

ARTICLE 13

GENERAL PROVISIONS

5 Sec. 13-01 Accessory Uses and Buildings - Generally

(a) In any District, only accessory uses, incidental only to a permitted use, are allowed when located on the same lot or parcel as a permitted use, provided the accessory use is clearly incidental to the principal use of the property.

10 (b) In any District an accessory building may be erected detached from the main building, or it may be erected as an integral part of the main building. Except as may otherwise be required, all accessory buildings shall comply in all respects with the requirements of this Ordinance applicable to the main building.

15 (c) No accessory building shall be used as a dwelling unit or any part of a dwelling unit.

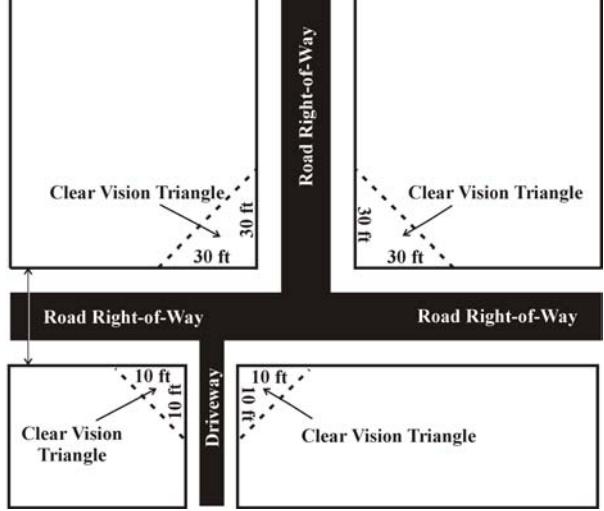
20 (d) All accessory buildings within a Residential District shall comply with the requirements of **Section 3-04**.

Sec. 13-02 Corner Clearance

30 No fence, wall, structure, shrubbery, sign, or other obstruction to vision shall be erected, established, or maintained on any corner lot which will obstruct the view of drivers in vehicles approaching the intersection. Fences, walls, structures, or plantings located in the triangular area described below shall not be permitted to exceed a height of thirty (30) inches above the lowest point of the intersecting road(s). The unobstructed triangular area is described as follows:

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5 (a) The area formed at the corner intersection of two (2) road right-of-way or easement lines, the two (2) sides of the triangular area being thirty (30) feet in length measured along abutting public right-of-way lines, and third side being a line connecting these two (2) sides.

10 (b) The area formed at the corner intersection of a road right-of- way or easement and a driveway, the two (2) sides of the triangular area being ten (10) feet in length measured along the right-of-way line and edge of the driveway, and the third side being a line connecting these two (2) sides.

15 Essential public services/utility buildings shall be permitted as authorized and regulated by state, federal, and local law and Ordinances, it being the intention hereof to exempt such essential services from the application of this Ordinance. Proposals for construction of essential public services/utility buildings shall be subject to review, following the procedures and requirements of *Article 18 and Article 19*, as applicable; it being the intention of the Township to achieve efficient use of the land and alleviate adverse impact on nearby uses or lands.

20 Essential public services/utility buildings shall comply with all applicable regulations that do not affect the basic design or nature of operation of those services.

Sec. 13-04 Fences

25 (a) Poles shall be located on the inside of the fence, such that the finished side faces the exterior of the property for all lots.

30 (b) Fences in all Residential are allowed within a required side or rear yard but shall not exceed four (4) feet in height, measured from the surface of the ground, and shall not extend toward the front of the lot nearer than the front of the house or the required minimum front yard setback, whichever is greater.

35 (c) Residential lots that are two (2) acres or more, have a road frontage of two hundred (200) feet or more, and are not included within the boundaries of a recorded plat shall be permitted to have a fence within the non-required front yard provided it shall not be a solid, privacy or screening fence.

(d) Fences shall not contain barbed wire, electric current, or charge of electricity,

except as provided in (g) below.

5 (e) Fences which enclose public or institutional parks, playgrounds, or public landscaped areas, situated within an area developed with recorded lots shall not exceed eight (8) feet in height measured from the surface of the ground, and shall not obstruct vision to an extent greater than twenty-five (25%) percent of their total area.

10 (f) The Building Department may, upon application by the property owner, review and allow a modification of the height of the fence which is intended to enclose property, subject to the following conditions. The Building Department shall be furnished with photographs clearly portraying the area to be fenced, as well as the abutting properties affected.

15 (1) The height shall in no instance exceed six (6) feet, measured from the surface of the ground.

20 (2) The modification shall not obstruct the light and air of any neighboring residence.

(3) The modified fence shall only be permitted in the rear yard.

(4) The modified fence shall be required to offer privacy in swimming pool, patio, terrace, and similar private areas.

25 (g) Fences on property zoned OS, B-1, B-2, B-3 and I-1 shall be of an ornamental nature of standard commercial fencing not to exceed six (6) feet in height. Barbed wire, spikes, nails, or any other sharp point or instrument of any kind on top or on the sides of any fence, or electric current or charge in fences is prohibited. Barbed wire cradles may be placed on top of fences enclosing public utility buildings, which may exceed six (6) feet in height and shall be located in a front yard wherever deemed necessary in the interests of public safety, provided that shrubs or evergreens are planted which will eventually screen the barbed wire cradles. Notwithstanding the above, security fencing is allowed in an I-1 District within ten (10) feet of the front property line provided it is suitably landscaped; provided further that if barbed wire cradles on top of fences are proposed, they shall be six (6) feet or greater in height. (See also **Section 14-02(f)(2)**).

(Ord. # 231, 12/27/05)

Sec. 13-05 Height Limitations

5 The following structural appurtenances may be permitted to exceed the height limitations of this Ordinance:

10 (a) Chimneys, church spires, cupolas, domes, towers, penthouses, water tanks, wind turbines, and monuments may be erected to a height up to sixty (60) feet; flag poles may be erected to a height up to thirty (30) feet. The Township shall be provided sufficient evidence to assure that adjacent uses and structures are not threatened due to a collapse of the structure for any reason.

15 (b) Applicants proposing wind turbines for their property must present specifications on the turbines. Sound level may not exceed 55 dB (decibels) maximum measured at the highest pitch at the property line. No shadow flicker shall be cast on the windows of any principal structure located on adjacent parcels at any time. Towers must be designed to collapse onto the parcel upon which it is located. The required minimum setbacks from all property lines shall be at least the distance as measured from the ground level to the highest tip of the windmill blades when revolving (sixty (60) ft. maximum). All other structures shall be setback at least twenty (20) feet or the minimum side yard setback for that district, whichever is greater, including guy wire anchors. Wind turbines located on top of buildings must meet the same height restriction as identified above, and if part of a site plan will require screening. If wind turbines are part of a site plan, a performance guarantee must be posted for removal of the turbine if that becomes necessary (Please refer to Sec. 23-08 of the Zoning Ordinance). If the wind turbine has not been used for a period of twelve (12) months or more to generate wind energy, the structure and all accessory structures must be removed. A wind site assessment may be required to determine the impact on existing or planned land use development in the area adjacent to the proposed wind turbine which would include information on wind speed, sound level, and shadow flicker. Please refer to Sec. 25-10 and Sec. 25-12 of the Zoning Ordinance for definitions corresponding to this section (Shadow Flicker, Sound Level, Wind Energy Systems, and Wind Site Assessment).

