

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

Sec. 118-03. – Scope of authority.

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

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

(1) The provision of any services; or

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

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

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

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

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

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

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

(d) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except for new small cell dedicated utility poles installed and operational in the ROW before the effective date of this article or related agreements, which shall remain in effect for the duration of this article or the agreement.

(e) Except as set forth in Section 118-05, below, or the Zoning Ordinance, and as limited in this section, small cell siting is a permitted use and not subject to zoning regulation if it complies with all other sections of this article and if:

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

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

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

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

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

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

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

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

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

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

(1) Collocation including replacement of existing poles or support structures is strongly encouraged over the installation of additional new poles or support structures in the ROW.

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

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

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

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

a. 1st Preference: Industrial

b. 2nd Preference: Commercial

c. 3rd Preference: Residential

d. 4th Preference: Underground commercial and then residential

e. 5th Preference: Environmentally sensitive areas including nature and wetland preservation sites

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

(d) Wireless providers shall repair all damage to the ROW caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and shall return the ROW to its prior condition. Following 60 days written notice, the City may make those repairs and charge the wireless provider the cost of the repairs.

Sec. 118-06. – Provider and City responsibilities; application information; shot clocks; tolling; deemed approved; basis for denial; resubmittal; batch applications; application fees; micro wireless facility exemption; alternate siting; decommissioning sites.

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

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

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

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

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

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

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

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

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

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

(c) The following "Shot Clock" deadlines apply:

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

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

b. Add 15 days if, a timely extension is requested.

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

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

b. Add 15 days if, a timely extension is requested.

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

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

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

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

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

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

(5) With respect to drainage infrastructure under the jurisdiction of the City or other authority, either of the following:

a. Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed, or

b. Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code of 1956, MCL 280.1 to 280.630, and access to the drainage infrastructure.

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

(7) Fail to comply with all other applicable codes.

(8) Fail to comply with section 118-05, above.

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

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

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

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

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

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

(k) Application Fee for a permit under subsection (2) shall not exceed the lesser of the following:

(1) $200.00 for each small cell wireless facility alone; or

(2) $300.00 for each small cell wireless facility and a new utility pole to which it will be attached.

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

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

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

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

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

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

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

(b) Rate: The rate for the collocation of small cell wireless facilities on authority poles shall be nondiscriminatory regardless of the services provided by the colocating person. The rate shall not exceed $30.00 per year per City pole plus any rate charged for the use of the ROW under section 118-04.

(c) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except with respect to wireless facilities on authority poles installed and operational before the effective date

of this article or any related agreement, which shall remain in effect for the duration of this article or the agreement.

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

(1) The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this article and the Act;

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

(3) The person owning or controlling the City pole shall not require more make-ready work than required to comply with law or industry standards; and

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

a. Include costs related to preexisting or prior damage or noncompliance unless the damage or noncompliance was caused by the applicant;

b. Include any unreasonable consultant fees or expenses; or

c. Exceed actual costs imposed on a nondiscriminatory basis.

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

(1) Continue to maintain the City pole;

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

(3) Offer to sell the pole to the wireless provider at a reasonable cost;

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

(5) Proceed as provided by an agreement between the City and the wireless provider.

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

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

Sec. 118-09. – Appeals.

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

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

All applicant wireless providers shall:

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

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

Sec. 118-11. – Bonding.

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

(b) The City shall not require a cash bond, unless the wireless provider has failed to obtain or maintain a bond required under this section or the surety has defaulted or failed to perform on a bond given to the City on behalf of a wireless provider.

Sec. 118-12. – Labelling.

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

Sec. 118-13. – Electric costs.

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

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

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

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

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

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

(a) This article is adopted in compliance with Michigan 2018 PA 365; MCL 460.1301 and 2018 PA 366; MCL 125.3205(1)(c) as amended and MCL 125.3514(10). However, the City takes specific note of inconsistencies as between these State Acts and certain potentially preemptive FCC Rulings concerning “Small Cells” known as the “Moratoria Order”; FCC 3rd Report and Order and Declaratory Ruling of 8/13/2018 FCC 18-111 https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf and “Small Cell Order”; FCC Declaratory Ruling and 3rd Report and Order of 9/27/2018 FCC 18-133 https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf.

(b) The City also notes inconsistencies with the Michigan Constitution of 1963 including but not limited to Article VII Sections 22, 26, 29, 30, 31 and 34. Adoption of this article shall not be construed as a waiver of the City’s right to engage in or otherwise support a legal challenge to either the State Acts or FCC rules referenced above. In the event of any interpretations, including Judicial, Legislative or Administrative, contrary

to the Michigan Public Acts and/or FCC rules referenced above, the City reserves the right to amend and or repeal this article and to cancel all related agreements, policies and procedures undertaken in furtherance hereof.

