

# EAU CLAIRE, MICHIGAN

## CODE OF ORDINANCES

Current through Local Legislation Ord. No. 2017-1, passed 4-17-2017

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## TITLE I: GENERAL PROVISIONS

Chapter

### 10. GENERAL PROVISIONS

## CHAPTER 10: GENERAL PROVISIONS

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### § 10.01 HOW CODE DESIGNATED AND CITED.

This code shall constitute and be designated as the “The Village of Eau Claire Code”, for which designation “code of ordinances”, “codified ordinances”, “this code”, or “code” may be substituted.

### § 10.02 DEFINITIONS.

(A) Terms used in this code, unless otherwise specifically defined, have the meanings prescribed by the statutes of the state for the same terms.

(B) For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*ACT.* Public Act 236 of 1961 being M.C.L.A. §§ 600.101 et seq., as amended.

*AUTHORIZED VILLAGE OFFICIAL.* A police officer, building inspector, or other designated official or employee of the village

authorized by this code to issue municipal civil infraction citations or municipal civil infraction violation notices.

**BUREAU.** The Village Municipal Violations Bureau, as established by this code.

**CIVIL INFRACTION.** An act or omission that is prohibited by this code or any ordinance of the village, but which is not a crime under this code or any other ordinance of the village, and for which civil sanctions including, without limitation, fines, damages, expenses, and costs may be ordered, as authorized by Public Act 236 of 1961, being M.C.L.A. §§ 600.8701 through 600.8735, as amended. A municipal **CIVIL INFRACTION** is not a lesser included offense of any criminal offense in this code.

**CODE.** The Village of Eau Claire Code as designated in § 10.01.

**COMPUTATION OF TIME.** The time within which an act is to be done, as provided in this code or in any order issued pursuant to this code, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day is Sunday or a legal holiday it shall be excluded; and when the time is expressed in hours, the whole of Sunday or a legal holiday, from midnight to midnight, shall be excluded.

**COUNCIL.** The Village Council of Eau Claire, Michigan.

**COUNTY.** The County of Berrien, Michigan.

**JUVENILE.** Any person under 17 years of age.

**MINOR.** A person under 21 years of age.

**MUNICIPAL CIVIL INFRACTION.** An act or omission that is prohibited by this code of the village, but which is not a crime under this code or any code, and for which civil sanctions including, without limitation, fines, damages, expenses, and costs may be ordered, as authorized by Public Act 236 of 1961, Ch. 87, being M.C.L.A. §§ 600.101 et seq., as amended. A **MUNICIPAL CIVIL INFRACTION** is not a lesser included offense of a violation of this code that is a criminal offense.

**MUNICIPAL CIVIL INFRACTION ACTION.** A civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

**MUNICIPAL CIVIL INFRACTION CITATION.** A written complaint or notice prepared by an authorized village official directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

**MUNICIPAL CIVIL INFRACTION VIOLATION NOTICE.** A written notice prepared by an authorized village official directing a person to appear at the Village Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of fines adopted by the village, as authorized under §§ 8396 and 8707(6) of the Act.

**OFFICER, DEPARTMENT, BOARD, AND THE LIKE.** Whenever any officer, department, board, or other public agency is referred to by title only, the reference shall be construed as if followed by the words “of the Village of Eau Claire, Michigan”. Whenever, by the provisions of this code, any officer of the village is assigned any duty or empowered to perform any act or duty, reference to the officer shall mean and include the officer or his or her deputy or authorized subordinate.

**ORDINANCES.** The ordinances of the village and all amendments thereto.

**PERSON.** Any natural individual, firm, trust, partnership, association, or corporation. Whenever the word **PERSON** is used in any section of this code prescribing a penalty or fine, as applied to partnerships or associations, the word includes the partners or members thereof and, as applied to corporations, the word includes officers, agents, or employees thereof who are responsible for any violations of the section. The singular includes the plural. The masculine gender includes the feminine and neuter genders.

**STATE, THE STATE, or THIS STATE.** The State of Michigan.

**VILLAGE.** The Village of Eau Claire, Michigan.

(Ord. 2001-6, passed 8-20-2001)

### **§ 10.03 SECTION CATCHLINES AND OTHER HEADINGS.**

The catchlines of the several sections of this code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be the titles of the sections, nor as any part of the sections, nor, unless expressly so provided, shall they be so deemed when any of the sections, including the catchlines, are amended or reenacted. No provision of this code shall be held invalid by reason of deficiency in any catchline or in any heading or title to any chapter, subchapter, or division.