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5 (c) Any mechanical and electrical equipment, including water and gas meters, elevator housings, stairways, tanks, generators, transformers, heating, ventilation and air conditioning equipment, and other similar equipment, located on the roof of any building shall comply with the following requirements:

10 (1) All such equipment shall be screened by a solid wall, fence, landscaping, and/or architectural feature that is constructed of the same material and compatible in appearance with the main building.

15 (2) Roof-mounted equipment shall not exceed a height of ten (10) feet above the surrounding roof surface, and shall occupy no more than fifteen percent (15%) of the total roof area. When roof-mounted equipment is located on a building that is adjacent to a residential use or is in view from the adjacent roadway, appropriate architectural screening shall be required.

20 (d) Structural extensions appropriate to the building design, such as cornices, shall be limited to five (5) feet above the stated height limit.

(Ord. # 246, 12/25/09)

Sec. 13-06 Lots Adjoining Alleys

25 In calculating the area of a lot that adjoins an alley for the purpose of applying lot area requirements of this Ordinance, one-half (1/2) the width of the alley abutting the lot shall be considered as part of the lot.

Sec. 13-07 Multi-Access Riparian Sites

30 (a) **Intent and Scope of Application.** The purpose of this Section is to promote safe and appropriate use of land contiguous to an inland lake, and adjacent upland areas. This Section applies to waterfront property. The objectives of this Section shall be carried out by regulating the land uses related to the manner and extent of access to a lake, river, stream, or other waterbody.

35 (b) **Procedure.** At the time of site plan review the applicant must supply a site plan in accordance with *Article 18*.

(c) Requirements

(1) All Zoning Districts

5 a. Where a parcel of land is contiguous to a lake, river, stream, or other waterbody, and is presented for subdividing, a parcel of land bordering on the body of water may be used and developed as a recreational park subject to the following requirements:

10 1. There shall be full compliance with the terms, conditions, and limitations imposed by **Chapter 17** of the Township Code of Ordinances and/or this Ordinance.

15 2. The recreational park shall be dedicated as a recreation park at the time of recording of a plat, a condominium master deed, or approved site plan.

20 3. The recreational park may be used for swimming and picnicking and other passive recreational activities, the privileges of which may be reasonably enjoyed by the owners and occupants of subdivision, condominium, or multiple family developments.

25 4. The recreational park is only for the use of owners or occupants of lots included in any plat or plats recorded within the parcel and/or condominium master deed, and provided that the recreational park is appropriately dedicated.

30 5. Each recreational park shall contain a lot depth of at least one hundred fifty (150) feet.

35 6. Each recreational park shall have at least twenty (20) linear feet of water frontage for each dwelling unit to which said privileges are extended or dedicated, provided there shall be at least three hundred (300) feet of water frontage.

7. That in no event shall the launching of boats or the construction of piers or wharfs there from be permitted from the recreational park.

b. In residential developments, including platted subdivisions,

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condominium projects, multiple family developments, and PUD districts where no lakefront lots are created within the development, the maximum number of boats that can be moored or docked from a common open space or stored in any manner with access through the common open space or recreational park area or on the water, shall be determined by the following:

Table 13-07 Maximum Number of Boats by District (per linear feet of shoreline)			
District	Feet of Lake Frontage	Number of Boat Docks (1)	Number of Boat Slips (per dock)
RCE/RC	125	1	2
R-1	100	1	2
R-2	80	1	2
R-3/R-4/R-5	70	1	2
RM-1/RMH	70	1	2
All Other Districts	70	1	2

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1. Lake frontage shall be measured along the shoreline. Where streams, canals, or cuts are used in calculating shoreline length, boats permitted shall be moored within such stream, canal, or cut.
2. The use or storage of boats in any manner in the common open space or recreational park shall be prohibited.

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3. Prior to any building permits being issued, the developer shall provide the Township with evidence that the limitations on the number of boats have been included within the condominium master deed, and/or deed restrictions or covenants.

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(d) **Exceptions.** The Zoning Board of Appeals (ZBA), following a public hearing, may waive or modify any of the provisions stated in this Section provided that the ZBA determines that such an exception is appropriate for the multi-access application. Requests for such an exception shall be made to the ZBA in such form as the ZBA shall prescribe and shall include, but not be limited to, a description of the multi-access plan, a description of the efforts that have been made to comply with the provisions of these regulations and the reasons such an exception is necessary. In reviewing a request for such exception, the ZBA shall consider public safety, project design, potential

impact on other riparian rights, lake capacity, and other factors deemed appropriate by the ZBA.

(Ord. #231, 12/27/05)

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Sec. 13-08 Performance Standards

10 (a) **Performance Standards.** All agricultural uses shall be conducted in accordance with the Michigan Right to Farm Act, P.A. 93 of 1981 and the Michigan Commission of Agriculture's Generally Accepted Agricultural and Management Practices. All non-agricultural uses within any District shall conform to the following standards of use, occupancy, and operation:

15 (1) **Airborne Solids.** Dust, smoke, soot, dirt, fly ash, and products of wind erosion shall be subject to the regulations established in conjunction with the Air Pollution Act, Michigan Public Act 348 of 1965, as amended, or other applicable state or federal regulations. No person, firm, or corporation shall operate or maintain any process, furnace, or combustion device for the burning of coal or other fuels, unless such processes or devices are equipped with recognized and approved equipment, methods, or technology to effectively reduce the quantity of gas-borne or airborne solids or fumes emitted into the open air.

20 25 The drifting of airborne matter beyond any property line, including wind-blown dust, particulates or debris from open stock piles, is prohibited. Emission of particulate matter from materials, products, or surfaces subject to wind erosion shall be controlled by paving, oiling, wetting, covering, landscaping, fencing, or other means.

30 (2) **Electromagnetic Radiation and Radio Transmission.** Electronic equipment required in an industrial, commercial, or other operation shall be designed and used in accordance with applicable rules and regulations established by the Federal Communications Commission (FCC). The operation of such equipment shall not interfere with the use of radio, television, or other electronic equipment on surrounding or nearby property.

35 (3) **Fire and Safety Hazards.** The storage and handling of flammable liquids, liquefied petroleum gases, and explosives shall comply with all

applicable Federal, State, and County regulations.

