

ORDINANCE NO. 2018 - 001

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF CLARE BY amending the City Code, Chapter 52.

Short Title: CITY OF CLARE – ORDINANCE AMENDMENT

**Chapter 52, Article III, Section 52.2 of the Code of Ordinances, City of Clare, Michigan, is hereby repealed and restated as follows:**

Sec. 52-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. This provision is amended by the addition of the following definitions:

*Access management (access control)* means a technique to improve traffic operations along a major roadway and decrease the potential for accidents through the control of driveway locations and design; consideration of the relationship of traffic activity for properties adjacent to, and across from, one another; and the promotion of alternatives to direct access.

*Access to property, reasonable* means a property owner's legal right, incident to property ownership, to access a public road right-of-way. Reasonable access to property may be indirect or certain vehicle turning movements prohibited for improved safety and traffic operations.

*Accessory building* means any subordinate building, such as private garages and farm buildings located on the same lot with the main building, or any portion of the main building, if such portion is occupied or devoted exclusively to an accessory use. Where an accessory building is attached to a main building in a substantial manner by a wall or roof, such accessory building shall be considered part of the main building for the purpose of determining the required dimensions of yards.

*Accessory use* means any use customarily incidental to the main use of the premises.

*Adequate lateral support* means the control of soil movement on a site as determined by accepted engineering standards.

*Adjacent* means touching or sharing a boundary. Adjacent does not mean contiguity for local unit boundary adjustment purposes.

*Adult bookstore* means an establishment that has as a substantial portion of its stock in trade and offers for sale, for any form of consideration, any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, movies, motion pictures, videocassettes, slides or other visual representations that are characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices or paraphernalia designed for use as part of or in connection with specified sexual activities.

*Alley* means a roadway in any district that fronts a side of the parcel other than the front, especially a road between or behind buildings.

*Architectural feature, significant* means any building, structure, or portion thereof that is sufficiently distinctive or unusual in design or construction as to warrant the preservation and minimal alteration of its original form.

*Area of the lot* means the net area of the lot and shall not include portions of streets and alleys.

*Arterial street* means a street defined in the master plan or city's Act 51 plan as "major traffic routes" and/or as an arterial or major street by the Michigan Department of Transportation where the movement of through traffic is the primary function, with service to adjacent land uses a secondary function.

*As-built plans* means construction plans in accordance with all approved field changes.

*Bar and tavern* means any public place licensed for the sale of alcoholic liquors, having a maximum occupancy capacity of less than 100 persons and not meeting the requirements of a class I restaurant.

*Berm* means a mound of earth graded, shaped and improved with landscaping in such a fashion as to be used for visual and/or audible screening purposes.

*Buffer zone* means a strip of land often required between certain zoning districts reserved for plant material, berms, walls, or fencing singularly or in combination to serve as a visual and noise barrier.

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

*Building envelope* means the ground area of a lot which is defined by the minimum setback and spacing requirements within which construction of a

principal building and any attached accessory structures (such as a garage) is permitted by this chapter. For condominium developments, the building envelope shall be illustrated on a site plan.

*Building line* means a horizontal line generally parallel to a front, rear, or side lot line which is located at the point of the foundation of a principal building nearest to the front, rear, or side lot line.

*Building, principal* means a building in which is conducted the principal uses of the lot on which such building is located.

*Building, service establishment* means a business which provides business-type services to patrons including, but not limited to, copy centers, postal centers, data centers and computer-repair establishments.

*Cabaret* means any place wherein food and any type of alcoholic liquor is sold or given away on the premises and the operator thereof holds a yearly license to sell such beverages by the glass and which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers.

*Caliper* means the diameter of a trunk measured as follows:

- (1) Existing trees are measured at four and one-half feet above the average surrounding grade; and
- (2) Trees which are to be planted shall be measured 12 inches above the average surrounding grade if the tree caliper is more than four inches, or if the tree caliper is less than four inches, it shall be measured at six inches above the average surrounding grade.

*Canopy tree* means a deciduous tree whose mature height and branch structure provide foliage primarily on the upper half of the tree. The purposes of a canopy tree are to provide shade to adjacent ground areas and to enhance aesthetics.

*Certificate of zoning compliance* means a document signed by the building and zoning administrator as a condition precedent to the commencement of a use or the alteration of a structure or building or the construction/reconstruction of a structure or building which acknowledges that such use, structure or building complies with the provisions of this chapter.

*Colocation* shall mean the location of two or more wireless communication providers of wireless communication facilities on a common structure, tower, or building, in an effort to reduce the overall number of structures required to support wireless communication antennas within the community.

*Commercial use* means an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee for more than seven days during a calendar year.

*Commercial vehicle* means any vehicle bearing or required to bear commercial license plates and which falls into one or more of the categories listed below:

- (1) Truck tractor.
- (2) Semitrailer, which shall include flat beds, stake beds, roll-off containers, tanker bodies, dump bodies and full or partial box-type enclosures.
- (3) Vehicles of a type that are commonly used for the delivery of ice cream, milk, bread, fruit or similar vending supply or delivery trucks. This category shall include vehicles of a similar nature which are also of a type commonly used by electrical, plumbing, heating and cooling, and other construction oriented contractors.
- (4) Tow trucks.
- (5) Commercial hauling trucks.
- (6) Vehicle repair service trucks.
- (7) Snow plowing trucks.
- (8) Any other vehicle with a commercial license plate having a gross vehicle weight in excess of 10,000 pounds or a total length in excess of 22 feet.

*Common elements* means the portions of the condominium project other than the condominium units are defined as follows:

- (1) General common elements means and includes:
  - a. The land in the condominium project.
  - b. The foundations, main walls, roofs, halls, lobbies, stairways entrances, exits, or communication ways.
  - c. The basements, flat roofs, yards and gardens, except as otherwise provided or stipulated.
  - d. The premises for the use of janitors or persons in charge of the condominium project, including lodging, except as otherwise provided or stipulated.
  - e. The compartments or installations of central services such as heating, power, light, gas, cold and hot water, refrigeration, air-conditioning, reservoirs, water tanks, and pumps and the like.
  - f. The elevators, incinerators and, in general, all devices or installations existing for common use.
  - g. All other elements of the condominium project owned in common and intended for common use or necessary to the existence, upkeep and safety of the project.

- (2) Limited common elements means and includes those common elements which are reserved in the master deed for the exclusive uses of less than all of the co-owners.

*Common land* means a parcel or parcels of land with the improvements thereof, the use, maintenance and enjoyment of which are intended to be shared by the owners and/or occupants of individual building units in a subdivision or a planned unit development.

