

CHAPTER 1320

General Provisions and Definitions

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CROSS REFERENCES

Zoning and planning in home rule cities - MCLA 117.4i
 Regulation of location of trades, building and uses by local authorities - MCLA 125.581
 Regulation of buildings; authority to zone - MCLA 125.582
 Regulation of congested areas - MCLA 125.583
 Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property - MCLA 125.583a
 Application of Zoning Code to signs - B & H 1476.15

1320.01 TITLE.

This Title One of Part Thirteen - the Planning and Zoning Code, shall be known and may be cited as the "Zoning Ordinance" or the "Zoning Code."

1320.02 PURPOSE.

This Zoning Code is enacted for the public health, safety and welfare.

1320.03 INTERPRETATION; CONFLICT OF LAWS.

This Zoning Code is the minimum requirement for promoting the public health, safety and general welfare. If it imposes more restrictions than State law or other City ordinances, the provisions of this Zoning Code shall govern. If the *State Housing Law* (MCL 124.401 et seq; MSA 5.2771, et seq) or the *Airport Zoning Act* (MCL 259.431, et seq; MSA 5.3475) or other statutes or ordinances have stricter regulations, the provisions of the statute or other ordinance shall govern. This Zoning Code is not intended to interfere with or annul any easement, covenant or other agreement between parties. Section titles or headings and any entire section entitled "Purpose" shall be interpretive aids only and shall not be construed to impose any substantive or procedural requirement.

1320.04 CHANGES AND AMENDMENTS.

(A) **Procedure.** The City Commission, on its own motion or on petition, may amend or repeal zoning boundaries or regulations after submitting them to the Planning Commission for its recommendation, report and public hearing. The City Commission may also hold a public hearing with the notice it deems advisable. A hearing before the

Planning Commission shall be granted a person interested at the time of its public hearing. The procedure for the Planning Commission public hearing shall be as follows:

- (1) At least 15 days notice of the public hearing shall be given in an official newspaper of general circulation in the City.
 - (2) At least 15 days notice of the time and place of the public hearing shall be mailed to each airport manager, electric, gas, pipeline, telephone, telecommunications provider, public utility company and to each railroad company owning or operating any public utility or railroad within the districts affected that registers its name and mailing address with the City Clerk for the purpose of receiving the notice. An affidavit of mailing shall be maintained.
 - (3) After the ordinance and maps have first been approved by the City Commission, if an individual property or several adjacent properties are proposed for rezoning, notice of the proposed rezoning and hearing shall be given at least 15 days before the hearing to:
 - (a) The owners of the property in question, unless 11 or more adjacent properties are proposed for rezoning; and All persons to whom real property is assessed within 300 feet of the boundary of the property in question, unless 11 or more adjacent properties are proposed for rezoning; and
 - (b) All persons to whom real property is assessed within 300 feet of the boundary of the property in question, unless 11 or more adjacent properties are proposed for rezoning; and
 - (c) At least one occupant of each dwelling unit or spatial area owned or leased by different persons within 300 feet of the boundary of the property in question. Where a single structure contains more than four dwelling units or distinct spatial areas, notice may be given to the manager or owner of the structure with a request to post the notice at the primary entrance to the structure. The occupants of all structures within 300 feet of the boundary of the property in question. Where the name of the occupant is not known, the term "occupant" may be used in making notification unless 11 or more adjacent properties are proposed for rezoning.
- (B) **Notice.** The notice shall contain the following:
- (1) A description of the proposed zoning;
 - (2) A description of the subject property including a listing of all existing street addresses within the property where they exist, unless 11 or more adjacent properties are proposed for rezoning;
 - (3) The time and place of the public hearing; and
 - (4) When and where written comments will be received.
- (C) **Protest.** If a protest of the proposed amendment is presented to the City Commission at or before final action on the amendment and it is properly signed by the owners of at least 20 percent of the area of land included in the proposed change, excluding publicly owned land, or by the owners of at least 20 percent of the area of and included within an area extending out 100 feet from any point on the boundary of land included in the proposed change, excluding publicly owned land, then such amendment shall be passed only upon five affirmative votes of the City Commission.
- (D) **Hearing Request.** The City Commission shall grant a hearing on a proposed ordinance

provision to a property owner who requests a hearing by certified mail, addressed to the City Clerk.

- (E) **Publication.** Following the adoption of a zoning ordinance or amendment by the City Commission, a notice of adoption shall be published in a newspaper of general circulation in the City within 15 days after adoption. The notice shall include the following information:
 - (1) In the case of a newly adopted zoning ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by the City Commission of the City of Traverse City;"
 - (2) In the case of an amendment to an existing ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment;
 - (3) The effective date of the ordinance;
 - (4) The place and time where a copy of the ordinance may be purchased or inspected.
- (F) **Court Decree.** An amendment for the purpose of conforming a provision of the Zoning Ordinance to a decree of a court of competent jurisdiction may be adopted by the City Commission and the notice of the adopted amendment published without referring the amendment to the Planning Commission.

(Ord. 718. Passed 2-5-07. Ord. 749. Passed 5-21-07.)