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a. **Above Ground Storage of Toxic and Hazardous Material.** The above ground storage of toxic and hazardous material shall be located within a secondary containment structure that will prevent a leak of the tank from flowing onto the soil in order to protect against groundwater contamination. The volume of the secondary containment shall be of sufficient size to contain the total capacity of the tank. Further, all storage tanks for flammable liquid materials above ground shall be located at least one hundred and fifty (150) feet from all property lines, and shall be completely surrounded by earth embankments, dikes, or other types of retaining wall which will contain the total capacity of all tanks so enclosed.

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b. **Underground Storage Tanks.** All underground storage tanks shall be registered with the Michigan Department of Natural Resources, in accordance with Public Act 165 of 1985, as amended. The location and contents of all such tanks shall be indicated on the site plan. Storage of flammable liquids or hazardous materials below ground shall be located not closer to a lot line than the greater depth to the bottom of the buried tank, and shall be enclosed by an impervious envelope adequate to prevent a liquid from contaminating the groundwater in an event of a rupture of the tank.

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c. **Detonable Materials.** The storage, utilization, or manufacture of detonable materials shall be permitted subject to approval by the Fire Department and the following restrictions:

Table 13-08.1
Detonable Material Storage

Proposed Activity	Restrictions
Storage, utilization, or manufacture of 5 lbs. or less	Permitted accessory use in I-1 District
Storage or utilization of over 5 lbs.	Special land use in I-1 District
Manufacture of over 5 lbs.	Not permitted

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Detonable materials covered by these requirements include, but are not limited to the following:

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1. All primary explosives such as lead azide, lead styphnate, fulminates, and tetracene.
2. All high explosives such as TNT, RDX, HMX, PETN, and picric acid.
3. Propellants and components thereof such as dry nitrocellulose, black powder, boron hydrides, and hydrazine and its derivatives.
4. Pyrotechnics and fireworks such as magnesium powder, potassium chlorate, and potassium nitrate.
5. Blasting explosives such as dynamite and nitroglycerine.
6. Unstable organic compounds such as acetylides, tetrazoles, and ozonides.
7. Strong unstable oxidizing agents such as perchloric acid, perchlorates, and hydrogen peroxide in concentrations greater than thirty-five percent (35%).
8. Nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

d. **Liquefied Petroleum Gas.** The storage or utilization of liquefied petroleum gas may be permitted, but subject to approval by the Fire Department and with the following restrictions:

Table 13-08.2 Liquid Petroleum Gas Storage	
Proposed Activity	Restrictions
Storage, utilization of 80 lbs. or less	Permitted accessory use in all districts
Storage, utilization of more than 80 lbs.	Permitted in I-1 District

(4) **Gases.** The escape of or emission of any gas that may be injurious or destructive to life or property, or that is explosive, is prohibited. Gaseous emissions shall be subject to regulations established in conjunction with the Air Pollution Act, Michigan Public Act 348 of 1965, as amended, the

federal Clean Air Act of 1963, as amended, and any other applicable Federal, State, or County regulations. Accordingly, gaseous emissions measured at the property line at ground level shall not exceed the levels indicated in the following chart, that is based on the National Ambient Air Quality Standards, unless a higher standard is imposed by a Federal, State, or County agency that has jurisdiction:

Table 13-08.3 Standards For Gaseous Emissions		
Gas	Maximum Emissions Level	Sampling Period
Sulfur dioxide	0.14 ppm	24 hours
Hydrocarbons	0.24 ppm	3 hours
Photochemical oxidants	0.12 ppm	1 hour
Nitrogen dioxide	0.05 ppm	Annual
Carbon monoxide	9.0 ppm 35.0 ppm	8 hours 1 hour
Lead	1.5 ug/cubic meter	3 months
Mercury	0.01 mg/cubic meter	10 hours
Beryllium	2.0 ug/cubic meter	8 hours
Asbestos	0.5 fibers/cc	8 hours

(5) **Glare and Heat.** Any operation or activity that produces glare shall be conducted so that direct and indirect illumination from the source of light does not exceed one-half (1/2) of one (1) footcandle when measured at any point along the property line of the site on which the operation is located. Any operation or process that produces glare or heat shall be conducted within an enclosure so as to completely obscure and shield such operation from direct view from any point along the property lines. If heat is a result of an industrial operation or process, it shall be so insulated as to not raise the temperature at any property line at any time.

(6) **Noise**

a. **Noise Disturbance Prohibited.** No activity, operation, or use of land, open body of water, buildings, or equipment shall make, continue, or cause to be made or continued, any noise disturbance or allow to be emitted, sound from any source or combination of sources other than a motor vehicle registered for use on public highways, which when measured in accordance with the procedure described below exceeds the sound level limits in Table 13-08.4.

Table 13-08.4
A-Weighted Sound Level Limits Decibels

Duration	Residential Districts		Non-Residential Districts	
A fraction (%) of any one-hour period	Night*	Day**	Night*	Day**
50%/30 min or greater	45	50	55	65
More than 10%/6 min but less than 50%/30 min	50	55	60	70
10%/6 min or less	55	65	70	75
Maximum, any duration	65	75	80	80

b. **Construction.** Operation of any tools or equipment used in construction, drilling, or demolition work shall be prohibited between the hours of 6:00 p.m. and 7:00 a.m. on weekdays or any time on Sundays or holidays, such that the sound therefrom creates a noise disturbance across a residential district boundary.

c. **Measurement of Sound Level.** Measurement of sound level shall be made at a height of 4.5 feet (+ or -) at a horizontal distance of 5.5 (+ or -) feet from a lot line or right-of-way line on any lot or right-of-way other than that on which the sound source or sources being measured is located. A violation shall be deemed to exist only if the sound level measured with the sound source or combination of sources of interest in operation is at least six (6) decibels greater than the sound level measured with the sound source or sources not in operation. Sound shall be measured at intervals of time not to exceed five (5) minutes. Reported duration associated with the reported sound level is that amount of time encompassing all measurements taken to obtain the sound level. For each measurement, observations shall be made of the meter reading each five (5) seconds until the number of observations equals the difference in decibels between the largest and smallest observed sound level; the measured sound level shall be equal to the average of the observations so obtained. The reported sound level shall be the lowest measured sound level.

(7) **Odor.** Offensive, noxious, or foul odors shall not be allowed to escape into the atmosphere in concentrations that are offensive, that produce a public nuisance, create a hazard to adjoining property, or would be otherwise detrimental to human, plant, or animal life.

(8) **Radioactive Materials.** Radioactive materials, wastes, and emissions, including electromagnetic radiation such as generated from an x-ray machine, shall not exceed levels established by Federal, State, or County agencies with regulatory jurisdiction. No operation shall be conducted in a manner that emits, outside of any property line, levels of radiation that exceed the lowest concentration permitted for the general population.

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(9) **Sewage Wastes and Water Pollution.** Sewage disposal or pretreatment facilities (including septic systems) and water pollution control facilities shall be subject to the applicable standards and regulations established by Federal, State, and County regulatory agencies, including the Michigan Department of Health, the Michigan Department of Environmental Quality, the Livingston County Health Department, any applicable local sewer and water regulations and the U.S. Environmental Protection Agency.