(c) The City further reserves the right to revoke or suspend any permits or approvals issued pursuant to this article if based on compelling and credible scientific or medical evidence or report from a qualified and credible public agency or health organization, the City Council determines that wireless facilities or infrastructure deployed hereunder present or constitute an imminent, serious, and credible threat or danger to the public health, welfare, or safety.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Effective Date

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

SECTION 4: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

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

Passed on Second Reading at a Special City Council Meeting on January 23, 2020.

_____

Daniel J. Terbrack
Mayor

Attest:

_____

Victoria Mitchell
City Clerk

R-01-20

A RESOLUTION

of the Council of the City of Berkley, Michigan
approving the Marihuana Business License Application Evaluation Point System
to be utilized in evaluating
Marihuana Business License applications

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

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

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

NOW, THEREFORE, THE CITY OF BERKLEY RESOLVES:

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

Introduced and passed at a special City Council meeting on Thursday, January 23, 2020.

_____
Daniel J. Terbrack, Mayor

Attest:

_____
Victoria E. Mitchell, City Clerk

DRAFT Marihuana Merit System Point Criteria

Key Terms Defined:

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

Managing Stakeholder:
For purposes of these criteria, *Managing stakeholder* refers to any stakeholder involved in managing the business or making management decisions.

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

Scientifically backed:
As included in point value 12, scientifically backed shall refer to stormwater management systems that are supported and "green infrastructure" by the U.S. Environment Protection Agency.

Stakeholder:
As outlined within the Licensing ordinance (Chapter 30 Article XV), *stakeholder* means, with respect to a trust, the trustee and beneficiaries; with respect to a limited liability company, all members and managers; with respect to a corporation, whether profit or non-profit, all stockholders, directors, corporate officers or persons with equivalent titles; and with respect to a partnership or limited liability partnership, all partners and investors.

Requirements*	Pass/Fail
Application submitted has all required materials	P/F
Subject Parcel falls outside of designated proximity to a school	P/F
Cannabis business complies with Existing Zoning	P/F
Off-street parking requirements for retail use has been met, per Section 138-219 of the Zoning Ordinance.	P/F
Odor control system preventing dispersion in neighborhood	P/F
All stakeholders are clear of recorded detrimental acts to public good	P/F
***These items must all be satisfied to be considered for the point evaluation.**	

Merit Based Criteria	Point Value**
Application Proposes the Redevelopment of Vacant or Underused building or property. (Defined as a structure or property that has been at least 50% vacant for a period of 4 months or longer)	25
Proposed redevelopment is comprised of a multi-tenant building or buildings, on the same or contiguous parcels. Separate tenant spaces within a single building must have separate means of public ingress/egress from the exterior or from a common lobby area.	24
Managing Stakeholders can demonstrate a history of lawfully operating a business compliant with applicable federal, state, and local regulations.	23
Proposed development does not displace existing operational business in Berkley	22
The marihuana business and property are under common ownership or control	21
Proposed development demonstrates and provides physical improvements to the area around the property or other areas contiguous to the property: -Trees; noninvasive species (Sub score: 5) -Public art; e.g. murals, sculptures, installations as approved by appropriate body (Sub score: 5) -Green Space (Sub score: 5) -Public areas such as alleyways, parking areas, sidewalks, plazas, etc. (Sub score: 5)	20 (Total dependent on satisfaction of sub scoring)
Proposed Site is located in the following areas, as permitted by the Zoning Ordinance: Eleven Mile Road, Woodward Ave, Twelve Mile Road (Coolidge to Woodward)	19
Proposed redevelopment is projected to add 15 or more new jobs (includes cannabis and non-cannabis uses) The majority of the jobs must be full time.	18
Managing Stakeholder is either a current property owner in Berkley, and has been for at least 6 months as of the application date, or is a current majority owner or stakeholder of an existing Berkley Business, and has been for at least 6 months as of the application date.	17
Proposed development parcel does not immediately abut residential property, or the closest point of the proposed marihuana business is not less than 65 feet from the nearest residential property line.	16
Proposed development eliminates or brings into compliance an existing nonconforming use or structure	15
Sustainable building materials and energy efficient elements will be used during construction and/or renovation of the structure	14
Application has disclosed 100% of owners and stakeholders, including those with less than 10% stake.	13
Proposed development incorporates Green Infrastructure into Stormwater management plan: -Pervious Parking; e.g. pervious concrete or pavement, pavers, infiltration systems, etc. (Sub score: 4) -Green Roof (Sub score: 4) -Rain Garden, Bioswales, or Stormwater Planters (Sub score: 2) -Other scientifically backed stormwater infrastructure systems (Sub score: 2)	12 (Total dependent on satisfaction of sub scoring)
Application demonstrates benefits to the community other than an increase in taxable value	11
Managing Stakeholder demonstrates at least 1 year of experience operating a licensed marihuana business (caregiver, provisioning, grower, etc.): -Experience acquired in Michigan (Sub score: 5) -Experience acquired in other legal jurisdictions (Sub score: 5)	10 (Total dependent on satisfaction of sub scoring)
Proposed development adds streetscape elements to the publicly owned right-of-way, including but not limited to benches, bike racks, planters, etc.	9
The proposed uses do not require any zoning map amendments or variances at the time of application.	8