*Common open space* means an unoccupied area within a planned unit development which is reserved primarily for the leisure and recreational use of all the planned unit development residents, owners and occupants, and generally owned and maintained in common by them, often through a homeowners association.

*Communications tower* means any freestanding structure or any antenna-type apparatus appended to any existing structure, used primarily or solely for the transmission of commercial data or radio, telephone and television signals.

*Contractor yard* means a site on which a building or construction contractor stores equipment, tools, vehicles, building materials and other appurtenances used in or associated with building or construction. A contractor's yard may include outdoor storage, or a combination of both.

*Convenience store* or *mini-mart* means a one-story retail store that is designed and primarily stocked to sell food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a "supermarket"). Convenience stores are designed to attract greater volumes of stop-and-go traffic.

*Convenience store with gasoline sales* means an establishment that retails convenience-food items which occupy 50 square feet or greater of the sales area in conjunction with gasoline sales.

*Cul-de-sac* means a dead-end public or private street, generally short in distance, which terminates in a circular or semicircular section of street which allows for vehicle turnaround.

*Curb cut* means the entrance to or exit from a property provided for vehicular traffic to or from a public or private thoroughfare.

*Deceleration lane* means an added roadway lane that permits vehicles to slow down and leave the main vehicle stream before turning.

*Detention basin* or *facility* means a manmade or natural water-collector facility designed to collect surface water in order to impede its flow and to release the water gradually at a rate not greater than that prior to the development of the property, onto natural or manmade outlets.

*Development* means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations. A

development may include a site plan, a plot (building) plan, a condominium plan, a plat or a manufactured housing community.

*Drive-in* means a business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure, including customer communication facilities for banks or other uses. A drive-in restaurant is distinct from a drive-through restaurant in that the majority of drive-in patrons consume food and beverages while in the vehicle and parked on the premises.

*Dumpster* or *waste receptacle* means any accessory exterior container used for the temporary storage of rubbish, pending collection, having the capacity of at least one cubic yard. Recycling stations and exterior compactors shall be considered to be dumpsters or waste receptacles.

*Dwelling* means any building or portion thereof usable exclusively for residence purposes.

*Dwelling, attached single-family* , means a single-family dwelling unit attached to one or more other single-family dwelling units by means of a common-party wall or by a connecting wall or similar architectural feature, such as a garage or carport, and with such dwelling having its own doors which open to the outdoors.

*Dwelling, multiple-family* , means any building usable for residence purposes by two or more families, not including a mobile home.

*Dwelling, single-family* , means a building containing not more than one dwelling unit designed for residential use and complying with the following standards:

- (1) The dwelling complies with the minimum square footage requirements of this chapter for the zone in which it is located.
- (2) The dwelling has a minimum width across any front, side or rear elevation of 20 feet and complies in all respects with this Code, including minimum heights for habitable rooms. Where a dwelling is required to comply with any federal or state standards or regulations for construction and where such standards or regulations for construction are different than those imposed by this Code, then, and in such event, such federal or state standard or regulation shall apply.
- (3) The dwelling is firmly attached to a permanent foundation constructed on the site in accordance with the city's building code and shall have a wall of the same perimeter dimensions as the dwelling and constructed of such materials and type as required in the applicable building code for single-family dwellings. If the dwelling is a mobile home as defined in this section, such dwelling shall be installed pursuant to the manufacturer's setup instructions and shall be secured to the premises by an anchoring system or device complying with the rules and

regulations of the state mobile home commission or shall have a perimeter wall as required in this subsection.

- (4) The dwelling, if a mobile home as defined in this section, is installed with the wheels removed and, additionally, no dwelling shall have any exposed towing mechanism, undercarriage or chassis.
- (5) The dwelling is connected to a public sewer and water supply or to such approved private facilities, if permissible under the provisions of this Code.
- (6) The dwelling contains a storage-capability area in a basement located under the dwelling, in an attic area, in closet areas or in a separate structure of standard construction, which storage area shall be equal to ten percent of the square footage of the dwelling or 100 square feet, whichever shall be less.
- (7) The dwelling is aesthetically compatible in design and appearance with other residences in the vicinity, with either a roof overhang of not less than 12 inches on all sides or alternatively with window sills or roof-drainage systems concentrating roof drainage at collection points along the sides of the dwelling; has not less than two exterior doors, with the second one being in either the rear or side of the dwelling; and contains steps connected to such exterior door areas or to porches connected to such door areas where a difference in elevation requires such steps.
- (8) The compatibility of design and appearance shall be determined in the first instance by the city building inspector upon review of the plans submitted for a particular dwelling, subject to appeal by an aggrieved party to the zoning board of appeals within a period of 15 days from the receipt of notice of such building inspector's decision. Any determination of compatibility shall be based upon the standards set forth in this definition, as well as the character, design and appearance of one or more residential dwellings, located outside of mobile home parks, within 2,000 feet of the subject dwelling where such area is developed with dwellings to the extent of not less than 20 percent of the lots situated within such area or, where such area is not so developed, by the character, design and appearance of one or more residential dwellings, located outside of mobile home parks, throughout the city. This subsection shall not be construed to prohibit innovative design concepts involving such matters as solar energy, view, unique land contour or relief from the common or standard site-built home.
- (9) The dwelling contains no additions, rooms or other areas which are not constructed with similar-quality workmanship as the original structure, including permanent attachment to the principal structure and construction of a foundation as required in this definition.

- (10) The dwelling complies with all pertinent building and fire codes. In the case of a mobile home, all construction and plumbing, electrical apparatuses and insulation within and connected to the mobile home shall be of a type and quality conforming to the mobile home construction and safety standards as promulgated by the United States Department of Housing and Urban Development, 24 CFR 3280, and as such standards may be amended from time to time. Additionally, all dwellings shall meet or exceed all applicable roof snow load and strength requirements.

The standards set forth in this definition shall not apply to a mobile home located in a licensed mobile home park, except to the extent required by state or federal law, or otherwise specifically required in provisions of this Code pertaining to such parks. All construction required in this definition shall be commenced only after a building permit has been obtained in accordance with the applicable city building code provisions and requirements.

*Economic impact study* means a professionally prepared, written evaluation which contrasts the economic vitality of the city with and without the proposed land use.

*Entertainment facilities* means an establishment which provides for activities such as, but not limited to, bowling alleys, billiard and pool halls, game and video arcades, and tag games.

*Environmental impact study* means a professionally prepared, written evaluation which defines, describes and evaluates the positive and negative environmental impacts of a proposed land use.