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(10) **Vibration.** Machines or operations which cause vibration shall be permitted in the Light Industrial District, provided vibrations emanating there from shall not be discernable and substantially annoying or injurious to property beyond the lot lines of the affected premises.

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(b) Procedures for Determining Compliance. In the event that the Township receives a complaint or otherwise has an indication of possible violation of any of these performance standards, the following procedures shall be used to investigate and, if necessary, resolve a violation:

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(1) Official Investigation. The Building Official shall determine whether there is reasonable cause to suspect that an operation or process is in violation of these performance standards. The Building Official may initiate an official investigation in order to make such a determination.

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Upon initiation of an official investigation, the Building Official is empowered to require the owner or operator of the facility in question to submit data along with any evidence deemed necessary to make an objective determination regarding the possible violation within a time period specified by the Building Official, but in every case, a reply must be forthcoming within three (3) calendar days from the receipt of notice.

Failure of the owner or operator to supply requested data within the stated time period shall be considered an admission of violation and provide *prima facia* evidence of grounds for taking any action, including legal action, to terminate the use and/or deny or cancel any permits or licenses required for continued use of the land. Data that may be required includes, but is not limited to, the following:

5 a. Plans of the existing or proposed facilities, including buildings and equipment.

10 b. A description of the existing or proposed machinery, processes, and products.

15 c. Specifications for the mechanisms and techniques used or proposed to be used to control emissions regulated under the provisions of this Section.

20 d. Measurement of the amount or rate of emissions of the material, including but not limited to, heat, sound, and glare, purported to be in violation.

25 e. Copies of studies, reports, specifications, and any other compilation of available data, including, but not limited to, filings, and reports related to:

30 1. Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC 6901 et seq.).

35 2. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC 7401 et seq.).

3. Occupational Safety and Health Act (OSHAct) (42 USC 651 et seq.).

4. Toxic Substances Control Act (TSCA) (15 USC 2601 et seq.).

35 5. Michigan Occupational Safety and Health Act (MIOSHA) (MCLA 408.1001 et seq.).

(2) Method and Cost of Determination. The Building Official shall take measurements, or cause measurements to be taken by a competent contractor, and complete investigation necessary to make an objective determination concerning the purported violation. Where required measurements and investigation can be accurately made by the Building Official using equipment and personnel normally available to the Township without extraordinary expense, such measurements and investigation may be completed before notice of violation is issued. If necessary, skilled personnel and specialized equipment or instruments shall be secured in order to make the required determination.

If the alleged violation is found to exist in fact, the costs of making such determination shall be charged against those responsible, in addition to such other penalties as may be allowable. If the bill is not paid within thirty (30) days, the Township shall take whatever appropriate action is necessary to recover such costs, or alternately, the cost shall be charged against the property where the violation occurred. If it is determined that no substantive violation exists, then the costs of this determination shall be paid by the Township.

(3) **Appropriate Remedies.** If, after appropriate investigation, the Building Official determines that a violation does exist, the Building Official shall take such lawful action as provided by this Section or any State or Federal regulation to eliminate such violation. The owners or operators of the facility deemed responsible shall be given written notice of the violation. The Building Official shall take appropriate action in accordance with the owner's or operator's response to the notice of violation. Appropriate action includes the following:

a. **Correction of Violation within Time Limit.** If the alleged violation is corrected within the specified time limit, even if there is no reply to the notice, the Building Official shall note "Violation Corrected" on the Township's copy of the notice, and the notice shall be retained on file. If necessary, the Building Official may take any other action as may be warranted by the circumstances of the case, pursuant to this Section and any other applicable regulation.

b. **Violation not Corrected and no Reply from Owner or Operator.** If there is no reply from the owner or operator within the specified time

limits, and the alleged violation is not corrected in accordance with the regulations set forth in this section, then the Building Official shall take any action reasonably calculated to correct or abate the violation.

c. **Reply Requesting Extension of Time.** If the alleged violator responds to the Township within the specified time limit of the original notice and requests an extension of time, the Building Official shall review the information submitted with the reply. Upon finding that an extension is warranted because of unique circumstances and that an extension will not cause imminent peril to life, health, or property, the Building Official may extend the specified time limit to a date certain, if the Building Official concurs that one (1) or more of the following:

1. The information requested pursuant to **Section 13-08(b)(1)** is impractical to readily produce.
2. An extreme hardship exists.
3. The reply indicates that an alleged violation shall be corrected or abated by the date certain and that all future operations shall comply with the regulations as set forth herein.

d. **Reply Requesting Technical Determination.** If a reply is received within the specified time limit requesting further review and technical analysis even though the alleged violations continue, then the Building Official may call in properly qualified experts to complete such analysis and confirm or refute the initial determination of violation.

If expert findings indicate that violations of the performance standards exist or did exist at the specified time, all costs incurred by the Township in making such a determination shall be paid by the persons responsible for the violations, in addition to such other penalties as may be appropriate under the terms of this Ordinance or other applicable regulations. Such costs shall be billed directly to the owners or operators of the subject use who are deemed responsible for the violation. If the bill is not paid within thirty (30) days, the Township shall take appropriate action to recover such costs, or alternately, the cost shall be charged against the property where the

violation occurred. If no substantial violation is found, cost of determination shall be borne by the Township.

5 (4) **Continued Violation.** If, after the conclusion of the time period granted for compliance, the Building Official finds that the violation continues to exist, any permits previously issued shall be void and the Township may initiate appropriate legal action, including possible pursuit of remedies in circuit court.

10 Sec. 13-09 Principal Building, Structure, or Use

No zoning lot may contain more than one (1) principal building, structure, or use except groups of multiple family dwellings under the same ownership, condominium developments, mobile or manufactured housing parks, shopping centers, or office and industrial complexes.

Sec. 13-10 Projections into Yards

20 (a) Architectural features and vertical projections may extend or project into a required yard as shown in the Table 13-10.