1320.05 APPLICATION OF CODE; COMPLIANCE REQUIRED.

Except as otherwise allowed by this Zoning Code:

- (A) No building or structure shall be built, rebuilt, converted, enlarged, moved or structurally altered, and no building or land shall be used, except for a use allowed in that district.
- (B) No building or structure shall be built, rebuilt, converted, enlarged, or structurally altered except in conformity with the height, setback, bulk and other dimensional limits for that district.
- (C) No land shall be cleared, no building or structure shall be built or rebuilt, converted, enlarged or structurally altered, and no parking area built or enlarged except after applying for and receiving a land use permit.
- (D) No building shall be built or increased in area except in conformity with the off-street parking and loading regulations of the district in which such building is located unless it receives a special land use permit or planned unit development permit or parking waiver that changes these regulations.
- (E) The minimum setbacks, parking spaces and other open spaces, including lot area per dwelling, required by this Zoning Code for any building hereafter built or structurally altered, shall not be encroached upon or considered as parking, setback, open space or lot area requirement for any other building, nor shall any lot area be reduced beyond the district requirements of this Zoning Code.
- (F) No setback or lot shall be reduced in dimensions or area below the minimum requirements set forth herein except as a result of governmental action. Lots created after the effective date of this Zoning Code shall meet at least the minimum requirements of this Code.
- (G) No lot, once established or improved with a building or structure shall be divided unless each lot resulting from the division conforms with all of the requirements of this Code.
- (H) Conditional Rezoning.

- (1) Purpose. It is the intent of this Section to provide a process by which an applicant seeking a rezoning of land may propose a Conditional Zoning Offer, with conditions and commitments attached thereto, as part of the application for a requested rezoning pursuant to MCL 125.3405. These provisions shall be in accord with the provisions of the Zoning Act.
- (2) Zoning District. An applicant requesting a rezoning may offer a Conditional Zoning Offer, as defined in this Section. The required application and process shall be the same as for rezoning requests, except as modified by the requirements of this Section.
- (3) Definitions. The following definitions shall apply to this Section.
 - (a) “Conditional Rezoning Offer” means conditions voluntarily proposed by a landowner for the use and development of land in exchange for the rezoning of the land. These conditions shall constitute requirements for, and in connection with, the development or use of the property approved under a Zoning Agreement.
 - (b) “Zoning Agreement” means a written agreement offered by the landowner and approved and executed by the landowner and the City and recorded with the Register of Deeds in the county where the property covered by the Zoning Agreement is located, incorporating the Conditional Rezoning Offer along with any requirements necessary to implement the Conditional Rezoning Offer. When necessary, the Zoning Agreement shall also include and incorporate, by reference, a Site Plan that illustrates the implementation of the Conditional Rezoning Offer. This Site Plan and Zoning Agreement shall not replace the requirement for a Site Plan as provided by the Zoning Ordinance.
- (4) Eligibility.
 - (a) A landowner may submit a proposed Conditional Rezoning Offer and Zoning Agreement with an application for a rezoning or at any time during the rezoning process.
 - (b) To be eligible, an applicant shall propose a Zoning District for the parcel at issue to be rezoned to and voluntarily offer use and development conditions for the affected parcel to be set forth in a Zoning Agreement, which are equally or more restrictive than the regulations that would otherwise apply under the proposed Zoning District.
- (5) Conditional Zoning Offer.
 - (a) The Conditional Rezoning Offer shall bear a reasonable and rational relationship or benefit to the property in question.
 - (b) The Conditional Rezoning Offer may not offer uses or developments of greater intensity or density, or that are not permitted in the proposed rezoned Zoning District.
 - (c) Any use or development proposed that would require a variance from height, area, setback or similar dimensional requirements in the Zoning Chapter will not be allowed unless and until a variance is granted by the Board of Zoning Appeals pursuant to the requirements of Chapter 1324.
 - (d) Any use or development proposed that would require approval of a Special Land Use or Site Plan Review will not be allowed unless approved

- as required by the Zoning Ordinance prior to establishment or commencement of development of the use.
- (e) The Conditional Rezoning Offer may be amended during the process of rezoning consideration provided that any amended or additional conditions are offered voluntarily by the landowner. A landowner may withdraw part of or amend its Conditional Zoning Offer any time prior to the final rezoning action of the City Commission by amendment of the application and Zoning Agreement. If such withdrawal or amendment occurs following the Planning Commission's public hearing on the original rezoning request, the amended application shall be referred to the Planning Commission for a new public hearing.
 - (f) A landowner may entirely withdraw its Conditional Rezoning Offer at any time prior to the adoption of the rezoning and Zoning Agreement by the City Commission.
- (6) Zoning Agreement. The Zoning Agreement shall incorporate the Conditional Rezoning Offer and shall include additional terms as necessary to implement the Zoning Agreement. In addition, the Zoning Agreement shall include the following:
- (a) That the Zoning Agreement and the Conditional Rezoning Offer were proposed voluntarily by the landowner, and that the City relied upon and granted the rezoning request in consideration of the Zoning Agreement and the Conditional Rezoning Offer.
 - (b) That the Zoning Agreement and its terms and conditions are authorized by all applicable state and federal law and that the Zoning Agreement is valid.
 - (c) That the property shall be developed or used in a manner that conforms to the requirements of the rezoned Zoning District and the Zoning Agreement.
 - (d) That the Zoning Agreement shall be binding upon and inure to the benefit of the landowner and the City, and their respective heirs, successors, assigns, receivers or transferees.
 - (e) That, if the rezoning becomes void under this Section, no development shall take place and no permits shall be issued unless and until a new Zoning District classification for the property has been established or a new rezoning been approved.
 - (f) That each of the requirements and conditions in the Zoning Agreement are necessary and reasonably related and roughly proportional in nature and extent to the impact created by the uses or activities authorized in the Zoning Agreement.
 - (g) That no part of the Zoning Agreement shall permit any activity, use, or condition that would otherwise be prohibited in the Zoning District to which the property is rezoned.
 - (h) The Zoning Agreement shall also contain a provision authorizing and providing a fund for the City to maintain proposed privately owned common areas within the development in the event that the property owner(s) fail(s) to timely perform necessary maintenance.