### **§ 10.04 CERTAIN ORDINANCES NOT AFFECTED BY CODE.**

Nothing in this code or the ordinance adopting this code shall affect any ordinance not in conflict with or inconsistent with this code:

- (A) Promising or guaranteeing the payment of money for the village, authorizing the issuance of any bonds of the village, any evidence of the village’s indebtedness, any contract or obligations assumed by the village;
- (B) Containing any administrative provisions of the Village Council;
- (C) Granting any right or franchise;
- (D) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, and the like, any street or public way in the village;

- (E) Making any appropriation;
- (F) Levying or imposing taxes;
- (G) Establishing or prescribing grades in the village;
- (H) Providing for local improvements and assessing taxes therefor;
- (I) Dedicating or accepting any plat or subdivision in the village;
- (J) Extending or contracting the boundaries of the village;
- (K) Prescribing the number, classification, or compensation of any village officers or employees;
- (L) Prescribing specific parking restrictions, no parking zones, specific speed zones, parking meter zones, and specific stop or yield intersections or other traffic ordinances pertaining to specific streets;
- (M) Pertaining to rezoning; and
- (N) Any other ordinance, or part thereof, which is not of a general and permanent nature; and all ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this code. The ordinances are on file in the village offices.

#### **§ 10.05 CONTINUATION OF ORDINANCES.**

The provisions of this code, so far as they are the same in substance as those of heretofore existing ordinances, shall be construed as a continuation of these ordinances and not as new enactments.

#### **§ 10.06 PRIOR RIGHTS, OFFENSES, AND THE LIKE.**

Any act done, offense committed, or right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred prior to the time of adoption of this code, shall not be affected by the adoption, but may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if the adoption had not been effected.

#### **§ 10.07 ORDINANCES REPEALED NOT REENACTED.**

(A) No ordinance or part of any ordinance heretofore repealed shall be considered re-ordained or reenacted by virtue of this code, unless specifically reenacted.

(B) The repeal of any curative or validating ordinances shall not impair or affect any cure or validation already effected thereby.

#### **§ 10.08 AMENDMENTS TO CODE.**

(A) Amendments to any of the provisions of this code shall be made by amending the provisions by specific reference to the section number of this code in the following language: "That section \_\_\_\_ of the Village of Eau Claire Code, is hereby amended to read as follows:...". The new provisions shall then be set out in full as desired.

(B) If a new section not heretofore existing in the code is to be added, the following language shall be used: "That the Village of Eau Claire Code is hereby amended by adding a section, to be numbered \_\_\_\_, which section reads as follows:...". The new section shall then be set out in full as desired.

#### **§ 10.09 SUPPLEMENTATION OF CODE.**

(A) By contract or by village personnel, supplements to this code shall be prepared and printed whenever authorized or directed by the Village Council. A supplement to the code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages which have become

obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(B) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by the omission thereof from reprinted pages.

(C) When preparing a supplement to this code, the codifier (meaning the person, agency, or organization authorized to prepare the supplement) may make formal, non-substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate divisions;
- (2) Provide appropriate catchlines, headings, and titles for sections and other divisions of the code printed in the supplement, and make changes in catchlines, headings, and titles;
- (3) Assign appropriate numbers to sections and other divisions to be inserted in the code and, where necessary, to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter", "this subchapter", "this division", and the like, as the case may be, or to "§§ \_\_\_\_ through \_\_\_\_" (inserting section numbers to indicate the sections of the code which embody

the substantive sections of the ordinance incorporated into the code); and

(5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

#### **§ 10.10 APPEARANCE TICKETS.**

The following public servants are hereby authorized to issue and serve appearance tickets with respect to ordinances of the village, as provided by Public Act 147 of 1968, being M.C.L.A. §§ 764.9a through 764.9e, as amended, when the public servant has reasonable cause to believe that a person has committed an offense in violation of a village ordinance:

- (A) Building Inspector;
- (B) Code Enforcement Officer; and
- (C) Fire Chief.

#### **§ 10.11 SEPARABILITY OF PROVISIONS.**

Each section, division, sentence, clause, and provision of this code is separable and, if any provision shall be held unconstitutional or invalid for any reason, the decision shall not affect the remainder of this code, or any part thereof, other than that part affected by the decision.

#### **§ 10.99 GENERAL PENALTY.**

(A) Unless a violation of any ordinance of the village is specifically designated in the ordinance as a municipal civil infraction, the violation shall be deemed to be a misdemeanor.

(B) The penalty for a misdemeanor violation shall be a fine not exceeding \$500, plus costs of prosecution, or imprisonment not exceeding 90 days, or both, unless a specific penalty is otherwise provided for the violation by this code or any ordinance.

(C) The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by this code or any ordinance, plus any costs, damages, expenses, and other sanctions, as authorized under Chapter 87 of the Act and other applicable laws.

(1) Unless otherwise specifically provided for a particular municipal civil infraction violation by this code or any other ordinance, the civil fine for a violation shall be not less than \$25, plus costs and other sanctions, for each infraction.

(2) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of this code or any ordinance. As used in this section, the term **REPEAT OFFENSES** means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision committed by a person within any six-month period, unless some other period is specifically provided by this code or any ordinance, and for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by this code or any ordinance for a particular municipal civil infraction violation, the increased fine for a repeat offense shall be as follows.