****For each criterion met by the applicant, the applicant shall receive the entire assigned point value or associated sub scores.**

Maximum Points Available: 297 [70% Requirement: 208]

M-06-20

January 23, 2020 Special City Council Meeting

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

Ayes:

Nays:

Motion:

RESTATED AND AMENDED COLLABORATION AGREEMENT

This Restated and Amended Collaboration Agreement (herein "Agreement"), with an effective date of _____, 2019, is made among the City of Berkley ("City"), a municipal corporation, whose address is 3338 Coolidge Hwy., Berkley, MI 48072; 27799 Woodward, LLC ("Vinsetta"), whose address is 90 N. Main St., Clarkston, MI 48346, as the successor-in-interest to Vinsetta Garage Holding LLC; and Lugo Properties, LLC ("Lugo"), whose address is 40700 Woodward Ave., Ste. 250, Bloomfield Hills, MI 48304.

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

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

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

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

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

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

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

Therefore, the parties agree:

1. Vinsetta and Lugo will cooperate (time being of the essence) to effect an exchange, combination, division and reconfiguration of the 3 Eaton parcels to create 2 resulting legal parcels, split north and south, as shown in attached Exhibit A, with the southern portion (fronting on Eaton Road) to be owned by Vinsetta (the "Vinsetta Parcel"), and the northern portion (fronting on the bank property to the north and the public alley to the east) to be owned by Lugo (the "Lugo Parcel"). The City will assist, at its cost, with preparing, delivering and recording any necessary documents of conveyance to effectuate this exchange of property. The boundary survey and legal description attached as Exhibit A shall be used for all purposes concerning this Agreement and for processing the Application for land division/combination and reconfiguration for review or approval.

2. Vinsetta will grant Lugo an easement across the Vinsetta Parcel in connection with development of the Lugo Parcel, in order to connect the Lugo Parcel to the storm drain and/or public utilities located on Eaton. The easement agreement attached as Exhibit B will be recorded with the conveyance documents contemplated herein upon fulfillment of the terms and conditions of this Agreement. Lugo will grant Vinsetta an easement across the Lugo Parcel in connection with development of the Vinsetta Parcel, in order to connect the Vinsetta Parcel to the Ameritech Easement and DTE electric pole and meter located on the Lugo Parcel. The easement agreement attached as Exhibit C will be recorded with the conveyance documents contemplated herein upon fulfillment of the terms and conditions of this Agreement.

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

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

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

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

(i) demolish and remove from the Lugo Parcel any and all existing buildings, structures, foundations, footers, slabs, asphalt, curbing, water meters, trees and landscaping in order to deliver the Lugo Parcel to Lugo as described below;

(ii) clear and grade the Lugo Parcel as required by the City's demolition permit criteria and remove from the site any excess fill, rock and/or debris;

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

and

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

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

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

6. Vinsetta shall, as soon as reasonably possible after the land combination/division, reconfiguration, and rezoning are approved, and in accordance with any applicable time limitations set forth in the Consent Judgment between the City and 27799 Woodward, LLC involving the Oxford Parking Lot Property (herein "Consent Judgment"), Oakland County Circuit Court, Case No. 2017-159355-CZ, file for site plan approval for its parking and related improvements. After receiving site plan approval from the City, Vinsetta will obtain any necessary permits and commence and diligently proceed, cooperatively with or separately from Lugo, to construct parking and related improvements on its respective portions of the reconfigured Vinsetta Parcel in accordance with the approved site plan(s). It is anticipated that Lugo will proceed to develop and construct the parking lot on its parcel at a later date as determined by Lugo. All construction shall be done in accordance with applicable City codes and regulations. Vinsetta and Lugo, in their sole discretion, may construct and use their parking areas on a shared use arrangement or separately, as they may mutually agree in the future.

7. The City, at the City's sole cost and expense, shall retain the services of ATA National Title Group, 36800 Gratiot Avenue, Clinton Township, Michigan 48035 (the "Title Company") for the purpose of delivering policies of title insurance showing clear title to the properties, drafting of closing and transfer documents, and for the purpose of holding all of the foregoing in escrow as escrow agent until such time that all of the requirements of Paragraph 3 have been fulfilled and ninety (90) days after Vinsetta completes Vinsetta's Work as required in Paragraph 5 and delivers any and all lien waivers and other documents required by the Title Company to insure clear title to the Lugo Parcel. The parties shall deposit fully executed and acknowledged recordable deeds, easement agreements, and other documents which will transfer the respective portions of their properties as contemplated by this Agreement. The Title Company shall release, record and close on the transactions contemplated by this Agreement as the case may be upon the satisfaction of the foregoing and the City has indicated that the Vinsetta Parcel and the Lugo Parcel are in full compliance with the City's requirements and pursuant to this Agreement. In the event that Vinsetta has not completed its obligations as required by this Agreement or if for any reason not the fault of Lugo the escrow is not closed within 180 days after the date of the full execution of this Agreement (except for the 90-day waiting period for the elimination of liens and any weather delays) and subject to the time periods contained in the Consent Judgment, the later date of which shall apply, Lugo shall have the right to terminate this Agreement and the items placed in escrow by Lugo and Vinsetta shall be returned to each respective party and neither party shall have any further obligation to the other. The foregoing notwithstanding, if Vinsetta has begun to perform under this Agreement but fails to complete its demolition requirements, and any lien is attached to the property, or there is otherwise a charge or assessment arising out of the acts or omissions of Vinsetta, its contractors, and or agents and representatives, and this Agreement is terminated by Lugo in accordance with the terms referenced above, Vinsetta shall bond over or indemnify and hold Lugo harmless from and against any such claims.