Table 13-10
Schedule of Permitted Projection into Yards

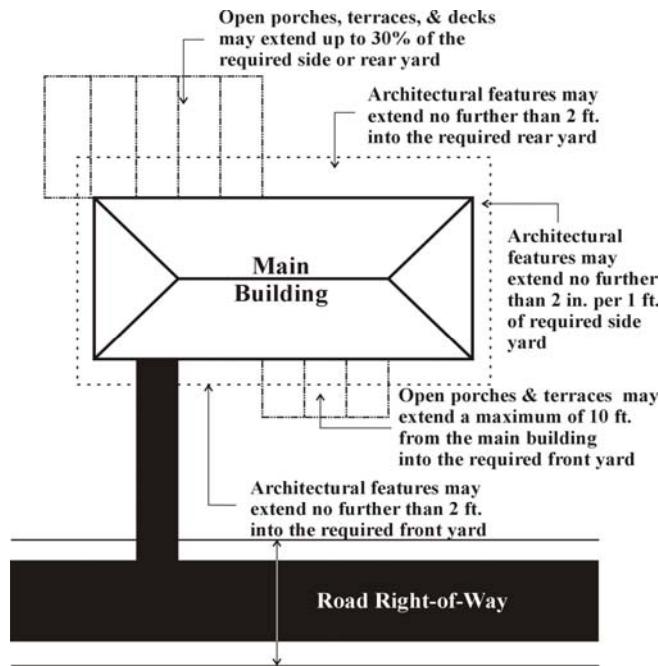
Projection	All Yards	Rear or Waterfront Yard	Side Yard
Air Conditioning Equipment Shelters	--	X	X
Air Conditioning Units, Window Mounted	X	--	--
Access Drives	X	--	--
Arbors & Trellises	X	--	--
Architectural Entrance Features (1)	X	--	--
Awnings & Canopies	X	--	--
Bay Windows (1)	X	--	--
Decks, Open or Enclosed (2)	--	X	X
Eaves, Overhanging (1)	X	--	--
Fences	X	--	--
Fireplace (Outside)		X	X
Flagpoles (3)	X		--
Gardens	X	--	--
Gutters (1)	X	--	--
Hot Tubs	--	X	X
Landscaping	X	--	--
Laundry Drying Equipment	--	X	X
Light Standard, Ornamental	X	--	--
Paved Terraces & Open Porches (2)	X	--	--

Table 13-10
Schedule of Permitted Projection into Yards

Privacy Walls	--	X	--
Sidewalks, Bikepaths & Walkways	X	--	--
Stairways, Open Unroofed	X	--	--
Steps & Stoops	X	--	--
Swimming Pools	--	X	--
Walls	X	--	--

x = Permitted in any area of yard

(b) **Notes.** The following notes apply to Table 13-10.



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(1) **Architectural Features.** Bay windows, window sills, belt courses, cornices, eaves, overhanging eaves, and other architectural features may project into a required side yard not more than two (2) inches for each one (1) foot of width of such required side yard, and may extend into any required front, rear, or waterfront yard not more than twenty-four (24) inches.

(2) **Terraces, Decks, and Porches.** Open paved terraces and open porches may project into a required front yard up to ten (10) feet. Open paved terraces, decks and open porches may project into a required side, rear, or waterfront yard up to thirty percent (30%) of the required minimum side, rear, or waterfront yard. Second story decks and porches with roofs shall be considered to be part of the main building for purposes of determining

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setbacks.

5 (3) **Flagpoles.** Flagpoles are not permitted within a yard that abuts U.S. 23 or I-96.

10 (b) Mechanical and electrical equipment such as blowers, generators, transformers, ventilating fans, and air conditioning units, shall be placed no closer than three (3) feet to any lot line in Business Districts and no closer than twelve (12) feet to any lot line in Residential Districts. Mechanical equipment in the Industrial District shall comply with all yard setbacks.

(Ord. #243, 8/1/08), (Ord. #231, 12/27/05)

Sec. 13-11 Residential Entranceway

15 In all Residential Districts, so called entranceway structures including, but not limited to, walls, columns, and gates marking entrances to single family subdivisions or multiple housing projects may be permitted at major entrances and may be located in a required yard, except as provided in *Section 13-05*; provided that such entranceway structures shall comply to all codes of the

20 Township and shall be approved by the Building Department and a permit issued.

Sec. 13-12 Road Frontage

25 (a) No lot shall be used for any purpose permitted by this Ordinance unless the lot abuts a public or private road having a width of at least sixty-six (66) feet or a shared driveway. This requirement shall not apply to lots abutting roads or roadways which were platted prior to adoption of this amendment or otherwise dedicated and accepted as a public roadway.

30 (b) No lot or parcel shall be used for any purpose permitted by this Ordinance unless the lot abuts a public road, approved private road, shared driveway, or roads or roadways which were platted prior to the adoption of this amendment or approved in accordance with an existing Township Ordinance in effect at the time of the establishment of the private road.

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Sec. 13-13 Swimming Pools

Private swimming pools shall be permitted as an accessory use only within the

rear yard (except for lakefront lots, see *Sec. 3-05*), provided they meet the following requirements:

5 (a) There shall be a distance of not less than ten (10) feet between the adjoining property line and outside of the pool wall.

10 (b) There shall be a distance of not less than four (4) feet between the outside pool wall and any building located on the same lot.

15 (c) No swimming pool shall be located less than thirty-five (35) feet from any front lot line.

20 (d) No swimming pool shall be located less than ten (10) feet from any side road or alley right-of-way, or the distance required for side yard by this Ordinance, whichever is greater.

25 (e) If electrical service drop conductors or other utility wires cross under or over a proposed pool area, the applicant shall make satisfactory arrangements with the utility involved for the relocation of wires before a permit shall be issued for the construction of a swimming pool.

30 (f) No swimming pool shall be located in an easement.

35 (g) For the protection of the general public, all swimming pools will be completely enclosed by a fence not less than four (4) feet in height measured vertically from final or finished grade immediately adjacent to the swimming pool. Any gate required shall be of a self-closing and self-latching type with the latch on the inside of the gate not readily available for children to open. All enclosing fences shall be so constructed so that a four (4) inch sphere will not pass through at any point, and shall be capable of safely sustaining a fifty (50) pound per lineal foot impact load. Construction shall be of steel, wrought iron, pressure-treated lumber or any other approved permanent material that does not provide an exterior stepping or horizontal ladder effect for the mounting thereof. All fences enclosing pools shall be continually maintained in accordance with the above requirements. Any enclosing fence which does not or cannot comply with all of the above requirements shall not be permitted, and in the alternate, the entire yard in which the pool is located shall be fenced in accordance with the requirements hereinbefore set forth.

40 (Ord. #243, 8/1/08), (Ord. # 231, 12/27/05)

Sec. 13-14 Temporary Uses, Buildings, and Structures

(a) **Temporary Uses.** All temporary uses shall hereafter be regulated by the following requirements:

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Table 13-14 Temporary Commercial Uses & Events ¹				
Use	Districts Permitted	Length of Time	Permit Approval By	Requirements
Seasonal Accessory Roadside Stands Sale of fruit & vegetables, hobby-craft, fish bait, & firewood grown, produced, or obtained from the site	Permitted use in RC & R-CE	60 days per permit, with a maximum of 2 permits per year, for a total of 120 days	Township Planner & Building Official	(1)
Temporary Accessory Residential Sales Garage, moving & yard sales, sales of fish bait, produce, flowers, personal motor vehicles, hobby-craft, firewood, & personal effects	Permitted use in all Residential Districts	1-4 days without permit 5-7 days with permit, with a maximum of 7 days per year	Township Planner & Building Official if more than 4 days	(2)
Seasonal Commercial Outdoor Sales Seasonal outdoor sale of merchandise related to holidays, promotional sales, or special events	Permitted use in B-1, B-2, B-3, & OS	60 days per permit, maximum of 2 permits per year, for a total of 120 days	Township Planner & Building Official	(3)
Special Events (Minor) Motor vehicle shows, charity events, & other activities open to the public where the normal parking and occupancy loads are not exceeded	Permitted use in OS, B-1, B-2, B-3, I-1, Commercial, Mixed Use or Industrial PUD, & P-SP	14 days per year	Township Planner, Fire Department & Building Official	(4)
Special Events (Major) Carnivals, festivals, motor vehicle shows, rodeos, animal shows, charity events, & other activities open to the public	Special Land Use in B-2, B-3, I-1, Commercial, Mixed Use or Industrial PUD & P-SP	3 days per year	Planning Commission & Fire Department	(5)

¹ Where a temporary commercial use or event is proposed that is not specifically addressed above, the Township Planner shall determine the appropriate review and approval procedures based upon similarity with the uses above.