(a) The fine for any offense which is a first repeat offense shall be no less than \$100, plus costs.

(b) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be no less than \$250, plus costs.

(D) A violation includes any act which is prohibited, or made or declared to be unlawful, or an offense by this code or any ordinance, and any omission or failure to act where the act is required by this code or any ordinance.

(E) Each day on which any violation of this code or any ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(F) In addition to any remedies at law, the village may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this code or any village ordinance.

(Ord. 2001-6, passed 8-20-2001)

## **TITLE III: ADMINISTRATION**

Chapter

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### **CHAPTER 30: VILLAGE OFFICIALS**

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**OFFICERS**

**§ 30.01 VILLAGE TREASURER.**

(A) *Establishment of office.* As authorized by Public Act 3 of 1895, Ch. II, § 1(3), as amended, the Village Treasurer shall be chosen by nomination by the Village President and appointed by a majority vote of the Village Council.

(B) *Term of office.* The term of office of the Village Treasurer shall be two years from the second Monday of March of each even-numbered year and until a successor is appointed. The person first appointed as Village Treasurer under this section shall have an initial term of office commencing as of the date such person takes and subscribes the oath of office and files it with the Village Clerk, together with the filing of any bond required by law. The initial term of office shall commence not earlier than the second Monday of March 2002.

(Ord. 2001-10, passed 11-19-2001)

**§ 30.02 VILLAGE CLERK.**

(A) *Establishment of office.* As authorized by Public Act 3 of 1895, Ch. II, § 1(3), as amended, the Village Clerk shall be chosen by nomination by the Village President and appointment by a majority vote of the Village Council.

(B) *Term of office.*

(1) The term of office of the Village Clerk shall be two years from the second Monday of March of each even-numbered year and until a successor is appointed.

(2) The person first appointed as Village Clerk under this section shall have an initial term of office commencing as of the date such person takes and subscribes the oath of office and files the same with the Village Clerk, together with the filing of any bond required by law, but such initial term of office shall commence not earlier than the second Monday of March 2002.

(Ord. 2001-11, passed 11-19-2001)

**VILLAGE TRUSTEES**

**§ 30.15 TERM AND MANNER OF ELECTION OF VILLAGE TRUSTEES.**

Two of the Village Trustees shall be elected at each biennial village election for the term of four years and until their successors are qualified.

(Ord. 2004-3, passed 12-20-2004)

**§ 30.16 INCREASE NUMBER OF TRUSTEES ON COUNCIL.**

(A) *Number of Trustees on Council.* The number of Trustees on the Village Council shall be four Trustees who, with the President, shall constitute the Council.

(B) *Term of office.* After the effective date of adoption of this section, three Village Trustees shall be elected each succeeding biennial village election. This section shall not shorten the term of any incumbent Trustee. Nor shall this section shorten or eliminate a prospective term unless the nomination deadline for that term is not less than 30 days after the effective date of this section.

(Ord. 2007-1, passed - -)

## RESERVE POLICE OFFICERS

### § 30.30 POSITION ESTABLISHED.

There is hereby established the position of reserve officer within the village.

(Ord. 2008-2, passed 11-17-2008)

### § 30.31 APPOINTMENT.

The Village Council is hereby authorized to appoint by resolution at any regular meeting of said Council or special meeting called for the purpose of any person or persons to the position of reserve officer, under such conditions and limitations as may be designated in said resolution. The Village Council (or the Village Police Committee, if the Council so delegates), may similarly by resolution remove any person from said position at any time the Village Council deems such removal appropriate.

(Ord. 2008-2, passed 11-17-2008)

### § 30.32 DUTIES.

(A) The reserve officer, upon appointment, is hereby authorized to temporarily, during the period of his or her appointment and while under the direction of the Village Police Department, to enforce all ordinances of the village, whether heretofore or hereafter enacted and regardless of whether such ordinances specifically designate a different official to enforce the same or do not designate any particular enforcing officer.

(B) The authority of the reserve officer shall at all times be auxiliary to the authority of the village police officers and/or any ordinance-enforcing officer of the village. Any ordinance-enforcing authority of police officers and other officers specifically designated in any village ordinance as enforcing officers shall continue in full force and effect and shall in no way be diminished or impaired by the terms of this subchapter.

(Ord. 2008-2, passed 11-17-2008)

### § 30.33 SPECIFIED AUTHORITY.

The reserve officer's authority herein specified shall include: investigation of ordinance violations and other suspected criminal activity; serving notice of violations; serving appearance tickets as authorized under Public Act 147 of 1968, being M.C.L.A. § 764.9c, as amended; appearance in court or other judicial or quasi-judicial proceedings to assist in the prosecution of violators; assisting village police officers in making arrests; and such other specific authority or duties as may be delegated to such reserve officer by a village police officer.