(7) Application Procedure.

- (a) An application for Conditional Rezoning shall include a Conditional Rezoning Offer, the proposed Zoning Agreement in a recordable format acceptable to the City, and any plans necessary to illustrate the Conditional Rezoning Offer. The Planning Director shall determine the adequacy of any submitted plan and may request additional detail if deemed necessary to properly demonstrate the extent of the proposed Offer(s).
- (b) The application may be amended during the process of consideration, provided that any amended or additional Conditional Rezoning Offers are proposed and entered voluntarily by the applicant.
- (c) The Zoning Agreement shall be reviewed by the City Attorney prior to the required Planning Commission public hearing to confirm that the Zoning Agreement is in a form acceptable for recording with the Register of Deeds in the county in which the property covered by the Zoning Agreement is located.

(8) Review Procedures.

- (a) Application Completeness. Upon submittal of a completed application in the proper form, the Planning Director shall assign the application a public hearing date and time.
- (b) Official Review. The Planning Director shall circulate site plans to the relevant agencies or officials for comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the application is recommended.
- (c) Planning Commission Review. The Planning Commission shall undertake a study of the proposed rezoning and set the matter for a public hearing in accordance with the requirements of the Zoning Act and the Planning Commission Rules of Procedure for consideration of any rezoning request.
- (d) Review Standards. The Planning Commission shall consider whether the proposed Zoning Agreement and Conditional Rezoning offer meet the standards in MCL 125.3201(1).
- (e) Recommendation to City Commission. The Planning Commission may recommend approval or denial of the Conditional Rezoning and Zoning Agreement.
- (f) City Commission Decision. Upon receipt of the Planning Commission's recommendations, the City Commission shall approve or deny the Conditional Rezoning and Zoning Agreement.

(9) Implementation and Effective Date.

- (a) Upon adoption of a rezoning and Zoning Agreement, notice of adoption shall be published in accordance with the requirements of the Zoning Act.
- (b) The Zoning Map shall be amended to specify the Zoning District to which the property is rezoned, plus the letter "A" to indicate that the property is subject to a Zoning Agreement. The City Clerk shall maintain a listing of all properties subject to Zoning Agreements and shall provide copies of the Agreements upon request.
- (c) The applicant shall record the approved Zoning Agreement with the

Register of Deeds in the county in which the property covered by the Zoning Agreement lies within thirty (30) business days following approval by the City Commission. Evidence of recording shall be provided to the City Clerk within forty-five (45) business days of approval by the City Commission.

- (d) The rezoning and Zoning Agreement shall commence and be in full force thirty-one (31) calendar days after the date the City Commission adopted the amendment and authorized the Agreement, unless otherwise provided by the City Commission.
 - (e) The use and development of the property(ies) shall conform to all of the requirements regulating use and development within the new Zoning District and the requirements of the Zoning Agreement. In the event of a conflict, the Zoning Agreement's requirements shall prevail.
 - (f) Prior to development, any other applicable zoning approval or other approval requirement imposed by this Chapter or other City ordinances shall be met.
- (10) Duration of Approval.
- (a) Unless extended by the City Commission for good cause, the Rezoning and Zoning Agreement shall expire and be void and of no effect two (2) years after adoption of the Conditional Rezoning and Zoning Agreement, unless the development set forth in the Zoning Agreement is at least 75 percent completed, and after 36 months if not 100 percent completed. Completion percentages shall be determined in the sole discretion of the Planning Director, subject to appeal to the Board of Zoning Appeals.
 - (b) Should the Rezoning and Zoning Agreement expire, all development on the subject property shall cease, and no further development shall be permitted. Until action satisfactory to the City is taken to bring the property into compliance with the Zoning Agreement, the City may withhold or, following notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of any other lawful action to achieve compliance.
 - (c) Notwithstanding the above, if the property owner applies in writing for an extension of the Zoning Agreement at least 60 days prior to the expiration date, the City Commission may, after recommendation by the Planning Commission, grant an extension of up to one (1) year. The extension may be granted if the property owner is able to demonstrate that the reasons for the extension were reasonably beyond his or her control and that the project has a reasonable expectation of proceeding. No further extensions shall be granted.
 - (d) Nothing in the Zoning Agreement, nor any statement or other provision shall prohibit the City from rezoning all or any portion of the property that is part of the Agreement to another Zoning District. Any rezoning shall be conducted in compliance with the Zoning Ordinance and the Zoning Act.
- (11) Continuation of Approval.
- (a) Provided that all development or use of the property in question is in compliance with the Zoning Agreement, a use or development authorized

thereunder may continue indefinitely.