*Essential public service building* means a building or structure principal to an essential public service, such as a drop-off station for residential recyclables, vehicle garages, telephone exchange buildings, electricity transformer stations or substations, gas regulator stations.

*Excavation* means any breaking of ground, except common household gardening and ground care.

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

*Family* means any number of individuals customarily living together as a single housekeeping unit and using common facilities.

**Feasibility of Colocation.** Colocation shall be deemed to be “feasible”, for purposes of this section where all of the following are met:

- (1) The wireless communication provider entity under consideration for colocation will undertake to pay market rent or other market compensation for colocation.
- (2) The site on which colocation is being considered, taking into consideration reasonable modification of replacement of a facility, is able to provide structural support.



- (3) The colocation being considered is technologically reasonable, e.g.; the colocation will not result in unreasonable interference, given appropriate physical and other adjustments in relation to the structure, antennas, and the like.
- (4) The height of the structure necessary for colocation will not be increased beyond a point deemed to be permissible by the City taking into consideration the several standards contained in Section 52.319 of this ordinance.

*Floor area, gross or total* means the sum of all gross horizontal areas of all floors of a building or buildings, measured from the outside dimensions of the outside face of the outside wall. Unenclosed porches, courtyards, or patios shall not be considered as part of the gross area except where they are utilized for commercial purposes such as the outdoor sale of merchandise.

*Floor area, residential.* For the purpose of computing the minimum allowable floor area in a residential dwelling unit, the sum of the horizontal areas of each story of the building shall be measured from the exterior faces of the exterior walls or from the centerline of walls separating two dwellings. The floor area measurement excludes areas of basements, unfinished attics, attached garages, breezeways, and enclosed and unenclosed porches.

*Floor area, useable.* For the purposes of computing parking requirements, the useable floor area shall be considered as that area to be used for the sale of merchandise or services, or for use to serve patrons, clients, or customers. Such floor area which is used or intended to be used principally for the storage or processing of merchandise, hallways, stairways, and elevator shafts, or for utilities for sanitary facilities, shall be excluded from this computation of useable floor area. Useable floor area shall be measured from the interior faces of the exterior walls, and total useable floor area for a building shall include the sum of the useable floor area for all floors. Where calculations are not provided, the useable or gross leasable floor area shall be assumed to be 85 percent of the gross floor area.

*Frontage* means the linear dimension measured along the public street right-of-way line or along the private road access easement.

*Frontage road* means a public or private drive which generally parallels a public street between the right-of-way and the front building setback line. Frontage roads can be one-way or bidirectional in design. The frontage road provides specific access points to private properties while maintaining separation between the arterial street and adjacent land uses. A road which allows parking or is used as a maneuvering aisle within a parking area is generally not considered a frontage road.

*Garage, private,* means a detached accessory building or portion of a main building used for the storage of passenger vehicles.

*Garage, public*, means any building used for the hire, sale, storage or servicing of automotive vehicles or trailers.

*Glare* means the effect produced at the lot line by brightness sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

*Grade, average* means the arithmetic average of the lowest and highest grade elevations in an area within five feet of the foundation line of a building or structure.

*Grade, finished* means the lowest point of elevation between the exterior wall of the structure and a line five feet from the exterior wall of the structure.

*Grade, natural* means the elevation of the ground surface in its natural state, before construction begins.

*Greenbelt* means a landscaped area along a street between the curb or road shoulder and the front yard building or parking setback line, this area also includes a front yard parking lot setback area.

*Handbill* means any printed or written matter, any sample or device, dodge, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter or literature that advertises for sale any merchandise, product, commodity or thing, or which directs attention to any business, mercantile or commercial establishment, or other activity for the purpose of either, directly or indirectly, promoting the interest thereof by sales, or which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind for which an admission fee is charged, or a collection taken for the purpose of private gain or profit, or which, while containing reading matter other than advertising matter, is predominately and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private gain of any person so engaged as advertiser or distributor. Such term does not include any bona fide newspaper, the principal objective of which is the dissemination of news items, even though the newspaper contains matter of an advertising nature. Such term also does not include signs advertising garage sales, yard sales, etc., regulated elsewhere in this Code.

*Hard surface*. For a single-family home, hard-surface consists of MDOT 22A or 23A gravel, brick, asphalt or concrete meeting the construction specifications of the city.

*Historical feature, significant* means any site or structure which is located in a designated local historic district or listed in the state or national register of historic places.

*Home occupation* means any occupation that is customarily performed at home and that does not involve an external structural change in the building, does not require the employment of the equivalent of full-time help, does not require on-street parking, does not require the display of a sign, is not conducted in an accessory building and does not impose any negative external

influences upon surrounding property. Under no circumstances shall a business that involves or is related to medical marijuana in any way be considered a home occupation. Home occupations expressly excludes all medical marijuana dispensaries, retail activity, growing facilities, and all activities licensed under Public Act 281 of 2016.

*Incinerator facilities* means a facility that uses thermal-combustion processes to destroy or alter the character or composition of medical waste, sludge, soil or municipal solid waste, not including animal or human remains.

*Impervious surface* means a manmade material which covers the surface of land and substantially reduces the infiltration of storm water to a rate of five percent or less. Impervious surface shall include pavement, buildings, and structures.

*Living space* means areas in a dwelling unit that are livable space. Livable space does not include closets, attics, crawl spaces and other storage areas.

*Lot* means a parcel of land occupied, or intended to be occupied, by a main building or a group of such buildings and accessory buildings, or utilized for the principal use and uses accessory thereto, together with such yards and open spaces as are required under the provisions of this chapter. A lot may or may not be specifically designated as such on public records. For purposes of meeting the dimensional standards of this chapter, a lot does not include public rights-of-way or private road easements, but does include access easements for a service drive. A lot may be a single lot of record, a portion of a lot of record, a combination of contiguous lots of record, contiguous portions of lots of record, a parcel of land described by metes and bounds or a condominium lot.

*Lot area, gross* means the area contained within the lot lines or property boundary including street right-of-way if so included.

*Lot area, net* means the total area of a horizontal plane within the lot lines of a lot, exclusive of any public street rights-of-way or private road easements, or the area of any lake. The lot area shall be used in determining compliance with minimum lot area standards.

*Lot area, net buildable* means the net lot area less areas devoted to floodplains or surface water bodies; water bodies being defined as areas greater than five acres in size (either before or after project implementation) which are periodically or permanently covered with water.

*Lot, corner* means any lot having at least two contiguous sides abutting upon one or more streets, provided that the interior angle at the intersection of such two sides is less than 135 degrees. A lot abutting a curved street shall be a corner lot if the arc has a radius less than 150 feet.