(1) Seasonal Accessory Roadside Stands

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- Requires a temporary use permit from the Township. Prior to permit issuance, the applicant must provide the Township with a site plan, drawn to scale, clearly indicating required off-street parking, means of

ingress/egress, and location of all proposed signs, equipment, and structures. After inspection and approval of the premises and approval of the site plan, a seasonal accessory use permit may be issued.

5 b. As a condition of the permit, the subject site shall be completely restored to its original condition within seven (7) days after expiration of the seasonal accessory use permit. All equipment, shelving, and/or temporary structures shall be promptly removed.

10 c. Failure by the applicant to maintain a safe parking area and proper means of ingress/egress shall constitute grounds for immediate termination of a seasonal accessory use permit.

(2) Temporary Accessory Residential Sales

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a. Any of the temporary accessory residential sales are allowed without a temporary use permit for a period of time, not to exceed four (4) days, within a six (6) month period, provided that such use does not create a traffic hazard or otherwise disturb the peace and tranquility of the subject neighborhood.

b. Temporary accessory residential sales in operation for a period of time in excess of four (4) days, shall require a temporary use permit from the Township Planner. Prior to the issuance of a permit, the applicant shall demonstrate the availability of adequate parking in a designated area off of the road shoulder, and shall provide traffic control if required, and shall provide such other personnel, facilities, or devices as may be required for the health and safety of the general public.

c. A temporary use permit shall be granted to the property owner of record only.

d. Temporary accessory residential sales shall not include the addition or alteration of any permanent buildings.

(3) Seasonal Commercial Outdoor Sales

- a. Requires a temporary use permit from the Township. Prior to permit issuance, the applicant must provide the Township with a site plan,

drawn to scale, clearly indicating required off-street parking, means of ingress/egress, and location of all proposed signs, equipment, and structures. After inspection and approval of the premises and approval of the site plan, a seasonal accessory use permit may be issued.

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b. As a condition of the permit, the subject site shall be completely restored to its original condition within seven (7) days after expiration of the temporary use permit. All equipment, shelving, and/or temporary structures shall be promptly removed.

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c. Failure by the applicant to maintain a safe parking area and proper means of ingress/egress shall constitute grounds for immediate termination of a temporary use permit.

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d. If the use is accessory to an established principal use, the use must be in compliance with **Section 13-01**.

(4) Special Events (Minor)

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a. Special events shall be subject to the Livingston County Sanitary Code, the regulations of the Livingston County Health Department, Livingston County Road Commission, and appropriate the Brighton Township Code of Ordinances.

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b. Special events are restricted to hours of operation set forth by the Township Planner, Fire Department and/or Building Official.

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c. Special events involving the assembly of people in temporary structures shall be expressly prohibited until such time as proper plans have been reviewed and approved by the Building and Fire Officials of the Township.

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d. Parking shall be computed at the rate of one (1) space for each two (2) persons predicated on the imposed occupancy load, where assembly within temporary structures is proposed. Parking for outdoor activities shall be established at the rate of one (1) parking space for each thirty-three (33) square feet of usable area. Parking shall be provided on-site or within five hundred (500) feet of the site(s).

- e. Dust control shall be maintained by the applicant throughout the duration of the temporary use permit, in areas of driveway and parking, through the use of approved dust control chemicals.
- 5 f. Traffic control shall be present, if required by the Township Planner, Fire Department and/or Building Official throughout the duration of a temporary use permit.
- 10 g. Failure to comply with any of the foregoing shall render the temporary use permit void.

(5) Special Events (Major)

- a. Special events shall be subject to the Livingston County Sanitary Code, the regulations of the Livingston County Health Department, Livingston County Road Commission, and the Brighton Township Code of Ordinances.
- 15 b. Special events are restricted to hours of operation set forth by the Planning Commission.
- 20 c. Special events involving the assembly of people in temporary structures shall be expressly prohibited until such time as proper plans have been reviewed and approved by the Building and Fire Officials of the Township.
- 25 d. Parking shall be computed at the rate of one (1) space for each two (2) persons predicated on the imposed occupancy load, where assembly within temporary structures is proposed. Parking for outdoor activities shall be established at the rate of one (1) parking space for each thirty-three (33) square feet of usable area. Parking shall be provided on-site or within five hundred (500) feet of the site(s).
- 30 e. Dust control shall be maintained by the applicant throughout the duration of the temporary use permit, in areas of driveway and parking, through the use of approved dust control chemicals.
- 35 f. Traffic control shall be present, if required by the Planning Commission, throughout the duration of a temporary use permit.

5 g. Failure to comply with any of the foregoing shall render the temporary use permit void.

10 (b) **Temporary Buildings or Structures.** All temporary accessory buildings or structures shall hereafter be regulated by the following requirements:

15 (1) Only one (1) temporary building or structure shall be permitted on a lot, in addition to a private garage (attached or detached), and one (1) additional permanent accessory building.

20 (2) Temporary accessory buildings or structures shall include pre-manufactured steel, aluminum, metal, fiberglass, and/or wood sheds. Conventionally constructed temporary buildings or structures shall be constructed to the minimum standards of the Michigan State Construction Code, less concrete or permanent foundations.

25 (3) A temporary building or structure shall not possess a permanent foundation. Such structures shall be anchored in position through the use of iron or steel stakes, located at or near all corners, or anchorage may be provided by an approved alternate device. Additionally, all temporary accessory structures shall be elevated to a minimum height of four (4) inches above the ground on timbers, planks, or bricks, and shall be maintained free of vermin infestation. In no instance shall a temporary building or structure be held in position through the use of guy wires, ropes, or cables.

30 (4) The maximum floor area of a temporary building or structure shall not exceed one hundred fifty (150) square feet, and/or twenty-five percent (25%) of the rear yard.

35 (5) A temporary building or structure shall be located and confined to the rear yard, at least ten (10) feet from any and all structures on the site. In the case of a lake or river front lot, the temporary building or structure shall be located and confined to the yard adjacent to the road or road frontage side, and shall be screened or landscaped and observe the minimum front yard setback from the road, as for main building of the district where located.