(Ord. 2008-2, passed 11-17-2008)

### § 30.34 STATUTORY REFERENCE.

The reserve officer is hereby declared to be a member of the Village Police Department Reserve Officer Program Auxiliary under the provisions of Public Act 203 of 1965, § 9, being M.C.L.A. § 28.609, the Commission on Law Enforcement Standards Act of 1965, as amended.

(Ord. 2008-2, passed 11-17-2008)

### § 30.35 EFFECTIVE DATE.

This subchapter took effect immediately upon publication. All ordinances of the village heretofore or hereafter adopted shall hereafter be supplemented by the terms of this subchapter.

(Ord. 2008-2, passed 11-17-2008)

## CHAPTER 31: VILLAGE ORGANIZATIONS

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### Section

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## COMMITTEES

### § 31.01 CAPITAL REPLACEMENT COMMITTEE.

(A) There is hereby created a Capital Replacement Committee for the village.

(B) The Committee shall consist of three members, appointed by the Village President by and with the consent of the Village Council. The term of appointment shall be one year, beginning the second Monday of April each year.

(C) The purpose of the Committee shall be to review the inventory, condition, and maintenance records of all village equipment and to make reports and recommendations to the Village Council as to the need to replace existing equipment or purchase additional equipment. The Committee shall recommend annual funding for these purposes. Recommendations for future annual budget appropriations shall be made at the annual budget work session and presented at the public hearing on the proposed budget prior to the beginning of each fiscal year.

(D) The Committee shall keep a full and accurate written record of its proceedings and recommendations, submitted as minutes to the Village Clerk for the official village record. The Committee shall comply with all requirements for meetings of a public body, as described in the Open Meetings Act, Public Act 267 of 1876, §§ M.C.L.A. §§ 15.261 et seq., as amended. The current version of *Robert's Rules of Order* shall govern the conduct of Committee meetings.

(E) Committee members shall be paid \$10 for each meeting at which their attendance is documented. Payment shall be made annually, based on attendance noted in official minutes on file in the Clerk's office.

(F) This section shall become effective 30 days after legal publication and in accordance with provisions of the Act governing same.

(Ord. 1998-5, passed 9-14-1998)

### § 31.02 COMMUNITY DEVELOPMENT COMMITTEE.

(A) There is hereby created a Community Development Committee for the village.

(B) The Committee shall consist of three members, appointed by the Village President by and with the consent of the Village Council. The term of appointment shall be one year, beginning the second Monday of April each year.

(C) The purpose of the Committee shall be to make recommendations to the Village Council for lending and administering the Village Community Development Fund cash to low income homeowners of the village. This lending shall be done through a low interest lending program. The Committee shall oversee the lending program and ensure all adopted building codes, lending guidelines, and repayment programs are enforced.

(D) The Committee shall keep a full and accurate written record of its proceedings and recommendations, submitted as minutes to the Village Clerk for the official village record. The Committee shall comply with all requirements for meetings of a public body, as described in the Open Meetings Act, Public Act 267 of 1876, being M.C.L.A. §§ 15.261 et seq., as amended. The current version of *Robert's Rules of Order* shall govern the conduct of Committee meetings.

(E) Committee members shall be paid \$10 for each meeting at which their attendance is documented. Payment shall be made annually, based on attendance noted in official minutes on file in the Clerk's office.

(F) This section shall become effective 30 days after legal publication and in accordance with provisions of the Act governing same.

(Ord. 1998-4, passed 9-14-1998)

## VILLAGE PLANNING COMMISSION

### § 31.15 SCOPE, PURPOSE, AND INTENT.

(A) This subchapter is adopted pursuant to the authority granted the Village Council under the State Planning Enabling Act, Public



Act 33 of 2008, being M.C.L.A. §§ 125.3801 et seq., and the State Zoning Enabling Act, Public Act 110 of 2006, being M.C.L.A. §§ 125.3101 et seq., to establish a Planning Commission with the powers, duties, and limitations provided by those acts and subject to the terms and conditions of this subchapter and any future amendments to this subchapter.

(B) The purpose of this subchapter is to provide that the Village Council shall hereby confirm the establishment under the State Planning Enabling Act, Public Act 33 of 2008, being M.C.L.A. §§ 125.3801 et seq., of the Village Planning Commission formerly established under the Municipal Planning Act, Public Act 285 of 1931, being M.C.L.A. §§ 125.31 et seq.; to establish the appointments, terms, and membership of the Planning Commission; to identify the officers and the minimum number of meetings per year of the Planning Commission; and to prescribe the authority, powers, and duties of the Planning Commission.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.16 ESTABLISHMENT.**

(A) The Village Council hereby confirms the establishment under the State Planning Enabling Act, Public Act 33 of 2008, being M.C.L.A. §§ 125.3801 et seq., of the Village Planning Commission formerly established under the Municipal Planning Act, Public Act 285 of 1931, being M.C.L.A. §§ 125.31 et seq.

(B) The Village Planning Commission shall have five members.