*Lot coverage* means the part or percent of a lot occupied by buildings and accessory buildings.

*Lot depth* means the horizontal distance between the front and rear lot lines, measured along the midpoint between side lot lines.

*Lot, flag* means a lot which is located behind other parcels or lots fronting on a public road, but which has a narrow extension to provide access to the public road.

*Lot frontage* means the length of the front lot line.

*Lot, interior* means a lot other than a corner lot which, with the exception of a "through lot", has only one lot line fronting on a street.

*Lot line* means a line bounding a lot, parcel, or general common element if there is no limited common element, which separates the lot, parcel, or general common element if there is no limited common element, from another lot, parcel, general common element if there is no limited common element, existing street right-of-way, approved private road easement, or ordinary high water mark.

*Lot line, front* means the lot line which separates the lot from the existing street right-of-way or approved private road easement that provides access to the lot. In the case of a corner lot, the line separating the narrowest side from the street.

*Lot line, rear* means the lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot or parcel, it means an imaginary line ten feet in length entirely within the lot or parcel, parallel to and at a maximum distance from the front lot line.

*Lot line, side* means any lot line other than a front or rear lot line.

*Lot, nonconforming* means a lot of record which does not meet the dimensional requirements of this chapter.

*Lot of record* means a tract of land which is part of a subdivision shown on a plat or map which has been recorded in the Office of the Register of Deeds for Clare or Isabella Counties; or a tract of land described by metes and bounds which is the subject of a deed or land contract which is likewise recorded in the office of the register of deeds. When two lots in a recorded plat have been combined into a single building site, said lots shall be deemed a single lot of record for the purposes of this chapter.

*Lot, through* (also called a double frontage lot) means an interior lot having frontage on two more or less parallel streets. In the case of a row of double frontage lots, all yards of said lots adjacent to streets shall be considered frontage, and front yard setbacks shall be provided as required.

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

*Lot, zoning* means a single tract of land, located within a single block, which, at the time of filing for a building permit, is designated by its owner or

developer as a tract to be used, developed, or built upon as a unit, under single ownership or control. A zoning lot shall satisfy this chapter with respect to area, size, dimensions, and frontage as required in the district in which the zoning lot is located. A zoning lot, therefore, may not coincide with a lot of record as filed with the county register of deeds, but may include one or more lots of record, or portions thereof.

*Massage parlor* means an establishment or place primarily in the business of providing massage services and which is not a myotherapy establishment.

*Medical marijuana* definitions:

- (1) *Grower* means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marijuana for sale to a processor or provisioning center.
- (2) *Licensee* means a person holding a state operating license.
- (3) *Marijuana* means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.
- (4) *Marijuana facility* means a location at which a license holder is licensed to operate under this act.
- (5) *Marijuana plant* means any plant of the species *Cannabis sativa* L.
- (6) *Marijuana-infused product* means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marijuana that is intended for human consumption in a manner other than smoke inhalation. Marijuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 to 289.8111.
- (7) *Michigan Medical Marijuana Act* means the Michigan Medical Marijuana Act, 2008 IL 1, MCL 333.26421 to 333.26430.
- (8) *Paraphernalia* means any equipment, product, or material of any kind that is designed for or used in growing, cultivating, producing, manufacture, compounding, converting, storing, processing, preparing, transporting, injecting, smoking, ingesting, inhaling, or otherwise introducing into the human body, marijuana.
- (9) *Person* means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.
- (10) *Plant* means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.
- (11) *Processor* means a licensee that is a commercial entity located in this state that purchases marijuana from a grower and that extracts resin

from the marijuana or creates a marijuana-infused product for sale and transfer in packaged form to a provisioning center.

- (12) *Provisioning center* means a licensee that is a commercial entity located in this state that purchases marijuana from a grower or processor and sells, supplies, or provides marijuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marijuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marijuana registration process in accordance with the Michigan Medical Marijuana Act is not a provisioning center for purposes of this Act.
- (13) *Registered primary caregiver* means a primary caregiver who has been issued a current registry identification card under the Michigan Medical Marijuana Act.
- (14) *Registered qualifying patient* means a qualifying patient who has been issued a current registry identification card under the Michigan Medical Marijuana Act or a visiting qualifying patient as that term is defined in section 3 of the Michigan Medical Marijuana Act, MCL 333.26423.
- (15) *Registry identification card* means that term as defined in section 3 of the Michigan Medical Marijuana Act. MCL 333.26423.
- (16) *Safety compliance facility* means a licensee that is a commercial entity that receives marijuana from a marijuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marijuana to the marijuana facility.
- (17) *Secure transporter* means a licensee that is a commercial entity located in this state that stores marijuana and transports marijuana between marijuana facilities for a fee.
- (18) *State operating license* or, unless the context requires a different meaning, *license* means a license that is issued under this act that allows the licensee to operate as one of the following, specified in the license:
  - a. A grower.
  - b. A processor.
  - c. A secure transporter.
  - d. A provisioning center.
  - e. A safety compliance facility.

- (19) *Statewide monitoring system* or, unless the context requires a different meaning, *system* means an internet-based, statewide database established, implemented, and maintained by the department under the marijuana tracking act, that is available to licensees, law enforcement agencies, and authorized state departments and agencies on a 24-hour basis for all of the following:
- a. Verifying registry identification cards.
  - b. Tracking marijuana transfer and transportation by licensees, including transferee, date, quantity, and price.
  - c. Verifying in commercially reasonable time that a transfer will not exceed the limit that the patient or caregiver is authorized to receive under section 4 of the Michigan Medical Marijuana Act, MCL 333.26424.

*Mobile home* means a structure, transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained in the structure. Such term does not include a recreational vehicle.

*Natural features* means features including soils, wetlands, floodplain, water bodies, topography, vegetative cover, and geological formations.

*Nightclub* means any public place licensed for the sale of alcoholic liquors, having a maximum occupancy capacity of greater than 100 persons and not meeting the requirements of a class I restaurant.

*Nonconforming building* means any building or portion thereof lawfully existing at the time the ordinance from which this chapter is derived became effective and which now does not comply with its regulations.

*Nonconforming use* means any property use which was lawful at the time the ordinance from which this chapter is derived became effective and which now does not comply with its regulations.

*Nuisance factors* means an offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things, such as, but not limited to: noise, dust, smoke, odor, glare, fumes, flashes, vibration, shock waves, heat, electronic or atomic radiation, objectionable effluent, noises of or congregation of people and traffic.

*Obscuring screen* means a visual barrier between adjacent areas or uses. The screen may consist of structures, such as a wall or fence, or living plant material.