(6) Temporary buildings or structures shall not be located nearer than twenty

(20) feet to any side or rear lot line.

(7) Temporary buildings or structures shall not exceed ten (10) feet in height.

5 (8) Any temporary building or structure associated with a temporary accessory use or seasonal accessory use (both as defined), shall comply with the regulations set forth in **Section 6-02**. Temporary accessory structures, as regulated in **Section 3-07**, shall not require a hearing before the Zoning Board of Appeals, prior to erection and utilization.

10 (9) A zoning or land use permit shall be secured for any temporary accessory building or structure, and a fee paid for processing, pursuant to **Section 23-07**.

15 (10) Temporary accessory structures shall be permitted in the Residential Districts, after approval by the Township Building Official. Temporary accessory structures shall be expressly prohibited in all other districts.

20 (11) Temporary accessory structures shall conform to the minimum side yard setback requirements specified in **Article 3**.

(Ord. #234, 12/28/06), (Ord. #231, 12/27/05)

Sec. 13-15 Voting Place

25 The provisions of this Ordinance shall not be so construed as to interfere with the temporary use of any property as a voting place in connection with a municipal or other public election.

30 Sec. 13-16 Wireless Communication Facilities

35 (a) **Purpose and Intent.** The regulations of this Section are intended to conform with federal laws and administrative rules governing facilities needed to operate wireless communication systems and to set forth procedures and standards for review and approval for the location of these facilities within Brighton Township. It is the Township's intent to reasonably regulate the location and design of these facilities to retain the integrity of neighborhoods and the character, property values and aesthetic quality of the Township. Given the increase in the number of wireless communication facilities

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requested as a result of the new technology and the Federal Telecommunications Act of 1996, it is the policy of the Township that all users should co-locate on Attached Wireless Communication Facilities and Wireless Communication Support Structures. Co-location is proposed in order to assure the most economic use of land and to prevent the proliferation of duplicative services. In recognition of the Township's concern that technological advances may render certain Wireless Communication Facilities obsolete or unnecessary in the future, requirements are set forth for the removal of unused or unnecessary facilities in a timely manner and provide security for removal.

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(b) **Zoning Districts and Approval Process for Wireless Communication Facilities.** Wireless Communication Facilities may be located within the Township in accordance with Table 13-16.

Table 13-16 Wireless Communication Facilities		
Type/Location of Wireless Communication Facility	Districts Permitted	Approval Procedure
Attached to Existing Structures		
Attached to an existing conforming structure that will not be materially altered or changed in appearance	All Non-Residential Districts	Approval by the Township Planner
Attached to an existing utility pole that will not be modified or materially alter the pole or impair sight lines or compromise safety	All Districts	Approval by the Township Planner, provided letter of acceptance is provided by the utility company
Co-location upon an attached wireless communication facility previously approved for such co-location	All Districts	Approval by the Township Planner
Located on a Municipally Owned Site		
Monopole up to 150 feet in height ¹	All Districts	Site Plan approval in accordance with <i>Article 18</i> .
Located on a Site Owned by Another Governmental Entity, Religious Institution, or Public School		
Monopole up to 100 feet in height ¹	All Districts	Special Land Use and Site Plan approval in accordance with <i>Articles 18 & 19</i> .
New Facility not Addressed Above		
Monopole up to 120 feet tall ¹	All Non-Residential Districts	Special Land Use and Site Plan approval in accordance with <i>Articles 18 & 19</i> .
Monopole any height	I-1 District	Special Land Use and Site Plan approval in accordance with <i>Articles 18 & 19</i> .
Lattice tower where it can be demonstrated that a monopole is not feasible.	I-1 District	Special Land Use and Site Plan approval in accordance with <i>Articles 18 & 19</i> .

¹ Height may be increased ten (10) feet where determined necessary to provide future co-location.

(c) **Application Requirements.** The following information shall be provided

with the application, in addition to other submittal requirements for sketch plan or site plan, as required in *Article 18*.

5 (1) Signed certification by a professional engineer licensed by the State of Michigan with regard to the manner in which the proposed structure will fall in the event of damage, accident or injury (i.e. "fall zone"), and that the setback area provided shall accommodate the structure should it fall or break and provide a reasonable buffer in the event the structure fails.

10 (2) A description of the performance guarantee to be posted at the time of receiving a building permit for the facility to ensure removal of the facility when it is abandoned or is no longer needed. The applicant shall demonstrate that funds will be available to the Township for removal of any structure used for wireless communication in an amount which reasonably reflects the cost of removal of the facility and restoration of the property or structure upon which the facility is located or placed. Adequate funds shall also be provided to cover the Township's administrative costs in the event that the applicant or its successor does not remove the Wireless Communication Facility in a timely manner.

15 (3) The security shall, at the election of the Planning Commission, be in the form of: cash; security bond; letter of credit; or, an agreement in a form approved by the Township Attorney and recordable at the office of the Register of Deeds, establishing a promise of the applicant and owner of the property, or their successors, to remove the facility in a timely manner as required under this Section of the Ordinance. It shall further be provided that the applicant, owner or successor, shall be responsible for payment of any costs or attorney fees incurred by the Township in securing removal.

20 (4) A map that illustrates existing and known proposed wireless communication facilities within Brighton Township and adjacent communities, which are relevant in terms of potential co-location or to demonstrate the need for the proposed facility. To the extent the information in question is on file with the Township, the applicant shall be required only to update as needed. Any information which is trade secret and/or other confidential commercial information which, if released would result in commercial disadvantage to the applicant, may be submitted with a request for confidentiality in connection with the development of

governmental policy MCL 15.243(l)(g). This Ordinance shall serve as the promise to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated in order to bring it to the attention of the Township.

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(5) For all new facilities, in recognition of the Township's policy to promote co-location, a written agreement, transferable to all assessors and assigns, that the operator shall make space available on the facility for co-location.

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(6) The name, address and phone number of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated during all times the facility is on the premises.

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(d) Design Standards Applicable to All Facilities. In addition to the criteria of Site Plan Review listed in *Article 18* and Special Land Use Review listed in *Article 19*, all wireless communication facilities shall be constructed and maintained in accordance with the following requirements and standards:

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(1) Facilities shall be located and designed to be harmonious with the surrounding areas. The Planning Commission may require unique design of the structure to either diminish the visual impact or to create an architectural feature that will contribute to or enhance community character.

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(2) A permit for the construction and use of a new wireless communication facility shall not be granted until the applicant demonstrates a feasible co-location is not available for the coverage area and capacity needs.

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(3) All new and modified wireless communication facilities shall be designed and constructed to accommodate co-location, with a written agreement in a format approved by the Township Attorney.

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(4) Landscaping shall be provided to screen the structure base, accessory buildings and enclosure from the views of adjacent uses and public rights-of-way.

(5) Elevations of the accessory buildings shall be provided. All accessory

buildings shall be constructed of brick, provided the Planning Commission may waive this requirement for a building that is located in the Industrial District and is not visible from a public right-of-way or Non-Industrial District.