- (b) Failure to comply with the Zoning Agreement at any time after approval shall constitute a violation of this Zoning Ordinance and may constitute a breach of the Zoning Agreement, and further use of the property may be subject to legal remedies available to the City, including the Zoning Agreement becoming void.
- (12) Reversion or Rezoning.
- (a) If the Zoning Agreement becomes void as provided in this Section, then the land shall revert to the former Zoning District, as required by the Zoning Act. The reversion process shall be initiated by the Planning Commission pursuant to the rezoning procedure set forth in the Zoning Ordinance and the Michigan Zoning Enabling Act.
 - (b) Upon reversion, the City Clerk shall record with the Register of Deeds in the county in which the property covered by the Zoning Agreement lies-a notice that the Zoning Agreement is no longer in effect.

Ord. 905. Passed 2-7-11. Ord. 922, Passed 8-15-11

1320.06 SEVERABILITY.

If any provision of this Zoning Code is declared invalid by a court, such decision shall not affect the validity of this Zoning Code or any part other than the part declared to be invalid.

1320.07 DEFINITIONS.

As used in this Chapter:

Abutting means a lot or parcel which shares a common border with the subject lot or parcel.

Accessory building means a building or structure customarily incidental and subordinate to the principal building and located on the same lot as and spatially separated from the principal building.

Accessory dwelling unit means a smaller, secondary home on the same lot as a principal dwelling. Accessory dwelling units are independently habitable and provide the basic requirements of shelter, heating, cooking and sanitation. There are two types of accessory dwelling units:

- a. Accessory dwelling in an accessory building (examples include converted garages or new construction)
- b. Accessory dwelling that is attached or part of the principal dwelling (examples include converted living space, attached garages, basements or attics; additions; or a combination thereof).

Accessory use means a use customarily incidental and subordinate to the principal use of the land or building and located on the same lot as the principal use.

Adult Foster Care Family Home means a private residence with the approved capacity to receive not more than 6 adults who shall be provided foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home State licensee shall be a member of the household and an occupant of the residence.

Adult foster care small group home means a State licensed adult foster care facility with the approved capacity for not more than 12 adult residents to be provided foster care.

Affordable housing means housing units for eligible low-income households where the occupant is paying no more than 30% of gross income for housing costs.

Aggrieved person means a person who has suffered a substantial damage from a zoning decision not in common to other property owners similarly situated, and who has actively opposed the decision in question.

Airport terminal means the main passenger location of an airport and includes all office, hotel and retail uses commonly occurring at such locations.

Alley means a way which functions primarily as a service corridor and provides access to properties abutting thereon. "Alley" does not mean "street".

Alteration means any change, addition or modification in construction or type of occupancy; any change in the structural members of a building, such as walls or partitions, columns, beams or girders.

Basement means that portion of a building which is partly or wholly below finished grade, but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement, as defined herein, shall not be counted as a story (see Figure 1-1). A cellar is a basement.

Berm means a constructed mound of earth rising to an elevation above the adjacent ground level of the site where located which contributes to the visual screening of the area behind the berm.

Block means a unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any other barrier to the continuity of development.

Block, face. "Face block" means that portion of a block or tract of land facing the same side of a single street and lying between the closest intersecting streets.

Boat house means an enclosed or partially enclosed structure designed for the use and storage of private watercraft and marine equipment.

Boat livery means any structure, site or tract of land utilized for the storage, servicing, docking or rental of watercraft for a fee.

Brew pub means a facility as defined such by the State of Michigan.

Building means any structure designed or built for the enclosure, shelter or protection of persons, animals, chattels or property of any kind.

Building, height of. See "Height of building".

Building, principal. "Principal building" means a building within which is conducted the main or principal use of the lot upon which it is located.

Cemetery means property, including crematories, mausoleums, and/or columbariums, used or intended to be used solely for the perpetual interment of deceased human beings or household pets.

Clinic means an establishment where human patients who are not lodged overnight are admitted for examination and treatment by a group of physicians or dentists or similar professions.

Club means an organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics, agriculture or similar activities, but not operated for profit and open only to members and not the public.

Cluster means a development design technique that concentrates building on a portion of the site to allow the remaining land to be used for recreation, common open space and preservation of environmentally sensitive features.

Communication Antenna means a device, dish or array used to transmit or receive telecommunications signals mounted on a communication tower, building or structure that is greater than one square meter in a residential district or two square meters in a non-residential district. Antenna does not include federally-licensed amateur radio station, television or radio receive-only antennas or antennas used solely for personal use. Communication antennas are not

“essential services,” public utilities or private utilities.

Communication tower or tower means any structure that is primarily designed and constructed for the purpose of supporting one or more antennas for telecommunications, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

Communication towers are not “essential services,” public utilities or private utilities.

Community Garden means a parcel gardened collectively by a group of people.

Convenience store means a retail establishment offering for sale prepackaged food products, household items and other goods commonly associated with the same and having a gross floor area of less than 5,000 square feet.

Country club. See "golf course".

Crematories means a building or structure, or room or space in a building or structure, for the cremation of deceased persons or deceased household pets.