*Offset* means the distance between the centerlines of driveways or streets across the street from one another.

*Outdoor display, sales, or storage* means outdoor display, sales, or storage that is accessory to a permitted commercial use or a business operated substantially outside of any building, including: retail sales of garden supplies and equipment (including but not limited to, trees, shrubbery, plants, flowers, seed, topsoil, trellises, and lawn furniture); sale of building and lumber supplies; automobiles, recreational vehicles, boats, mobile homes, garages, swimming pools, playground equipment, mowing equipment, farm implements, construction equipment and similar materials or equipment, rental and leasing establishments; and year-round flea markets, farmer's markets, roadside stands, and auctions.

*Parapet wall* means an extension of a building wall above the roof which may serve to screen roof-mounted mechanical equipment.

*Paraprofessional* means a person with similar, but ordinarily less, occupational background and experience than a professional, who assists a professional in the performance of his duties and responsibility.

*Parcel* or *tract* means a continuous area of acreage of land which can be described as provided for in the Michigan Land Division Act.

*Parking lot, off-street* means a facility providing vehicular parking spaces, along with adequate drives and aisles for maneuvering to provide access for entrance and exit for the parking of more than three vehicles.

*Parking space* means an area of definite length and width, said area shall be exclusive of drives, aisles or entrances giving access thereto, and which is accessible for the parking of permitted vehicles, meeting the requirements of [sections] 52-305 through 52-308.

*Pawnshop* means any business that loans money on deposit of personal property or deals in the purchase or possession of personal property on condition of selling the same back again to the pledger or depositor, or loads or advances money on personal property by taking chattel mortgage security thereon, and takes or receives such personal property. This definition shall be deemed to exclude banks and other regulated financial business.

*Performance guarantee* means a financial guarantee to ensure that all improvements, facilities, or work required by this chapter will be completed in compliance with the ordinance, regulations and the approved plans and specifications of a development.

*Person* means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

*Planned residential unit development* means a residential development planned and developed as an entity, under unified control, developed according



to comprehensive and detailed plans, including a program providing for the continual maintenance and operation of such improvements, facilities and services, which will be for the common use of the occupants of the planned residential unit development, which may have single-family dwellings or attached single-family dwellings.

*Professional* means an individual whose full-time career requires extraordinary or highly specialized education, training, skills and licensing in a commonly recognized occupation which adheres to a formally established set of ethical and/or legal standards of eligibility, performance and personal conduct.

*Public and quasi-public institutional buildings, structures, and uses* means buildings, structures, and uses of governmental agencies and nonprofit organizations including, but not limited to, office buildings, police stations, fire stations, municipal parking lots, post offices, libraries, museums, and community centers.

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

*Restaurant* means any public place licensed by the state department of agriculture where food is cooked, prepared, provided or served for human consumption without a license for the sale of alcoholic liquor, excluding churches, educational facilities, hospitals, and nonprofit clubs and lodges.

*Restaurant, class I* , means any public place licensed by the state department of agriculture where food is cooked, prepared, provided or served for human consumption and the premises are licensed for the sale of alcoholic liquors, provided that the establishment is operated subject to all of the following requirements and performance standards:

- (1) Culinary facilities shall at all times be maintained and provided for the preparation and cooking of food for consumption on the premises.
- (2) The establishment shall offer a varied menu of food items, consisting of not fewer than ten such food items, cooked or prepared on the premises.
- (3) Not more than 50 percent of the gross floor area open to the general public shall be used for purposes other than seating for diners consisting of tables, chairs, booths and necessary aisle ways, and public restrooms shall not be considered in such determination.
- (4) During any given 90-day period, no more than 50 percent of the gross revenues of the establishment shall be derived from the sale of any alcoholic liquor as defined by the Michigan Liquor Control Code of 1998, Public Act No. 58 of 1998 (MCL 436.1101 et seq.).

*Restaurant, drive-in or drive-thru* means any restaurant where foods and beverages are sold to a retail customer through a service window or similar aperture without requiring the retail customer to exit his vehicle to make the purchase, and shall include an establishment that allows the retail customer to drive in or through any enclosed building or structure and make a purchase of food and beverage without requiring the retail customer to exit his vehicle.

*Restaurant, sit-down* , means any restaurant where foods and beverages are sold primarily for consumption on the premises.

*Retention basin* means a pond, pool, or basin used for the permanent storage of storm water runoff.

*Screening* means the method by which a view of one site from an adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, or other features.

*Significant natural, historical, and architectural features* means significant architectural features, drainage ways and streams, endangered species habitat, floodplains, hedgerows, significant historical features, landmark trees, ponds and lakes, steep slopes, wetlands and woodlots.

*Specified anatomical areas* means and includes any one or more of the following:

- (1) Less than completely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

*Specified sexual activities* means and includes any one or more of the following:

- (1) The fondling or erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- (2) Human sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation or sodomy;
- (3) Human masturbation, actual or simulated;
- (4) Human excretory functions as part of, or as related to, any of the activities described in subsections (1) through (3); and
- (5) Physical violence, bondage, mutilation or rape, actual or simulated, as part of, or as related to, any of the activities described in subsections (1) through (4).

*Steep slopes* means slopes with a grade of 12 percent or more.

*Story* means that part of a building, except a mezzanine as defined herein, included between the surface of one floor and the surface of the next floor, or if

there is no floor above, then the ceiling next above. A story thus defined shall not be counted as a story when more than 50 percent, by cubic content, is below the height level of the adjoining ground. A basement shall not be counted as a story.

*Substantial improvement* means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the national register of historic places or the state inventory of historic places.

*Substantial portion* means a use or activity accounting for more than 20 percent of any one or more of the following:

- (1) Stock in trade;
- (2) Display space;
- (3) Floor space; or
- (4) Viewing time, movie display time or entertainment time measured per month.

*Supercenter* means a retail establishment selling supermarket items as well as those items typically found in a department or discount store, of more than 50,000 square feet within one or more structures.

*Supermarket* means a retail establishment selling groceries, dry goods, frozen foods and similar items typically within a building of over 5,000 square feet.

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

*Telecommunication tower* shall mean and include all structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals. This may include, but shall not be limited to, radio towers, television towers, telephone devices and exchanges, micro-wave relay facilities, telephone transmission equipment buildings and private and commercial mobile radio facilities. Not included within this definition are: citizen band radio facilities; short-wave receiving

facilities; radio and television broadcast reception facilities; federally Licensed amateur (ham) radio facilities; satellite dishes, and governmental facilities which are subject to state or federal law or regulations which pre-empt municipal regulatory authority.