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(6) Fencing shall be provided for protection of the support structure and security from children and other persons who may otherwise access facilities.

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(7) Any nonconforming situations on the site, such as outdoor storage, signs, inadequate landscaping, unpaved parking, lack of a sidewalk, improper lighting or similar conditions shall be brought into conformance prior to the erection of the wireless communication facility. If existing buildings or structures are not in conformance with the current zoning standards, improvements shall be made to decrease the nonconformity or additional landscaping shall be provided to reduce the impact of the nonconformity and the wireless facility.

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(8) The operator shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.

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(9) The applicant shall demonstrate that the requested height of the new or modified support structure and antenna shall be the minimum height necessary for reasonable communication by the applicant, including additional height to accommodate future co-location where appropriate.

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(10) Minimum required setbacks for new facility or support structure.

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a. From any Residential District - the height of the structure, plus twenty five (25) feet, provided the engineering information required in (c)(1) above, is provided. The person or body with authority to approve the facility may decrease this setback to that provided in c. below, upon a finding that no residential use exists or is expected on the adjacent site.

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b. From any existing or proposed rights-of-way or other publicly traveled roads or non-motorized improved pathways - one half (1/2) the height of the structure, plus twenty five (25) feet, provided the engineering information required in (c)(1) above, is provided; otherwise the setback shall be the height of the facility.

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c. From any Non-Residential District - one half (1/2) the height of the structure, plus ten (10) feet, provided the engineering information required in (c)(1) above, demonstrates such setback is adequate.

10 (11) Accessory buildings shall be a maximum of fourteen (14) feet high and shall be set back in accordance with the requirements for main buildings in that zoning district.

15 (12) There shall be unobstructed access to the support structure, for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement. This access shall have a width and location determined by such factors as: the location of adjacent thoroughfares and traffic and circulation within the site; utilities needed to service the tower and any attendant facilities; the location of buildings and parking facilities; proximity to residential districts and minimizing disturbance to the natural landscape; and the type of equipment which will need to access the site.

20 (13) Where an attached wireless communication facility is proposed on the roof of a building if the equipment enclosure is proposed as a roof appliance or penthouse on the building, it shall be designed, constructed and maintained to be architecturally compatible with the main building. The equipment enclosure may be located within the main building or may be an accessory building. If proposed as an accessory building, it shall conform with all district requirements for main buildings, including yard setbacks.

25 (14) The support system shall be constructed in accordance with all applicable building codes and shall include the submission of a soils report from a geotechnical engineer, licensed in the State of Michigan. This soils report shall include soil borings and statements confirming the suitability of soil conditions for the proposed use.

30 (15) The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission shall be noted. Any aviation hazard lighting shall be detailed on the plans.

35 (16) A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility.

The plan shall be designed to ensure the long term, continuous maintenance to a reasonable standard.

5 (e) **Removal.** As a condition of every approval of a wireless communication facility, adequate provision shall be made for removal of all or part of the facility by users and owners upon the occurrence of one (1) or more of the following events:

10 (1) When the facility has not been used for one hundred eighty (180) days or more. For purposes of this Section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of non-use.

15 (2) Six (6) months after new technology is available at reasonable cost, as determined by the Planning Commission, which permits the operation of the communication system without the requirement of the support structure.

20 (3) The situations in which removal of a facility is required, as set forth in paragraph (1) above, may be applied and limited to portions of a facility.

25 (4) Upon the occurrence of one (1) or more of the events requiring removal, specified in paragraph (1) above, the property owner or persons who had used the facility shall immediately apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition as reasonably determined by the Township Planner.

30 (5) If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days of the applicable deadline, and after at least thirty (30) days written notice, the Township may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected and/or enforced from or under the security posted at the time application was made for establishing the facility.

(f) Co-Location

(1) Statement of Policy. It is the policy of the Township to minimize the overall number of newly established locations for Wireless Communication Facilities and Wireless Communication Support Structures within the Township and to encourage the use of existing structures for Attached Wireless Communication Facilities. If a provider fails or refuses to permit co-location on a facility owned or controlled by it, where co-location is feasible, the result will be that a new and unnecessary additional structure will be required, in contradiction with Township policy. Co-location shall be required unless an applicant demonstrates that co-location is not feasible.

(2) Feasibility of Co-Location. Co-location shall be deemed "feasible" for the purpose of this Section where all of the following are met:

- a. The wireless communication provider or property owner where co-location is proposed will accept market rent or other market compensation for co-location and the wireless communication provider seeking the facility will pay these rates.

b. The site on which co-location is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.

- c. The co-location being considered is technically reasonable, e.g. the co-location will not result in unreasonable interference, given appropriate physical and other adjustments in relation to the structure, antennas and the like.

(g) Nonconforming Facilities and Penalties for not Permitting Co-Location.

If a party who owns or otherwise controls a wireless communication facility fails or refuses to alter a structure to accommodate a proposed and otherwise feasible co-location, that facility shall thereupon and thereafter be deemed to be a nonconforming structure and use, and shall not be altered, expanded or extended in any respect. In addition, if a party refuses to allow co-location in accordance with the intent of this Section, and this action results in construction of a new tower, the Township may refuse to approve a new wireless communication support structure from that party for a period of up to five (5) years. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates

5 entitlement to variance relief which, in this context, shall mean a demonstration that enforcement of the five (5) year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services, or that enforcement would have the effect of prohibiting the provision of personal wireless communication services.

10 (h) **Variances.** The Zoning Board of Appeals may consider a variance from the requirements of this Section, based upon a finding that one (1) or more of the following factors exist, as appropriate for the type of variance requested:

15 (1) **Location.** The applicant has demonstrated that a location within a district or location in accordance with the requirements of this Section can not reasonably meet the coverage or capacity needs of the applicant.

20 (2) **No Co-Location.** The applicant has demonstrated that a feasible co-location is not available for the coverage area and capacity needs because existing structures can not support the facility, that co-location would result in unreasonable interference, or that reasonable financial terms are not available for co-location.

25 (3) **Setback.** The applicant has provided engineering information that documents that the tower is self collapsing and that the setback area provided shall accommodate the structure should it fall or break and provide a reasonable buffer in the event the structure fails.

30 (4) **Height.** The height requested is due to signal interference due to topography, tall buildings, masses of trees, or other obstructions, or would reduce the number of towers to the benefit of the Township.

35 (5) **All.** The applicant has proposed means to mitigate any negative impacts through provision for future co-location, if found to be appropriate by the Township, and special design of the facility and site.

(6) **All.** The wireless communication and accessory facilities shall be designed to be compatible with the existing character of the proposed site, neighborhood and general area such as a steeple, bell tower, or similar form.

CHARTER TOWNSHIP OF BRIGHTON ZONING ORDINANCE

(Ord. #243, 8/1/08), (Ord. #234, 12/28/06)