Critical root zone means a circular area surrounding a tree, the radius of which is measured outward from the trunk of a tree one foot for each one inch of diameter at breast height. The critical root zone shall also extend to a depth of four feet below the natural surface ground level.

Cultural facilities means facilities for activities for the preservation and enhancement for the cultural well-being of the community.

Development means all structures and other modifications of the natural landscape above and below ground or water on a particular site.

Diameter at breast height means the diameter of a tree trunk in inches measured by diameter at four and one-half feet (4.5') above the ground.

District means a section of the City for which the zoning regulations governing the use of buildings and premises, the height of buildings, setbacks and the intensity of use are uniform.

Drive-in means an establishment which by design, physical facilities, service, or by packaging procedures encourages or permits customers to receive services or obtain goods while remaining in their motor vehicles.

Drive-through means an establishment which by design, physical facilities, service, or by packaging procedures encourages or permits customers to receive service or obtain goods intended to be consumed off-premises.

Dripline means an imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

Driveway means a means of access for vehicles from a street, approved alley, across a lot or parcel to a parking or loading area, garage, dwelling or other structure or area on the same lot.

Driveway, Service means a point of access solely for the use of vehicles designed to load and unload trash receptacles three cubic yards or more in size.

Dwelling means any building or portion thereof which is designed for or used exclusively for residential purposes and containing one or more dwelling units.

Dwelling, multiple family. "Multiple family dwelling" means a building or portion thereof containing three or more dwelling units and designed for or occupied as the home of three or more families living independently of each other.

Dwelling, single-family. "Single-family dwelling" means a detached building containing one dwelling unit and designed for or occupied by only one family.

Dwelling, two-family. "Two-family dwelling" means a building designed for or occupied exclusively by two families living independently of each other.

Dwelling unit means one or more rooms with bathroom and principal kitchen facilities designed as a self-contained unit for occupancy by one family for living, cooking and sleeping purposes. The existence of a food preparation area within a room or rooms shall be evidence of the existence of a dwelling unit.

Eligible household means a household meeting the income criteria included in Chapter 1376, with income determined in a manner consistent with determinations of lower-income households and area median income under Section 8 of the U.S. Housing Act of 1937, as amended (Section 8 Housing Program).

Eligible housing nonprofit means a 501(c)3 nonprofit housing organization with the means and capacity to guarantee and enforce long-term affordability of affordable housing units meeting the requirements of Chapter 1376.

Emergency shelter means a facility operated by a governmental or nonprofit agency where supportive services and shelter are offered to homeless persons.

Erected means built, constructed, reconstructed, moved upon, or any physical operations on the premises required for the building. Excavations, fill, drainage and the like, shall be considered a part of erection when done in conjunction with a structure.

Essential services means the installation, construction, alteration or maintenance by public utilities or governmental agencies of underground, surface or overhead telephone, electrical, gas, steam, fuel, or water distribution systems, collections, supply or disposal systems, streets, alleys, sidewalks, or trails, including pavement, traffic control devices, signs, poles, wires, mains, drains, sewers, pipes, conduits, cables, padmount transformers, fire alarm and police call boxes, traffic signals, hydrants and similar accessories in connection therewith which are necessary for the furnishing of adequate service by such utilities or governmental agencies for the general public health, safety, convenience or welfare. "Essential services" do not include communication antennas and communication towers.

Essential service-structures. The erection, construction, alteration or maintenance by public utilities or governmental agencies of structures not in the right-of-way over 800 cubic feet in area including, but not limited to, towers, transmission and subtransmission facilities, or buildings related to essential services in all districts.

Facade means the exterior wall of a building exposed to public view.

Family means one or more persons occupying a dwelling unit and living as a single housekeeping unit, whether or not related to each other by birth or marriage, as distinguished from persons occupying a boarding house, lodging house or hotel.

Fence means a constructed barrier made of wood, metal, stone, brick or any manufactured materials erected for the enclosure of yard areas.

Flood plain, 100 year. "100 year flood plain" means the lowland areas adjoining inland and coastal waters which are identified on Floodway Maps produced by FEMA (Federal Emergency Management Agency) and which are estimated to have a one per cent chance of flooding in a given year.

Floor area. See AGross Floor Area@.

Frontage means the total continuous width of the front lot line.

Golf course/country club means any golf course, public or private, where the game of golf is played, including accessory uses and buildings customary thereto, but excluding golf driving ranges and miniature golf courses as a principal use.

Grade means

1. **For buildings having walls adjoining one street only:** the elevation of the public

sidewalk, top of curb, or centerline of the street right-of-way, whichever is closest to the building, where a building wall adjoins a street.

2. **For buildings having walls adjoining more than one street:** the average elevation of the sidewalks, curbs or centerlines of streets, whichever is closest to the building walls adjoining the streets.
3. **For buildings having no wall adjoining the street:** the average of the lowest and highest ground surface elevations in an area within six feet of the foundation line of a building or structure. Any building or structure wall within 35 feet of a public or private street shall be considered as adjoining the street. (See Figure 1-2.)

Greenbelt means a strip of land of definite width and location upon which existing vegetation is preserved or an area is reserved for the planting of living plant materials to serve as an obscuring screen or buffer strip in carrying out the requirements of this Code.