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

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

- (1) *Rezoning traffic impact study*. A traffic impact study which contrasts typical uses permitted under the current and requested zoning or land use classification. This study usually includes a trip generation analysis and a summary of potential impacts on the street system.
- (2) *Traffic impact assessment*. A traffic impact study for land uses which are not expected to have a significant impact on the overall transportation system but will have traffic impacts near the site. This type of study focuses on the expected impacts of a development at site access points and adjacent driveways.
- (3) *Traffic impact statement*. A traffic impact study which evaluates the expected impacts at site access points and intersections in the vicinity.
- (4) *Regional traffic impact study*. A comprehensive traffic impact study for land uses expected to have a significant long term impact on the street system. Such a study evaluates the impacts over a long period and may involve analyses of alternate routes. This type of study is typically prepared using a computer model which simulates traffic patterns.

*Truck terminal* means a structure to which goods, except raw or unprocessed agricultural products, natural minerals, or other natural resources, are delivered for immediate distribution to other parts of the city, for delivery to other intrastate or interstate destinations, or for distribution involving transfer to other modes of transportation.

*Yard, front*, means the open space extending from the full width of the lot between a building and the front lot line.

*Yard, rear*, means the open space extending the full width of the lot between a building and rear lot line.

*Yard, side*, means the open space extending from the front yard to the rear yard between a building and the side lot line.

**Chapter 52, Article III, Section 52.319 of the Code of Ordinances, City of Clare, Michigan, is hereby added as follows:**

## Section 52-319 Wireless Telecommunications Towers

A. Purpose and Goals. The purpose of this Section is to establish guidelines for the siting, use, and maintenance of wireless telecommunications towers and antennas. The goals of this Section are to:

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

In furtherance of these goals, the City shall give due consideration to the City's Master Plan, Zoning Map, existing and future land uses, and sensitive areas in approving sites for the location of towers and antennas.

B. Applicability.

- (1) *New Towers and Antennas.* All new towers and antennas in the City shall be subject to these regulations, except as provided in Subsections 2, 3, and 4, below.
- (2) *Amateur Radio Station Operators.* This section shall not govern any tower, or the installation of any antenna, that is owned and operated by a federally licensed amateur radio station operator. Amateur radio towers will be governed by maximum heights for non-attached structures in appropriate districts, as required elsewhere in this Ordinance.
- (3) *Receive Only Antennas.* This Section shall not govern any receive only antenna or tower installed and used by an individual to receive a fixed-wireless data signal at only a single location, except receive only antennas or towers shall meet the following conditions:

- (a) A tower or antenna is permitted only as an accessory use in all districts.
  - (b) The tower or antenna height shall not exceed fifty (50) feet.
  - (c) The tower shall be setback from all property lines the minimum of the tower height or the underlying setbacks of the district, whichever is greater.
  - (d) Guy wires are not permitted on the tower.
  - (e) The tower shall be equipped with an anti-climbing device.
  - (f) No ground equipment or additional buildings are permitted to accommodate the tower or antenna.
  - (g) No antenna or structure shall extend more than six (6) feet horizontally from the tower.
  - (h) A Certificate of Zoning Compliance is required prior to constructing the tower.
  - (i) The antenna or tower shall not be used to retransmit a data signal to multiple individuals' locations.
- (4) *Preexisting Towers and Antennas.* Towers and antennas that existed prior to enactment of this ordinance shall not be required to meet the requirements of this Section, other than the applicable requirements of Subsections C(12), C(13), C(16), C(17), C(18), G, and H.

C. General Requirements.

- (1) *Principal or Accessory Use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- (2) *Lot Size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, road frontage requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- (3) *Inventory of Existing Sites and Justification of New Sites.* Each application for an antenna and/or tower shall provide to the City an inventory of existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City or within three (3) miles of the border thereof, including specific information about the location, height, and design of each tower. The City may share such

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

- (4) *Height.* Overall heights for new towers and antennas shall meet the following requirements:
  - (a) Maximum height for a single-user tower is one hundred-fifty (150') feet. A single-user tower must have a foundation capable of supporting a tower with a height of one hundred ninety-five (195') feet, to facilitate possible future tower height extension in the event of colocation by other users.
  - (b) Maximum height for a tower with allowances for multiple users is one hundred ninety-five (195') feet. The applicant must provide written assurance, verifying that there are reasonable provisions (including the tower, the equipment structure plan, and site location) for colocation by two other users. In addition, the applicant must provide written assurance that permission to colocate will be granted for compensation at the prevailing market rate. Suitability of this documentation will be assessed by the Zoning Administrator (for certificate of zoning compliance) or by the Planning Commission during site plan review.
- (5) *Setbacks.* The following setback requirements shall apply to all new towers:
  - (a) Towers must be setback a distance equal to at least the height of the tower from an adjoining lot line, except in an industrial district where the setback from an adjoining lot line will be half the tower height. These setback requirements are in addition to meeting the requirements of C-7.
  - (b) Accessory buildings must satisfy the minimum zoning district setback requirements.
- (6) *Road Frontage.* For the entire lot, including a sub-parcel on which a tower or antenna is sited, there shall be a minimum of one hundred-fifty (150') feet of road frontage.

- (7) *Separation Distances.* New towers shall be located a minimum of four hundred (400') feet from any existing residential dwelling on adjacent properties.
- (8) *Tower and Antenna Appearance.* Towers and antennas shall meet the following requirements:
  - (a) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
  - (b) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
  - (c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- (9) *Landscaping.* The following requirements shall govern the landscaping surrounding towers:
  - (a) Towers and accompanying facilities shall be landscaped in a manner that effectively screens the view of the tower compound from property used (or potentially to be used) for residences. A landscaping plan shall be submitted for approval by the Zoning Administrator (certificate of zoning compliance) or by the Planning Commission (site plan review).
  - (b) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may provide sufficient buffer.
- (10) *Security.* Towers shall be equipped with anti-climbing devices and enclosed by security fencing not less than eight (8') feet in height. The fence may be equipped with an appropriate anti-climbing device, at the discretion of the owner.
- (11) *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required,



all available lighting options must be presented to the Zoning Administrator (certificate of zoning compliance) or to the Planning Commission (site plan review).