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

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

10. The mutual promises, rights and obligations under this Agreement shall run with the land and shall inure to the benefit of, and be binding on, the parties and their successors, assigns and grantees.

11. This Agreement comprises the entire agreement and understanding among the parties with respect to the subject matter contained in the Agreement. Any amendment or supplementation thereof shall be in writing signed and dated by the parties.

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

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

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

27799 Woodward, LLC

By: _____

Its: _____

Date: _____

Lugo Properties, LLC

By: _____

Its: _____

Date: _____

City of Berkley

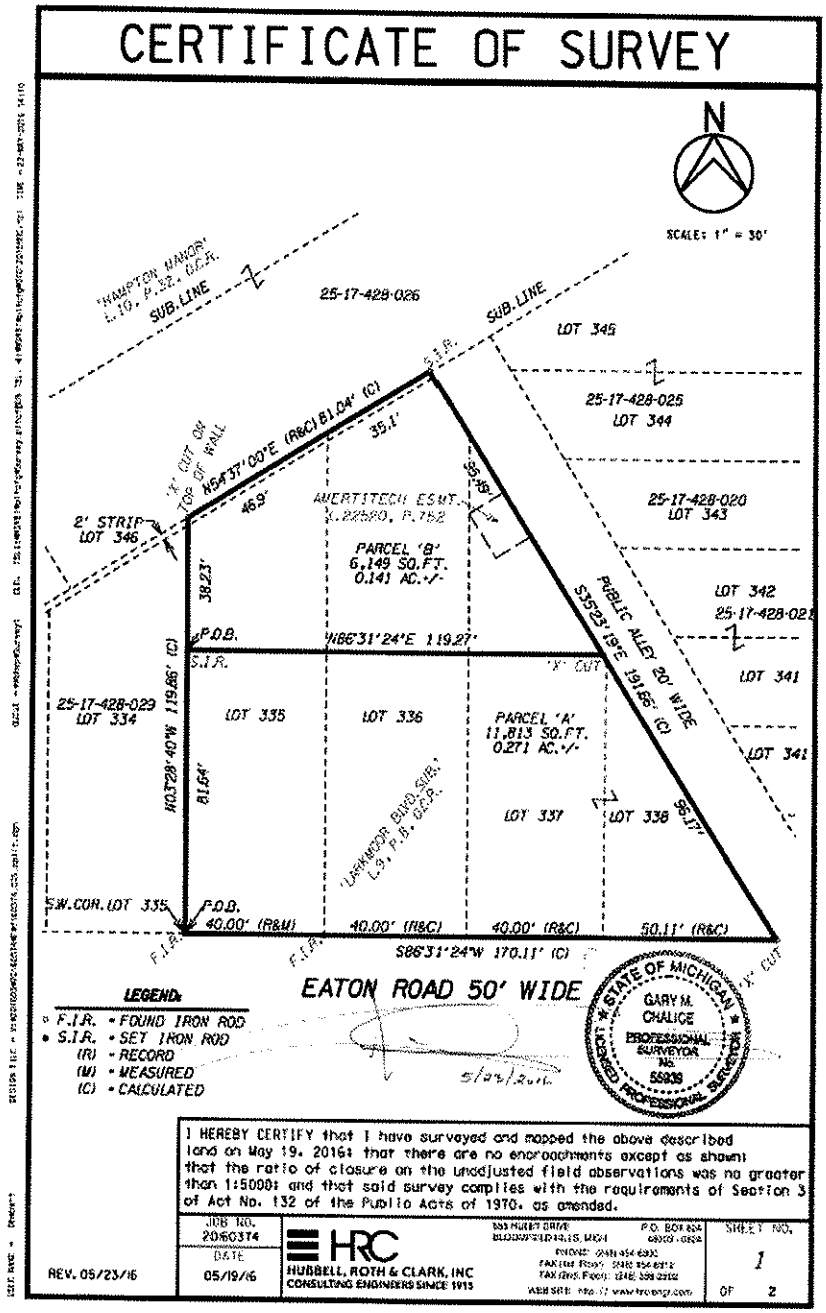
By: _____

Its: _____

Date: _____

EXHIBIT “A”