Grocery store means a retail establishment primarily selling prepackaged and perishable food as well as other convenience and household goods.

Gross floor area (GFA) means the sum of the gross horizontal areas of the several floors of a building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor-to-ceiling height is less than six feet.

Height of building means the vertical distance from the grade to the highest point on a mansard or flat roof or to the median height between the eaves and the ridge for gable, hip and gambrel roofs. (See Figure 1-3).

Home occupation means an accessory use of a dwelling unit for business purposes.

Impervious surface means any material which prevents, impedes or slows infiltration or absorption of storm water directly into the ground at the rate of absorption of vegetation bearing soils, including building, asphalt, concrete, gravel and other surfaces.

Impervious surface ratio means the area of impervious surface less those areas used exclusively for pedestrian circulation or outdoor recreational facilities divided by the gross site area.

Kennel means any lot or premises used for the sale, boarding, or breeding of dogs, cats or other household pets or the keeping of five or more dogs or cats in any combination over the age of six months.

Land clearing means:

1. The clearing of over 8,000 square feet of vegetation from any site, or
2. The removal of more than 20 trees more than 6 inches in diameter at breast height within 50 feet of a public or private street or river.

Mowing, trimming or pruning of vegetation to maintain it in a healthy, viable condition is not considered land clearing.

Landing area means a landing pad, area, strip, deck or building roof used to launch or receive aircraft, including, but not limited to, power-driven winged or delta-winged aircraft, gliders, balloons and helicopters.

Landscaping means some combination of planted trees, vines, ground cover, flowers or turf so long as a minimum of 80 per cent of the landscape area is covered by living plant material. In addition, the combination or design may include rock ground cover, earth mounds, and such structural features as fountains, pools, art works, screens, walls, fences and benches.

Laundromat means a business that provides home-type washing, drying and/or ironing machines for hire to be used by customers on the premises or operated for the benefit of retail customers who bring in and call for laundry.

Lot means a parcel of land occupied or intended for occupancy by a use permitted in this Zoning Code, including one principal building together with accessory buildings, open spaces and parking areas required by this Zoning Code, and having its principal frontage upon a street or upon an officially approved private street. The word "lot" includes the words "plot", "tract" or "parcel".

Lodging Facility means a commercial establishment with one or more buildings whose primary use is to provide temporary overnight accommodations within individual guest rooms or suites to the general public for compensation. Accessory uses may include eating places, meeting rooms and other similar uses.

Lot, corner. "Corner lot" means a lot which has at least two contiguous sides abutting on and at the intersection of two or more streets.

Lot of record means a lot whose existence, location and dimensions have been legally recorded or registered in a deed or on a plat.

Lot, through. "Through lot" means an interior lot having frontage on two more or less parallel streets.

Lot width means the horizontal distance between side lot lines measured parallel to the front lot line at the minimum required front setback line.

Manufacturing means the production of articles for use from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labor or machine.

Marina means a commercial mooring, berthing, or docking facility for watercraft with or without provisions for launching, haulout, servicing, fueling or sales of accessory supplies.

Medical Marihuana means marihuana as defined by the Michigan Medical Marihuana Act., MCL 333.26421 et seq. grown, used, or transferred for "medical use" as defined by the Michigan Medical Marihuana Act., MCL 333.26421 et seq.

Medical Marihuana Collective means a use where Medical Marihuana is transferred, pursuant to the Michigan Medical Marihuana Act., MCL 333.26421 et seq.

Medical Marihuana Cultivation means a use where Medical Marihuana is grown as permitted by the Michigan Medical Marihuana Act., MCL 333.26421 et seq.

Medical Marihuana Cultivation Facility means a use where more than 72 plants are being cultivated on a Parcel.

Microbrewery means a facility as defined as such by the State of Michigan.

Non-conforming use means a lawful use of land that does not comply with the use regulations for its zoning district but which complied with applicable regulations at the time the use was established.

Nursing home. See "Residential care and treatment facility".

Open space, common. "Common open space" means land within or related to a development, not individually owned that is designed and intended for the common use or enjoyment of the residents and their guests of the development and may include such complementary structures and improvements as are necessary and appropriate.

Operator of Medical Marihuana Collective means any person who is employed by or otherwise involved in the operation of a Medical Marihuana Collective.

Ordinary high water mark means the line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is identified along Grand Traverse Bay and the lower Boardman River as elevation 581.04 feet

USGS.

Owner means any person having an ownership interest in a premises as shown on the latest Traverse City tax records.

Parcel. See a "lot".

Parking area means any public or private area, under or outside of a building or structure, designed and used for parking motor vehicles, including parking lots, driveways and legally designated areas of public streets.

Parking area, commercial. "Commercial parking area" means a tract of land which is used for the storage of motor vehicles, which is not accessory to any other use on the same or any other lot and which contains parking space rented to the general public or reserved for individuals by the hour, day, week or month.

Parking area, off-street. "Off street parking area" means a land surface or facility providing vehicular parking spaces off of a street together with drives and maneuvering lanes so as to provide access for entrance and exit for the parking of motor vehicles.

Parking area, private. "Private parking area" means a parking area for the exclusive use of the owners, tenants, lessees, or occupants of the lot on which the parking area is located or their customers, employees, or whomever else they permit to use the parking area.