- (12) *State or Federal Requirements.* All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards and regulations. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense, as required in Subsection G.
- (13) *Building Codes; Safety Standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers. If, upon inspection, the City concludes that a tower fails to comply with applicable codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have sixty (60) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said sixty (60) days shall constitute grounds for removal of the tower or antenna at owner's expense, as required in Subsection G.
- (14) *Engineering Certification and Liability Insurance.* Application for tower or antenna siting approval must be accompanied by a signed certification from an independently hired State of Michigan licensed professional engineer. The engineer shall certify integrity of the design and indicating how the tower or antenna would fall in event of such occurrence. Application for tower or antenna siting approval must also include evidence of at least one million (\$1,000,000) U.S. dollars of general liability insurance to cover the applicant, land owner, City and damage to other persons or property that may result from unforeseen events or circumstances. The City shall be notified of any notice cancellations or changes in liability insurance.
- (15) *Measurements.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the City irrespective of municipal, county, and state jurisdictional boundaries.

- (16) *Not Essential Services.* Towers and antennas shall be regulated or permitted pursuant to this Section and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- (17) *Licensed or Franchises.* Owners and/or operators of towers or antennas shall certify that all licenses or franchises required by law for the construction and/or operation in the City have been obtained and shall file a copy of all required licenses or franchises with the Zoning Administrator.
- (18) *Signs.* No signs shall be allowed on an antenna or tower except for usual regulatory signs required by the State of Michigan or the FCC such as “No Trespassing”, “Danger”, or a sign indicating who should be contacted in case of an emergency.
- (19) *Buildings and Support Equipment.* Buildings and support equipment associated with antennas or towers shall comply with the requirements of Subsection F.
- (20) *Provision for Removal.* The application for siting of any antenna or tower shall require the applicant to deposit with the City Clerk security of a performance guarantee (in a time duration and with a financial institution deemed acceptable to the City) in the form of cash, a certified check, or irrevocable bank letter of credit, which will ensure full compliance with this Ordinance and any conditions of approval. The security shall cover removal of the facility when it has been abandoned, is no longer in use, or is in violation as provided in Subsection G. The security shall be in the amount indicated in the following schedule:

Total Construction Cost	Security
\$0.00 - \$2,500	\$500
\$2,501- \$7,500	\$1,000
\$7,501 - \$15,000	\$2,000
\$15,001- \$25,000	\$5,000
\$25,001 - \$50,000	\$15,000
\$50,001 and greater	\$25,000

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

condition of the security that the applicant and owner are responsible for the payment of any costs and attorney fees incurred by the City in securing removal.

- (21) *Tower Spacing.* Minimum spacing between tower locations shall be two (2) miles. The Planning Commission may waive this standard where the proposed location of the tower will serve to cluster two or more towers in close proximity to one another and, thereby, minimize the visual impacts upon panoramic views in the City.

D. Permitted Uses.

- (1) *General.* The uses listed in this Subsection are deemed to be permitted uses. They shall not require a special use permit, but they may require administrative approval or review as governed by the following provisions.
- (a) The City Zoning Administrator may administratively approve or review the uses listed in this Subsection.
  - (b) Each applicant for administrative approval or review shall apply to the Zoning Administrator, providing all information called for and/or regulated in Subsection C and a nonrefundable fee as established by resolution of the City Board to reimburse the City for the costs of reviewing the application.
  - (c) The Zoning Administrator shall review the application as required in this Section, and determine if the proposed use complies with all requirements and regulations of this Ordinance.
  - (d) If an administrative approval is denied, the applicant may take an appeal to the Board of Appeals.
- (2) *List of Permitted Uses.* Locating antennas on existing or preexisting towers or structures consistent with the terms of Subsection (a) is permitted upon administrative review by the Zoning Administrator. Antennas or cable microcell networks consistent with Subsection (b) and (c) below are permitted uses, upon approval by the Zoning Administrator after an administrative review:
- (a) Administratively reviewed tower colocation must not require tower reconstruction or tower height modification above the following thresholds:

- (i) Height increase greater than 20 feet or 10% of the original tower height as approved at the time of construction or greater than the maximum tower height permitted in Subsection C(4).
  - (ii) Width increase of the original tower as approved at the time of construction by more than necessary to permit the installation of the new equipment.
  - (iii) Increase in the related facilities or tower foot print greater than 2500 square feet.
- (b) Any antenna that is not attached to a tower may be approved by the Zoning Administrator as a secondary use to any commercial, industrial, or similar structure, provided:
  - (i) The antenna does not extend above the highest point of the structure.
  - (ii) The antenna complies with all applicable FCC and FAA regulations.
  - (iii) The antenna complies with all applicable building codes.
  - (iv) The antenna will not materially alter the appearance of the existing structure.
  - (v) Any accessory equipment for the antenna shall be placed inside the structure to which the antenna is attached or in the rear yard with screening provided so that the equipment is not visible from adjacent properties and roads.
- (c) Installing a cable microcell network through use of multiple low powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

#### E. Special Uses.

- (1) *General.* The uses listed in this Subsection will require a special use permit issued pursuant to Article V of this Ordinance.
- (2) *List of Permitted Special Uses.* Any of the following may be granted as a special use if it meets all applicable requirements set forth in this Ordinance:

- (a) Locating a tower, including the placement of additional buildings or other supporting equipment used in connection with said tower, in any Industrial District (I) or Industrial Park District (IPD), or on any land that is designated in the Master Plan as public or semi-public.
- (b) Locating a tower, including the placement of additional buildings or other supporting equipment used in connection with said tower, elsewhere in the City, subject to the following:
  - (i) Applicant shall provide information and supporting documents that demonstrate that no existing structure identified in Subsection C(3) or location in a zoning district listed within Subsection E(2)(a) can reasonably meet the disclosed service, coverage and/or capacity needs of the applicant, including demonstration that not approving the proposed location would result in a significant gap in coverage and prohibit personal wireless services to individual in that location. Such demonstration requires identification of all structure and properties considered and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.
  - (ii) Applicant shall demonstrate good faith by identifying and evaluating alternate sites, locations, designs, placements, or features for the proposed facility that would be more consistent with the purposes stated in Subsection A.
  - (iii) For each alternate site, location, design, placement, or feature identified by the applicant or otherwise, the applicant shall demonstrate that the proposed facility is more consistent with the ordinance purposes stated in Subsection A and/or that such alternates are not feasible.
  - (iv) Wireless communication facilities and towers shall be of a design that camouflages or conceals the presence of antennas and towers into the surrounding environment and to minimize the visual impact so as to be compatible with the existing character of the proposed site, neighborhood, and general area, as found satisfactory by the City. Monopole construction is preferred.