EXHIBIT A


CERTIFICATE OF SURVEY
N
SCALE: 1" = 30'
"HAMPTON MANOR" L.10, P.52, O.C.R.
SUB. LINE
25-17-428-026
SUB. LINE
LOT 345
25-17-428-025
LOT 344
25-17-428-020
LOT 343
LOT 342
25-17-428-021
LOT 341
LOT 341
S.I.R.
"X" CUT ON TOP OF WALL
N54°37'00"E (R&C) 81.04' (C)
35.1'
55.9'
2' STRIP LOT 346
46.9'
AMERITECH ESMT. L.22580, P.752
PARCEL 'B' 6,149 SQ.FT. 0.141 AC.+/-
38.23'
P.O.B.
N86°31'24"E 119.27'
S.I.R.
"X" CUT
PUBLIC ALLEY 20' WIDE
S35°23'19"E 191.66' (C)
25-17-428-029 LOT 334
LOT 335
LOT 336
PARCEL 'A' 11,813 SQ.FT. 0.271 AC.+/-
N0°28'40"W 119.66' (C)
81.04'
"JARAMOR BLVD. SUB." L.9, P.8, O.C.R.
LOT 337
LOT 338
96.17'
S.W.COR. LOT 335
F.I.R.
P.O.B.
40.00' (R&M)
40.00' (R&C)
40.00' (R&C)
50.11' (R&C)
F.I.R.
F.I.R.
S86°31'24"W 170.11' (C)
"X" CUT
EATON ROAD 50' WIDE
LEGEND:
F.I.R. - FOUND IRON ROD
S.I.R. - SET IRON ROD
(R) - RECORD
(M) - MEASURED
(C) - CALCULATED
STATE OF MICHIGAN
GARY M. CHALICE
PROFESSIONAL SURVEYOR
No. 55939
REGISTERED PROFESSIONAL SURVEYOR
5/24/2016
I HEREBY CERTIFY that I have surveyed and mapped the above described land on May 19, 2016; that there are no encroachments except as shown; that the ratio of closure on the unadjusted field observations was no greater than 1:5000; and that said survey complies with the requirements of Section 3 of Act No. 132 of the Public Acts of 1970, as amended.
JOB NO. 20160314
DATE 05/19/16
REV. 05/23/16
HRC
HUBBELL, ROTH & CLARK, INC
CONSULTING ENGINEERS SINCE 1915
SHEET NO. 1 OF 2

DESCRIPTION OF PROPERTY (25-17-428-024, 25-17-428-030 and 25-17-428-031 TAKEN FROM RECORD)

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

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

DESCRIPTION OF PARCEL 'A'

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

DESCRIPTION OF PARCEL 'B'

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

EXHIBIT “B”

EXHIBIT B
EASEMENT

EASEMENT FOR STORM WATER DRAINAGE AND UTILITIES

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

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

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

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

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

GRANTOR:
27799 Woodward, LLC

By: _____

Its: _____

Date: _____, 2019

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

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

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

GRANTEE:
Lugo Properties, LLC

By: _____

Its: _____

Date: _____, 2019

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

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

_____
Notary Public, County, MI
Acting in _____ County, MI
My commission expires

Drafted by, and Return to:
John D. Staran, Esq.
2055 Orchard Lake Road
Sylvan Lake, MI 48320

EXHIBIT A

DESCRIPTION OF GRANTOR'S PROPERTY

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

EXHIBIT B

DESCRIPTION OF GRANTEE'S PROPERTY

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

EXHIBIT “C”

EXHIBIT "C"
DTE EASEMENT

EASEMENT FOR DTE ELECTRIC POLE AND AMERITECH

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

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

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

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

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

GRANTEE:
27799 Woodward, LLC

By: _____

Its: _____

Date: _____, 2019

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

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

_____
Notary Public, _____ County, MI
Acting In _____ County, MI
My commission expires

GRANTOR:
Lugo Properties, LLC

By: _____

Its: _____

Date: _____, 2019

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

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

_____
Notary Public, _____County, MI
Acting In _____ County, MI
My commission expires

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

248-731-7243

EXHIBIT A

DESCRIPTION OF GRANTOR'S PROPERTY

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

EXHIBIT B

DESCRIPTION OF GRANTEE'S PROPERTY

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

M-07-20

January 23, 2020 Special City Council Meeting

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

Ayes:

Nays:

Motion:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

27799 WOODWARD, LLC,
a Michigan limited liability company,

Plaintiff,

v

CITY OF BERKLEY,
a Michigan municipal corporation,

Defendant.