(C) Members of the Village Planning Commission as of the effective date of this subchapter shall, except for an ex officio member whose remaining term on the Planning Commission shall be limited to his or her term on the Village Council, continue to serve for the remainder of their existing terms so long as they continue to meet all of the eligibility requirements for Planning Commission membership set forth within the State Planning Enabling Act, Public Act 33 of 2008, being M.C.L.A. §§ 125.3801 et seq.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.17 APPOINTMENTS AND TERMS.**

(A) The Village President, with the approval of the Village Council, by a majority vote of the members elected and serving, shall appoint all Planning Commission members, including the ex officio members.

(B) The Planning Commission members, other than an ex officio member, shall serve for terms of three years each.

(C) A Planning Commission member shall hold office until his or her successor is appointed. Vacancies shall be filled for the unexpired term in the same manner as the original appointment.

(D) Planning Commission members shall be qualified electors of the village, except that two Planning Commission members may be individuals who are not qualified electors of the village. The membership of the Planning Commission shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the village, in accordance with the major interests as they exist in the village, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire geography of the village to the extent practicable.

(E) One member of the Village Council shall be appointed to the Planning Commission as an ex officio member, and not more than one-third of the members of the Planning Commission may be ex officio members.

(F) An ex officio member has full voting rights. An ex officio member's term on the Planning Commission shall expire with his or her term on the Village Council.

(G) No other elected officer or employee of the village is eligible to be a member of the Planning Commission.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.18 REMOVAL.**

The Village Council may remove a member of the Planning Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.19 CONFLICT OF INTEREST.**

(A) Before casting a vote on a matter on which a Planning Commission member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Planning Commission. Failure of a member to disclose a potential conflict of interest as required by this subchapter constitutes malfeasance in office.

(B) For the purposes of this section, **CONFLICT OF INTEREST** is defined as, and a Planning Commission member shall declare a conflict of interest and abstain from participating in Planning Commission deliberations and voting on a request, when:

(1) An immediate family member is involved in any request for which the Planning Commission is asked to make a decision. **IMMEDIATE FAMILY MEMBER** is defined as an individual's father, mother, son, daughter, brother, sister, or spouse, or a relative of any degree residing in the same household as that individual;

(2) The Planning Commission member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency, or association;



(3) The Planning Commission member owns or has a financial interest in neighboring property. For purposes of this division (B)(3), a **NEIGHBORING PROPERTY** shall include any property falling within the notification radius for the application or proposed development, as required by the zoning ordinance or other applicable ordinance; and

(4) There is a reasonable appearance of a conflict of interest, as determined by a majority vote of the remaining members of the Planning Commission.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.20 COMPENSATION.**

The Planning Commission members may be compensated for their services as provided by Village Council resolution. The Planning Commission may adopt bylaws relative to compensation and expenses of its members for travel when engaged in the performance of activities authorized by the Village Council including, but not limited to, attendance at conferences, workshops, educational and training programs, and meetings.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.21 OFFICERS AND COMMITTEES.**

(A) The Planning Commission shall elect a Chairperson and a Secretary from its members, and may create and fill other offices as it considers advisable.

(B) An ex officio member of the Planning Commission is not eligible to serve as Chairperson.

(C) The term of each office shall be one year, with opportunity for reelection as specified in the Planning Commission bylaws.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.22 BYLAWS, MEETINGS, AND RECORDS.**

(A) The Planning Commission shall adopt bylaws for the transaction of business.

(B) The Planning Commission shall hold at least four regular meetings each year and shall, by resolution, determine the time and place of the meetings.

(C) Unless otherwise provided in the Planning Commission's bylaws, a special meeting of the Planning Commission may be called by the Chairperson or by two other members, upon written request to the Secretary. Unless the bylaws otherwise provide, the Secretary shall send written notice of a special meeting to Planning Commission members at least 48 hours before the meeting.

(D) The business that the Planning Commission may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act, Public Act 267 of 1976, being M.C.L.A. §§ 15.261 et seq., except that the notice of a special meeting to Planning Commission members shall be at least 48 hours before the meeting.

(E) The Planning Commission shall keep a public record of its resolutions, transactions, findings, and determinations. A writing prepared, owned, used, in the possession of, or retained by a Planning Commission in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, Public Act 442 of 1976, being M.C.L.A. §§ 15.231 et seq.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.23 ANNUAL REPORT.**

The Planning Commission shall make a report after every meeting to the Village Council concerning its operations and the status of the planning activities, including recommendations regarding actions by the Village Council related to planning and development.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.24 AUTHORITY TO MAKE MASTER PLAN.**

(A) Under the authority of the State Planning Enabling Act, Public Act 33 of 2008, being M.C.L.A. §§ 125.3801 et seq., and other applicable planning statutes, the Planning Commission shall make a Master Plan as a guide for development within the village's planning jurisdiction.

(B) Final authority to approve a Master Plan or any amendments thereto shall rest with the Planning Commission unless the Village Council passes a resolution asserting the right to approve or reject the Master Plan.