Parking area, public. "Public parking area" means a publicly owned or controlled parking area available to the public, with or without payment of a fee.

Parking space means an area of land provided for vehicles exclusive of drives, aisles, or entrances giving access thereto, which is fully accessible for parking of permitted vehicles.

Parking structure means a building or structure consisting of more than one level and used to store motor vehicles.

Pavement. "Pavement" and "paved" mean permanent and completely covered with concrete, a bituminous surface, brick or other surface approved by the Planning Director.

Pedestrian scale means design and construction considerations based upon the scale of a human being which imbue occupants and users of the built environment with a sense of comfort and security.

Person means a corporation, association, partnership, trust, firm or similar activity as well as an individual.

Place of worship means a building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose.

Planning director means the head of the City Planning and Zoning Department or the designee of that person.

Plat means a map of a subdivision of and recorded with the Register of Deeds pursuant to State statute

Primary Caregiver means a primary caregiver with a registry identification card as defined by the Michigan Medical Marihuana Act., MCL 333.26421 et seq.

Principal use means the main use of land or structures as distinguished from a secondary or accessory use.

Public utility means any person, firm or corporation, municipal department, board or commission duly authorized to furnish and furnishing under federal, state or municipal regulations to the public; gas, steam, electricity, sewage disposal, communication, telephone, telegraph, transportation or water.

Qualifying Patient means a qualifying patient with a registry identification card as defined by

the Michigan Medical Marihuana Act., MCL 333.26421 et seq.

R-District means a residence district, namely an RC, R-1a, R-1b, R-2, R-9, R-15, and R-29 district.

Recreational facilities means buildings, or grounds, excluding amusement parks, where a variety of sport or exercise activities are offered.

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

Residential Care and Treatment Facility means a facility providing:

1. Services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation;
2. Temporary emergency shelter and services for battered individuals and their children in a residential structure.

Restaurant, family means an establishment where food and drink are prepared and served to seated customers. Customer turnover rates are typically less than one hour. Generally, these establishments serve breakfast, lunch, and dinner and sometimes are open 24 hours a day. It may include cafeteria-style facilities.

Restaurant, fast food means an establishment where food and drink are served to customers at a counter. Such establishments may or may not have seating facilities. Generally, food and drink is ordered and taken to be consumed outside the restaurant building.

Restaurant, fine means an establishment where food and drink are prepared and served. Customer turnover rates are typically one hour or longer. Such establishments serve dinner but generally do not serve breakfast and may or may not serve lunch or brunch.

Right-of-way means a public or private street, alley or easement permanently established for the passage of persons or vehicles.

Rooming house means a residential building where rooms or suites of rooms are rented where the renters use common facilities, such as hallways and bathrooms. A rooming house shall not include lodging facilities, apartment houses, two and multi-family dwellings or fraternity and sorority houses.

School means an educational institution under the sponsorship of a private or public agency providing elementary or secondary curriculum, and accredited or licensed by the State of Michigan; but excluding profit-making private trade or commercial schools.

Screen means a structure providing enclosure and a visual barrier between the area enclosed and the adjacent property. A screen may also be non-structured, consisting of shrubs or other growing materials.

Screen, opaque means a masonry wall, fence sections, earthen berm, evergreen hedge or a combination of these elements which completely interrupt visual contact and provide spatial separation.

Setback means the distance required between a lot line and a building wall.

Setback, front. AFront setback@ means the minimum required distance, extending the full lot width, between the principal building and the front lot line.

Setback, rear. ARear setback@ means the minimum required distance, extending the full lot width, between the principal and accessory buildings and the lot line opposite the front line.

Setback, side. ASide setback@ means the minimum required distance, extending from the front setback to the rear setback, between the principal and accessory building and the side lot line.

Site diagram means a drawing, drawn to scale, showing the location of buildings and structures

on a lot, as well as driveways, curb cuts, alleys, streets, easements and utilities. See Appendix 1, Figure 1-4.

Site plan means a plan showing all salient features of a proposed development, so that it may be evaluated in order to determine whether it meets the provisions of this Code.

Stop work order means an administrative order which directs a person not to continue, or not to allow the continuation of an activity which is in violation of this Code.

Street means any public way, such as a public street, avenue or boulevard, at least 16 feet wide. Street does not mean "alley". See also "Private street".

Street, access. "Access street" means a street or alley designed primarily to provide access to properties.

Street, arterial. "Arterial street" means a street designed to carry high traffic volumes through the community.

Street, collector. "Collector street" means a street designed to carry moderately high traffic volumes from arterial and access streets.

Street, private. "Private street" means an officially approved thoroughfare, other than a public street or alley, permanently reserved as the principal means of access to abutting property.

Structural alterations means any change in a building requiring a building permit.

Structure means anything constructed or erected, the use of which requires a more or less permanent location on the ground or an attachment to something having a permanent location on the ground, including, but not limited to, freestanding signs, billboards, back stops for tennis courts and pergolas.

Tourist home means a single-family dwelling owned and occupied by a person renting out not more than three rooms for compensation to persons who do not stay for more than seven consecutive days.

Townhouse means a multiple dwelling in which each dwelling unit shares a common wall with at least one other dwelling unit and in which each dwelling unit has living space on the ground floor and has a separate ground-floor entrance.