- (c) Locating an antenna on existing or preexisting towers or structures in compliance with this Section when locating such antenna will increase the original tower height as approved at time of construction more than 20 feet or 10%, increase the width of the original tower as approved at time of construction by more than necessary to permit the installation of the new antenna and equipment, increase the original tower facility or foot print as approved at time of construction to an area greater than 2500 square feet, or will violate the terms and conditions of any previous approval of the tower and tower facility. Colocation by multiple carriers on existing or preexisting towers will be strongly encouraged, provided such colocation is accomplished in a manner consistent with the following:
  - (i) A tower that is modified or reconstructed shall be of the same tower type as the existing tower or reconstructed as a monopole.
  - (ii) Height.
    - (a) An existing or preexisting tower may be modified or rebuilt to a taller height, not to exceed forty-five (45) feet over the original tower's height, provided the ultimate height does not exceed the maximum height listed in Subsection C(4)(b).
    - (b) An existing or preexisting tower modified or rebuilt to a taller height shall not require an additional setback distance as set forth in Subsection (c)(5).
- (d) Any antenna that is not located on a tower as a secondary use to any commercial, industrial, or institutional structure, provided:
  - (i) The antenna does not extend more than thirty (30') feet above the highest point of the structure.
  - (ii) The antenna complies with all applicable FCC and FAA regulations.
  - (iii) The antenna complies with all applicable building codes.

- (iv) The antenna will not materially alter the appearance of the existing structure.
  - (v) Any accessory equipment for the antenna shall be placed inside the structure to which the antenna is attached or in the rear yard with screening provided so that the equipment is not visible from adjacent properties and roads.
- (e) Relocating a tower within fifty (50') feet of its existing location to accommodate colocation, provided the following conditions are met:
  - (i) Relocation does not further decrease a required setback as required in Subsection (C)(5) or cause violation of the separation requirement in Subsection (C)(7).
  - (ii) After a tower is rebuilt to accommodate colocation, any abandoned or unused tower must be removed from the site, in accordance with the stipulations of Subsection G.

F. Buildings and other Equipment Storage.

- (1) *Antennas located on towers.*
  - (a) The related unmanned equipment structures shall not contain more than three hundred (300') square feet of gross floor area per user or be more than twelve (12') feet in height. It shall be located within fifty (50') feet of the associated tower. Multiple users will be strongly encouraged to share an equipment structure with a common wall.
  - (b) The structure or cabinet shall be screened as required in Subsection C(9).
  - (c) The structure shall be surrounded by a security fence as required in Subsection C(10).
  - (d) The structure will comply with all applicable building codes.
- (2) *Antennas Mounted on Structures or Rooftops.* The equipment cabinet or structure used in association with antennas shall comply with the following:
  - (a) The cabinet or structure shall not contain more than three hundred (300') square feet of gross floor area per

user or be more than twelve (12') feet in height. In addition, for buildings and structures that are less than sixty-five (65') feet in height, the related unmanned equipment structure, if over one hundred (100') square feet of gross floor area or eight (8') feet in height, shall be located on the ground and shall not be located on the roof of the structure.

- (b) If the equipment is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than twenty-five (25%) percent of the roof area.
- (c) If the equipment structures or cabinet is located on the ground, it will be surrounded by a security fence as required in Subsection C(10).
- (d) Equipment storage buildings or cabinets shall comply with all applicable building codes.

G. Removal of Antennas, Towers, and Associated Facilities.

- (1) A condition of every approval of a wireless communication facility shall be adequate provisions for removal of all or part of the facility as required in Subsection C(20). Removal shall be called for upon the occurrence of one or more of the following events:
  - (a) When the facility has not been used one hundred eighty (180) days or more. For purposes of this Section, the removal of antennas or other equipment necessary to operate the facility or the cessation of the operations (transmission and/or reception of communication signals) shall be considered as the beginning of a period of nonuse. Also, a change of use, from the original principal use, without reapplication and approval by the City will be considered as the beginning of a period of nonuse.
  - (b) When a tower, antenna, or other facility is in violation of this Ordinance.
- (2) The situations in which removal of a facility is required, as set forth above, may be applied and limited to portions of a facility.
- (3) Upon the occurrence of one or more of the events requiring removal, as specified above, the property owner or persons who have 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 the pre-existing conditions as documented on the approved site plan.

- (4) If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days following written notice by the City, the City may remove or secure removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn, collected and/or enforced from or under the security posted at the time application was made for establishing the facility. If reasonable actual costs for facility removal and site restoration exceed the posted security, then the owner of this facility will be liable for those excess costs.

#### H. Nonconforming Uses.

- (1) *Not Expansion of Nonconforming Use.* Towers that are constructed and antennas that are installed, in accordance with the provisions of this Section shall not be deemed to constitute the expansion of a nonconforming use of a structure.
- (2) *Pre-existing Towers.* Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such pre-existing towers. New construction (other than routine maintenance), height modification, expanded use, or application for colocation on a pre-existing tower shall comply with the requirements of this Ordinance.
- (3) *Replacing Damaged or Destroyed Nonconforming Towers or Antennas.* Pre-existing or nonconforming antennas or towers that are damaged or destroyed are governed by reconstruction in Section 13.90 of this Ordinance. In the event of abandonment or termination of use, such towers will be removed.

#### I. Review.

- (1) *Completeness of Application.* Upon receipt of an application for a special use permit and payment of application fees, the Zoning Administrator must determine if the application is administratively complete within 14 business days and notify the applicant in writing what additional information is necessary to make the application complete. Once an application is determined to be administratively

complete, the Zoning Administrator shall notify the applicant, the Planning Commission, and the City Commission.

- (2) *Scheduling Public Hearing.* To enable timing required in Section I(3) and notwithstanding provisions to the contrary, the City Clerk shall schedule the public hearing required for applications needing a Special Use. This shall be done upon determination that the application is administratively complete.
- (3) *Decision.* Once the application is complete, the Zoning Administrator for principal uses and the City Board for special uses must approve or deny an application for new equipment (including an antenna) on an existing tower within 60 days and must approve or deny an application for a new tower within 90 days.

Passed by the City Commission of the CITY OF CLARE on January 2, 2018, at its regular meeting with five commissioners in attendance, five voting aye, zero nay. Adopted by the City Commission of the City of Clare this 2<sup>nd</sup> day of January, 2018.

Signed: Patrick Humphrey, Mayor.

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I hereby certify that the foregoing was duly adopted by the CITY COMMISSION of CITY OF CLARE, Michigan, at its regular meeting on the 2nd of January, 2018, that of five members of the City Commission, five were in attendance and five voted for the adoption of the Ordinance. I further certify that the above and foregoing ordinance is recorded in Ordinances for the CITY OF CLARE.

Effective Date

This Ordinance shall take effect thirty (30) days following date of publication as required by law. All Ordinances or part Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Diane Lyon, City Clerk