(Ord. 2011-2, passed 12-19-2011)

#### **§ 31.25 ZONING POWERS.**

The Village Council hereby confirms the transfer of all powers, duties, and responsibilities provided for zoning boards or zoning commissions by: the former Village Zoning Act, Public Act 207 of 1921, being M.C.L.A. §§ 125.271 et seq.; the State Zoning Enabling Act, Public Act 110 of 2006, being M.C.L.A. §§ 125.3101 et seq.; or other applicable zoning statutes to the Village Planning Commission formerly established under the Municipal Planning Act, Public Act 285 of 1931, being M.C.L.A. §§ 125.31 et seq.

(Ord. 2011-2, passed 12-19-2011)

### § 31.26 CAPITAL IMPROVEMENT PLAN.

To further the desirable future development of the village under the Master Plan, the Village Council, after the Master Plan is adopted, shall prepare or cause to be prepared by the Village President or by a designated nonelected administrative official, a capital improvements program of public structures and improvements, showing those structures and improvements in general order of their priority, for the following six-year period. The prepared Capital Improvement Plan, if prepared by someone other than the Village Council, shall be subject to final approval by the Village Council. The Planning Commission is hereby exempted from preparing a Capital Improvements Plan.

(Ord. 2011-2, passed 12-19-2011)

### § 31.27 SUBDIVISION AND LAND DIVISION RECOMMENDATIONS.

The Planning Commission may recommend to the Village Council provisions of an ordinance or rules governing the subdivision of land. Before recommending such an ordinance or rule, the Planning Commission shall hold a public hearing on the proposed ordinance or rule. The Planning Commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the village. The Planning Commission shall review and make recommendation on a proposed plat before action thereon by the Village Council under the Land Division Act, Public Act 288 of 1967, being M.C.L.A. §§ 560.101 et seq. Before making its recommendation, the Planning Commission shall hold a public hearing on the proposed plat. A plat submitted to the Planning Commission shall contain the name and address of the proprietor or other person to whom notice of a hearing shall be sent. Not less than 15 days before the date of the hearing, notice of the date, time, and place of the hearing shall be sent to that person at that address by mail and shall be published in a newspaper of general circulation in the village. Similar notice shall be mailed to the owners of land immediately adjoining the proposed platted land.

(Ord. 2011-2, passed 12-19-2011)

### § 31.28 EFFECTIVE DATE.

This subchapter took effect on the date of its publication, December 21, 2011.

(Ord. 2011-2, passed 12-19-2011)

## CHAPTER 32: VILLAGE POLICIES

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### Section

32.01 Fire Department service charges

32.02 Property placed in village custody

### § 32.01 FIRE DEPARTMENT SERVICE CHARGES.

(A) *Purpose.* In order to protect the village from incurring extraordinary expenses resulting from the utilization of the Fire Department's resources to respond to an incident involving hazardous materials, the Village Council authorizes the imposition of charges to recover reasonable and actual costs incurred by the Fire Department in responding to calls for assistance in connection with a hazardous materials release.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**HAZARDOUS MATERIALS.** Includes, but is not limited to, a chemical that is a combustible liquid, a flammable gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable reactive, or water reactive.

**RELEASE.** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, or disposing into the environment.

**RESPONSIBLE PARTY.** Any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity that is responsible for a release of a hazardous material, either actual or threatened, or is an owner, tenant, occupant, or party in control of property onto which or from which hazardous materials release.

(C) *Charges imposed upon responsible party.* When the Fire Department responds to a call for assistance in connection with a hazardous materials release, actual costs incurred by the Fire Department responding to such a call shall be imposed upon responsible parties including, but not limited to:

(1) Three hundred dollars per hour, or fraction thereof, for each unit required, in the opinion of the officer in command, to stand by at the hazardous material incident. For each hour, or fraction thereof, that the pumps are activated, an additional sum of \$100 per hour shall be charged;

(2) A \$15 per hour, per firefighter, or fraction thereof, in the opinion of the officer in command, to be utilized in responding to the hazardous materials incident;

(3) All personnel-related costs incurred by the Fire Department as a result of responding to the hazardous materials incident. Such costs may include, but are not limited to, wages, salaries, and fringe benefits and insurance for full-time and part-time firefighters, full-time and part-time municipal employees, and elected officials acting in their official capacity, overtime pay and related fringe benefit costs for hourly employees, and fire run fees paid to on-call firefighters. Such personnel-related charges shall commence after the first hour that the Fire Department has responded to the hazardous materials incident, and continue until all personnel have concluded hazardous materials incident-related responsibilities;

(4) Other expenses incurred by the Fire Department in responding to the hazardous materials incident including, but not limited to, rental or purchase of machinery, equipment, labor, consultants, legal and engineering fees, medical and hospitalization costs, and the replacement costs related to any contaminated equipment, extinguishing agents, supplies, water purchased from municipal water systems, and meals and refreshments for personnel while responding to the hazardous materials incident;

(5) Charges to the Fire Department imposed by any local, state, or federal government entities related to the hazardous materials incident; and

(6) Costs incurred in accounting for all hazardous material incident-related expenditures, including all bill and collection costs.