Trailer means any enclosure used for living, sleeping, business or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses or skirtings, and which has been or reasonably may be equipped with wheels or devices for transporting the enclosure from place to place. "Trailer" includes motor homes, travel trailers and camper vans.

Transit center means a fixed location where passengers interchange from one route or vehicle to another that has significant infrastructure such as a waiting room, benches, restrooms, sales outlet, ticket or pass vending machines and other services.

Transitional housing means a facility which is operated by a government or a nonprofit agency providing interim sleeping and bath accommodations; interim eating and cooking facilities; and professional services to assist individuals or families in locating permanent housing.

Treelawn means the area of public right-of-way lying between the curb line of a curbed Street or developed travelway of a noncurbed street and the nearest private property line substantially parallel to said street.

Trip end means the total of all motor vehicle trips entering plus all motor vehicle trips leaving a designated land use or building over a given period of time.

Vacation Home Rental means a commercial use of a dwelling where the dwelling is rented or sold for any term less than 30 consecutive days.

Yard means an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise

provided in this Zoning Code.

Yard, front. "Front yard" means all land extending across the width of a property and lying between the building line and the front lot line.

Yard, rear. "Rear yard" means all land extending across the width of the property and lying between the building and the rear lot line.

Yard, side. "Side yard" means all land lying between a principal building and the side lot lines and extending from the front to the rear of the principal building.

Zoning Code means Part 13, Title One of the Code of Ordinances of the City of Traverse City and includes the text of this Zoning Code as well as all maps, tables, graphics, schedules as included or attached as enacted or subsequently amended.

(Ord. 476. Passed 7-6-99. Ord. 557. Passed 2-4-02. Ord. 565. Passed 6-3-02. Ord. 630. Passed 3-15-04. Ord. 672. Passed 03-21-05. Ord. 723. Passed 3-19-07. Ord. 781. Passed 2-4-08. Ord. 773. Passed 3-17-08. Ord. 787. Passed 3-17-08. Ord. 820. Passed 1-05-09. Ord. 827. Passed 2-02-09. Ord. 843. Passed 8-3-09. Ord. 873. Passed 8-16-10. Ord. 892. Passed 12-6-10. Ord. 902. Passed 2-7-11. Ord. 998. Passed 7-7-14. Ord. 1010. Passed 9-2-14. Ord. 1021. Passed 4-6-15. Ord. 1025. Passed 9-8-15.)

1320.08 STANDARD INDUSTRIAL CLASSIFICATION.

The *Standard Industrial Classification Manual 1987*, Office of Management and Budget, United States Government, has been relied upon by the drafters of this Code for identification of and classification of economic activities. When questions of interpretation arise the *Standard Industrial Classification Manual 1987* may be relied upon as an aid.

(Ord. 476. Passed 7-6-99.)

1320.09 RULES OF CONSTRUCTION.

This chapter should be liberally construed to give effect to its purpose and the purposes of the Zoning

Enabling Act. If a definition is not provided, common dictionary definitions may be referred to as interpretive aids. Words used in the present tense include the future tense and the singular includes the plural unless the context clearly indicated the contrary. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.

Ord. 476. Passed 7-6-99.)

1320.10 USES NOT MENTIONED.

When a use is not expressly mentioned in this Zoning Code, the Planning Director shall make an interpretation as to what district or districts should accommodate the use. The decision shall be based on the intent of each district, similar uses mentioned in a district, and recognized rules of interpretation. The Planning Director's decision shall be appealable to the Board of Zoning Appeals.

(Ord. 476. Passed 7-6-99.)

1320.11 TEMPORARY BUILDINGS.

Temporary buildings used in conjunction with construction work only may be permitted in any district during the period that the construction work is in progress, but such temporary buildings shall be removed upon the completion of the construction work.

(Ord. 476. Passed 7-6-99.)

1320.12 RECREATIONAL VEHICLES, HOUSEBOATS AND TRAILERS.

Recreational vehicles, houseboats and trailers shall not be used for living purposes in any district other than in a licensed trailer park.

(Ord. 476. Passed 7-6-99.)

1320.13 TENTS OR PORTABLE BUILDINGS.

The use and occupancy of a tent or portable building for the purpose of general living quarters is not permitted in any zoning district.

(Ord. 476. Passed 7-6-99.)

1320.14 EXCAVATION.

The extraction of sand, gravel, or other raw materials at or below grade and the processing of raw materials extracted upon the premises in all districts is allowed subject to the following:

- (A) The land to be excavated shall consist of not less than 10 contiguous acres.
- (B) Mining operations are not likely to create a nuisance or interfere with the reasonable enjoyment of surrounding land.
- (C) It shall be demonstrated by independent professional affidavit that all operations will comply with City noise ordinances.
- (D) Dust, smoke or similar airborne particles shall not leave the property in amounts or degrees greater than from allowable uses in the same district.
- (E) All operations and excavations shall be protected against trespass by fences and other suitable means. Truck traffic to and from the site shall be limited to Monday through Friday and shall not be earlier than 9:00 a.m. or later than 5:00 p.m.
- (F) All operations and excavations shall be set back at least 100 feet from the property line and 200 feet from any abutting body of water or R-district.

(Ord. 476. Passed 7-6-99.)