Case No. 2017-159355-CZ
Hon. Denise Langford Morris

TOM KALAS (P41805)
KALAS KADIAN, P.L.C.
Attorneys for Plaintiff
31350 Telegraph Road, Suite 201
Bingham Farms, MI 48025
(248) 731-7243
tom@kalkad.com

LAUREL F. McGIFFERT (P31667)
PLUNKETT COONEY
Attorneys for Defendant City of Berkley
150 W Jefferson, Suite 800
Detroit, MI 48226
(313) 983-4752
lmcgiffert@plunkettcooney.com

JOHN D. STARAN (P35649)
HAFELI STARAN & CHRIST, P.C.
Attorneys for Defendant City of Berkley
2055 Orchard Lake Road
Sylvan Lake. MI 48320-1746
(248) 731-3080
jstaran@hsc-law.com

CONSENT JUDGMENT

Upon stipulation and consent of the parties, by and through their respective attorneys, the Court finds:

A. Plaintiff 27799 Woodward, LLC is a Michigan limited liability company that owns certain real property (hereafter the "Subject Property") in Berkley, Michigan, located west of Woodward Ave., south of Catalpa, and on the north side of Oxford Street commonly known as 960, 972, 984 and 996 Oxford Street, Berkley, Michigan (parcel nos. 25-17-431-023, 022, 021, and 034, respectively). The legal description of the

Subject Property is attached as Exhibit 1. The Subject Property on Oxford Street is behind and across a public alley from the Vinsetta Garage restaurant located at 27799 Woodward, Berkley, Michigan. Plaintiff and the Vinsetta Garage are related entities.

B. Defendant City of Berkley ("City") is a Michigan municipal corporation in Oakland County that is organized and exists under the Home Rule Cities Act, MCL 117.1 et seq.

C. Pursuant to the Michigan Zoning Enabling Act, MCL 125.3101, et seq, the City has adopted a Zoning Ordinance and Zoning Map, which have been amended from time to time.

D. In June 2016, Plaintiff filed with the City Plaintiff's Application for Rezoning requesting a conditional rezoning of the Subject Property from R-1D Single-Family Residential District to P-1 Parking District to allow Plaintiff to thereon develop an additional parking lot for the Vinsetta Garage restaurant.

E. On September 16, 2016, the Berkley Planning Commission, after holding a public hearing, recommended denial of Plaintiff's rezoning request.

F. On October 3, 2016, the Berkley City Council denied the rezoning request.

G. Thereafter, Plaintiff filed an application with the Berkley Zoning Board of Appeals requesting a land use variance.

H. On December 12, 2016, the Berkley Zoning Board of Appeals, after holding a public hearing, denied Plaintiff's land use variance request.

I. On June 20, 2017, Plaintiff filed its Complaint in this Court against the City requesting invalidation of the R-1D zoning of the Subject Property, equitable relief and money damages.

J. The parties subsequently participated in facilitative mediation, which took place in 2018.

K. The parties now desire to compromise and settle the lawsuit in accordance with the terms and conditions of this Consent Judgment in order to avoid further litigation costs and expenses and the risks and uncertainties of a trial, and to resolve their differences relative to this matter without any admission or finding of liability.

L. This Consent Judgment is presented to the Court by stipulation of the parties, through their respective attorneys, and the Court determines this Consent Judgment is reasonable and just.

THEREFORE, IT IS ORDERED THAT:

1. The Subject Property shall remain zoned R-1D Single Family Residential District. Nothing in this Consent Judgment prohibits or precludes the City, in its legislative discretion, from later amending the zoning of the Subject Property. But, notwithstanding the zoning of the Subject Property now or as may be later amended, Plaintiff may develop, construct and use the Subject Property in conformance with the terms of this Consent Judgment. The use of the Subject Property in conformance with this Consent Judgment shall be considered to be a lawful and conforming permitted use. In the event of destruction or damage by storm or other casualty, and notwithstanding the zoning of the property at such time, Plaintiff may redevelop and re-use the Subject Property in conformance with this Consent Judgment.

2. Plaintiff may use parcels 25-17-431-023 and 022 on Oxford Street (herein "Oxford parking lot property") for parking use consistent with, and as would be permitted under, the City's P-1 Parking District in effect as of January 1, 2020. In accordance with the P-1 zoning ordinance requirements, Plaintiff shall provide and install a screening wall and landscaping for its parking lot, and any parking lot lighting shall be designed and shielded to protect against

spill-over effects to, or illumination of, adjacent residential properties. Lighting shall not exceed zero (0) foot candles at the western and southern property lines. Plaintiff shall provide photo metrics for the parking lot lighting for review and approval by the City as part of the site plan review and approval process.

3. Plaintiff shall apply to the City and obtain any required permits or approvals and demolish and remove any existing structures located on 984 Oxford (parcel 25-17-431-021). Demolition and removal shall occur prior to or simultaneous with construction of the Oxford parking lot on parcels 25-17-431-023 and 022.

4. Plaintiff shall build or cause to be built on parcel 25-17-431-021 a new, site-built, single-family residential dwelling conforming to the City's R-1D zoning and applicable codes and regulations. Construction of that new dwelling shall commence no later than 90 days after completion and the city's final approvals of the Oxford parking lot construction on parcels 25-17-431-023 and 022, and shall proceed diligently and continuously to completion, weather permitting. Whether to construct the new dwelling on parcel 25-17-431-021 or to have a third party successor lot purchaser do so, in accordance with the requirements contained herein, shall be Plaintiff's choice.