(D) *Billing procedures.*

(1) Following the conclusion of the hazardous materials incident, the Fire Chief shall prepare a detailed listing of all known expenses and invoice the responsible party for payment. The invoice shall demand full payment within 30 days of receipt of the bill.

(2) Any additional expenses that shall become known to the Fire Chief following the transmittal of the bill to the responsible parties shall be billed in the same manner on a subsequent bill to the responsible party. For any amounts due that remain unpaid after 30 days, the Fire Department shall impose a late charge of 1% per month, or fraction thereof.

(E) *Other remedies.* The village may pursue any other remedy, or may institute any appropriate action or proceeding, in a court of competent jurisdiction, to collect any charges imposed under this section. The recovery of charges imposed under this section does not limit liability of responsible parties under local ordinance or state or federal law, rule, or regulation.

(F) *Effective date.* This section took effect 30 days after publication.

(Ord. 1996-2, passed 2-10-1997)

#### **§ 32.02 PROPERTY PLACED IN VILLAGE CUSTODY.**

(A) No person shall leave or cause to be left any property within the custody of the village or upon any premises owned or controlled by the village except by the express consent of the village or in compliance with any ordinance of the village or with any other applicable law. No person shall fail to claim any property belonging to any such person which comes into the possession of the village.

(B) For any and all property placed in the custody of the village in violation of division (A) above, or otherwise, including lost, stolen, abandoned, or other property surrendered to any agent of the village, or recovered by any agent of the village, the village is hereby authorized to charge a reasonable fee for services rendered in the safe keeping of said property. Said fees shall not exceed the sum of \$10 per week, plus all other expenses incurred in moving, packaging, storing, or otherwise safekeeping of said property.

(C) The Police Department of the village shall have custody of said property; providing, however, that property coming into possession of the village may, at the discretion of the Village Council, remain in the custody of any other department of the village. Said property shall be surrendered to the true owner or last lawful possessor upon proper proof thereof and upon payment of the charges as provided herein; provided, however, that nothing contained herein shall be construed as obligating release of property being held as evidence or pursuant to court order.

(D) If any article is not claimed and charges paid within six months from the date the village first acquired custody, the Police Department of the village may proceed to sell the article in the manner set forth for sale procedure below. If no bids are received for the purchase of any property, it shall be conclusively presumed that said property is of no value and it shall be destroyed or otherwise disposed of as directed by the Village Council, by a resolution to be passed by the Village Council for said purpose. Proceeds of said sale shall be applied as provided by law, the first of said proceeds shall be used to reimburse the village for the expenses of said sale and charges for storage and other services rendered by the village; the excess, if any, over such items, shall be paid to the owner or person entitled to possession upon proof thereof, and in the absence of such proof, said excess shall be credited to the General Fund of the village.

(E) All items sold pursuant to the provisions of division (D) above shall be sold at public auction in accordance with the following procedure.

(1) Prior to any auction sale, the Village Clerk shall post a notice thereof in the Village Hall and shall publish a notice in a newspaper of general circulation in the village at least one week prior to said sale.

(2) Said notice shall describe any money recovered or held and also any other property recovered and held, together with the time and place of public sale at which said other property may be purchased by the highest bidder. Said highest bidder shall receive a bill of sale for the property bought from the village.

(3) Until the date of said sale, the property may be claimed at the Village Hall upon the terms and conditions set forth in this section and the sale shall be cancelled insofar as such property is concerned.

(F) This section shall not apply to motor vehicles which come into the possession of the village. Before any sale of any item is held provided for in this section, the Chief of Police of the village shall inspect each item to be sold and shall determine whether any of the

items to be sold has a probable resale value of in excess of \$200. If the Chief of Police shall certify that any item to be sold has a probable resale value of more than \$200, said item shall not be sold or disposed of without a resolution specifically authorizing the sale as to any such item being passed by the Village Council.

(G) The Police Department of the village shall keep records of fees charged and paid, property redeemed by payment of charges, property sold, sale proceeds, and all other financial matters pertaining to property in its custody or otherwise in the custody of the village and provided for in this section.

(H) The said provisions of this section shall not apply to property being disposed of pursuant to the discretion or order of any court or magistrate, or to motor vehicles, or to contraband or other forfeited property, where other statutory sale procedures are provided, or to property covered by the provisions of other ordinances or laws.

(Ord. 1976-1, passed - -) Penalty, see § 10.99

## TITLE V: PUBLIC WORKS

Chapter

### 50. GENERAL PROVISIONS

### 51. GARBAGE COLLECTION AND RECYCLING

### 52. WATER

### 53. SEWER

## CHAPTER 50: GENERAL PROVISIONS

Section

50.01 Collection of water and sewer bills

### § 50.01 COLLECTION OF WATER AND SEWER BILLS.

The water and wastewater service rates, fees, charges and polices set forth in Res. 2015-4, passed 9-21-2015 are incorporated by references as if appearing in total.