5. On the remaining, western-most parcel 25-17-431-034, which is currently vacant, Plaintiff shall, within one year after completion and final approval of the Oxford parking lot construction, commence to build, cause to be built, or sell for the purpose of building, one or more additional single-family residential dwellings thereon in accordance with the R-1D zoning and applicable codes and regulations. Both parcels 25-17-431-021 and 034 shall be restricted to single-family residential dwelling purposes and use unless the City, in its sole, legislative discretion, decides to later change the zoning of those parcels to allow a different use.

6. Prior to commencing any construction of the Oxford parking lot on parcels 25-17-431-023 and 022, Plaintiff must apply for and obtain site plan approval from the City Planning Commission in accordance with the City's Zoning Ordinance. The scope of the City Planning Commission's site plan review shall be to determine whether Plaintiff's site plan is consistent with this Consent Judgment and applicable City ordinances. The Planning Commission shall not have authority to require any modification that is inconsistent with the Consent Judgment or reduces the number of parking spaces below 26.

7. The previous Collaboration Agreement dated April 4, 2016, between the City, Vinsetta Garage Holding, LLC, and Lugo Properties, was terminated by Lugo Properties and replaced in its entirety by the Restated and Amended Collaboration Agreement (herein "Restated Collaboration Agreement") dated _____, 2020 (copy attached as Exhibit 2). The Restated Collaboration Agreement, upon execution by all applicable parties, shall be implemented diligently and in good faith by Plaintiff and the City in accordance with the terms thereof simultaneous with implementation of this Consent Judgment. Plaintiff shall submit a site plan for construction of a parking lot on the Eaton lots covered by the Restated Collaboration Agreement. Plaintiff shall submit its Eaton parking site plan to the City Planning Commission before or simultaneous with Plaintiff's filing of its site plan for development of the parking lot on Oxford Street. The City Planning Commission shall process and review the Eaton parking lot site plan in accordance with its P-1 District regulations in effect as of January 1, 2020, and its site plan review ordinance requirements and shall process the site plan without undue delay, time being of the essence. The scope of the site plan review shall be to determine whether Plaintiff's site plan is consistent with this Consent Judgment and applicable City ordinances. No changes or modifications shall be required to the site plan that result in less than 28 parking spaces being constructed. Upon receiving site plan approval, Plaintiff shall proceed in good faith and with due

diligence to secure engineering and other necessary permits and approvals and to commence construction of the Eaton parking lot. The Eaton parking lot shall be constructed before or simultaneous with construction of the Oxford parking lot. Whether to construct the Eaton parking lot before or simultaneous with the Oxford parking lot construction shall be Plaintiff's choice. Issuance by the City of site plan approvals and permits for the Eaton and Oxford parking lots shall not be unreasonably delayed or withheld, time being of the essence.

8. Plaintiff shall commence construction of the Oxford and Eaton parking lots within 60 days, weather permitting, after receiving final engineering and permit approvals from the City and any other public agencies with jurisdiction over the parking lot construction. Plaintiff intends to construct the Oxford and Eaton parking lots at the same time; thus, Plaintiff may delay construction of the Oxford parking lot until it receives all final site plan, engineering and permit approvals for both the Oxford and Eaton parking lots from the City and any other public agencies with jurisdiction over the parking lots construction. To the extent possible, the Eaton and Oxford parking lot screening walls shall be constructed using similar materials so as to show resemblance in appearance, and the parking lot surfaces will consist of asphalt paving. The screening walls may consist of masonry construction or such other similar or decorative material presented by Plaintiff and approved by the Planning Commission.

9. The public alley behind the Vinsetta Garage restaurant shall allow north and southbound vehicle traffic, and any current signs indicating otherwise shall be removed. Vehicular ingress and egress to the Oxford parking lot shall be solely via the adjacent public alley to the east. Likewise, vehicular ingress and egress to the Eaton parking lot shall be solely via the adjacent public alley to the east. There shall be no other curb cuts or driveways proposed nor permitted from either parking lot onto Oxford or Eaton Streets.

10. After the Oxford and Eaton parking lots are constructed and put into operation, Plaintiff and Car Bar, LLC d/b/a Vinsetta Garage Restaurant (herein "Vinsetta Garage") may, at its option, discontinue valet parking service and any leases, agreements, or arrangements it currently has for offsite, shared parking.

11. Plaintiff shall ensure that the management of the Vinsetta Garage will use its best efforts to discourage and prohibit its employees from parking on the street on Oxford or Eaton Streets, and Plaintiff shall further ensure that the management of Vinsetta Garage will use its best efforts to educate and discourage its customers and visitors from parking on the street on Oxford and Eaton Streets.

12. No signs, except for directional and traffic control, and signs restricting parking to Vinsetta Garage patrons and indicating violators may be towed, shall be allowed at or within the Oxford and Eaton parking lots. Advertising signs are prohibited, but signs with towing information are allowed.

13. Except as modified in this Consent Judgment, development and use of the Oxford and Eaton parking lots shall conform to the City's Zoning Ordinance and all other applicable codes and regulations. No other variances or waivers from the City's Zoning Ordinance or other codes and regulations may be requested or granted for the development and use of the parking lots and Subject Property, unless required to meet the intention of the parties under this Consent Judgment and consistent with the minimum number of required parking spaces for Eaton and Oxfords . Once the Eaton and Oxford parking lots are constructed and put in use, Plaintiff and Vinsetta Garage Restaurant shall be deemed to be in compliance with the City parking requirements as they pertain to these parties and their current uses and occupancy loads at the time of entry of this Consent Judgment.

14. Notwithstanding the foregoing, the parties acknowledge that some minor modification of the site plans may result from further engineering or requirements of other public agencies. Minor modifications shall be allowed by the City if the modification is substantially in compliance with this Consent Judgment, the parties' intent, and the final site plans. Such minor modifications shall not, however, enlarge the parking lot on Oxford beyond the current boundaries of parcels 25-17-431-023 and 022.

15. Plaintiff and the City for themselves, and their boards, commissions, officials, officers, employees, contractors, and related entities, mutually release and discharge each other from any and all claims, demands, causes of action, suits, liabilities, damages and rights which may now exist or which may subsequently accrue by reason of acts, events, circumstances, incidents, transactions, or occurrences arising out of or relating to this lawsuit and existing on the date of entry of this Consent Judgment, whether known or unknown on that date. This mutual release does not, however, bar claims, actions or proceedings brought by either party to construe or enforce this Consent Judgment.

16. This Consent Judgment shall be recorded with the Oakland County Register of Deeds, and the rights, duties, responsibilities, obligations, restrictions, and covenants herein shall run with the land and shall bind and inure to the benefit of the parties' respective successors, grantees and assigns.

17. To the extent this Consent Judgment conflicts with any City ordinance or regulation, the terms of this Consent Judgment shall control. To the extent this Consent Judgment is silent on issues regulated by City ordinance or regulation, then the City ordinance or regulation shall control.

18. The terms of this Consent Judgment may be amended or modified only by written agreement of the parties and approved or ordered by the Court. Minor modifications to the final

Site Plans, may be approved administratively by the City without having to amend this Consent Judgment.

19. The parties and their respective successors and assigns shall treat each other in good faith and shall take no action which is contrary to or interferes with the spirit of this Consent Judgment, nor omit any action which is necessary or convenient to or consistent with the spirit and intent of this Consent Judgment.

20. By their execution of this Consent Judgment, the parties represent and warrant that they have the authority to execute this Consent Judgment and bind their respective entities, successors and assigns to its terms and conditions.

21. Any clerical errors or mistakes in document or exhibit descriptions contained in this Consent Judgment may be corrected by the parties, and all parties agree to cooperate in making such corrections in order to effectuate the spirit and intent of the parties in entering into this Consent Judgment

22. This Consent Judgment is hereby deemed to include all exhibits attached hereto and any attached plans referenced herein, said exhibits and plans being incorporated herein and made a part hereof fully and to the same extent as if the contents of the exhibits and plans were set out in their entirety in this Consent Judgment. All references to this Consent Judgment are deemed to be a reference to the body of this Judgment and to the exhibits and the attached plans.

23. Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting of this Consent Judgment and that, accordingly, no court construing this Consent Judgment shall construe it more stringently against one party than the other.

24. The Court retains continuing jurisdiction to interpret and enforce this Consent Judgment.

THIS CONSENT JUDGMENT RESOLVES ALL PENDING CLAIMS AND CLOSES THE CASE.

_____
Hon. **Denise Langford Morris**
Circuit Court Judge

Approved for Entry:

27799 Woodward, LLC

By: _____

Its: Authorized Member

City of Berkley

By: _____

Its: **Mayor** (Per City Council approval _____2020)

By: _____

Its: **Clerk** (Per City Council approval _____ 2020)

27799 Woodward, LLC

By: _____
TOM KALAS (P41805)
KALAS KADIAN, P.L.C.
Attorneys for Plaintiff
31350 Telegraph Road, Suite 201
Bingham Farms, MI 48025
(248) 731-7243
tom@kalkad.com

City of Berkley

By: _____
LAUREL F. McGIFFERT (P31667)
PLUNKETT COONEY
Attorneys for Defendant City of Berkley
150 W Jefferson, Suite 800
Detroit, MI 48226
(313) 983-4752
lmcgiffert@plunkettcooney.com

By: _____
JOHN D. STARAN (P35649)
HAFELI STARAN & CHRIST, P.C.
Attorneys for Defendant City of Berkley
2055 Orchard Lake Road
Sylvan Lake. MI 48320-1746
(248)731-3080
jstaran@hsc-law.com

Prepared By and
When Recorded Return to:

JOHN D. STARAN (P35649)

HAFELI STARAN & CHRIST, P.C.
2055 Orchard Lake Road
Sylvan Lake. MI 48320-1746
(248) 731-3080
jstaran@hsc-law.com