## CHAPTER 51: GARBAGE COLLECTION AND RECYCLING

Section

### *Garbage*

51.01 Establishment

51.02 License required

51.03 Payment

51.04 Containers

51.05 Weekly pickup

51.06 Can/container capacity and durability

51.07 Licenses; applications; fees; additional requirements

51.08 Sanitation Commissioner

51.09 Service fees

51.99 Penalty

### GARBAGE

### § 51.01 ESTABLISHMENT.

There is hereby established a garbage and trash collection service for the residents of the village.

(Ord. 21, passed - -)

#### **§ 51.02 LICENSE REQUIRED.**

A license is no longer required.

#### **§ 51.03 PAYMENT.**

Water, sewer, and sanitation utility rates and penalties will be reviewed annually and set by motion and majority vote of the Village Council.

(Ord. 2000-7, passed 10-16-2000)

#### **§ 51.04 CONTAINERS.**

Every applicant shall furnish, for his or her own use, suitable and proper containers for all garbage and trash, rubbish and ashes, and all garbage containers shall have covers and be kept covered; the customer shall place his or her containers of garbage and/or trash at the edge of the street, alley, or at the curb in front of his or her premises on the day same it is to be picked up by the collector and at a time previous to the time designated for the arrival of the collector and after such containers have been emptied by the collector the customer shall promptly remove said containers from the street; any person who, because of physical disability, age, or infirmity, is unable to place such containers at the curb or street may make special arrangements direct with the collector for the movement of such containers.

(Ord. 21, passed - -) Penalty, see § 51.99

#### **§ 51.05 WEEKLY PICKUP.**

The collector shall pick up garbage, trash, rubbish, and ashes once each week. Each customer shall be notified at the time application is made for service as to the day and time, within reasonable limits, that the collector will service his or her premises, and any changes made thereafter by the collector shall be so communicated by him or her to the customer.

(Ord. 21, passed - -)

#### **§ 51.06 CAN/CONTAINER CAPACITY AND DURABILITY.**

All containers furnished by the customer as containers for garbage or trash shall be of substantial construction strong enough to hold and contain, when handled, the contents of such containers. Garbage cans shall not exceed 20-gallon capacity and containers for trash and rubbish shall not exceed 26-gallon capacity.

(Ord. 21, passed - -) Penalty, see § 51.99

#### **§ 51.07 LICENSES; APPLICATIONS; FEES; ADDITIONAL REQUIREMENTS.**

(A) All applications for licenses to pick up, collect, and transport garbage, trash, or rubbish shall be made to the Village Clerk. Applicants shall state their name, address, type of license desired, description of equipment to be used, and location of disposal area for garbage, trash, and rubbish collected by applicant. All applications for licenses shall be referred by the Village Clerk to the Sanitation Commissioner who, in conjunction with the Chief of Police, will cause an investigation to be made and make recommendations to the Village Council as to the granting or rejecting of the license for said applicant. The Village Council shall consider the recommendations of the Sanitation Commissioner in conjunction with the Chief of Police, and shall approve or reject the granting of all licenses under this subchapter. Application for licenses may be rejected by the Village Council, or licenses already granted may be revoked by the Village Council, for the following reasons:

- (1) Improper, unsanitary, or lack of equipment, conveyances, or vehicles used to transport said garbage, trash, or rubbish;
- (2) Unsatisfactory or unsanitary disposal areas; and
- (3) Inability or failure to comply with the terms and provisions of rules and regulations relating to garbage, trash, and rubbish pickup and disposal as may be adopted from time to time by the Village Council.

(B) No license shall be granted by the Village Council to any applicant unless the conveyance or vehicle to be used by the applicant to pick up and transport any rubbish, trash, or garbage. All conveyances or vehicles used to transport rubbish, trash, or garbage shall be equipped with tailgates.

(C) Applicants and licenses shall be required to have their vehicles or conveyances equipped with covering, permanent or temporary, as to prevent trash, rubbish, or garbage from blowing or falling off the conveyances while being transported.

(D) In addition to the qualifications and requirements stated elsewhere in this subchapter, all garbage licenses shall be required to meet the following additional requirements.

- (1) All garbage licensees shall be required to transport garbage within the village in a motor truck.
- (2) All garbage licensees shall be required to have said motor truck or trucks equipped with a leak-proof metal box or container to hold and contain all garbage collected, and said metal box shall not be less than 300 cubic feet in capacity.
- (3) All garbage licensees shall be required to have a garbage disposal area located outside the incorporational limits of the village, and shall be required to operate and maintain said garbage disposal area in a manner such as not to constitute a legal nuisance.

(4) All garbage licensees shall be required to keep said motor truck or trucks in a clean and sanitary condition by washing same after each day of garbage collection by means of a pressure hose. All trucks used by garbage licensee shall be repainted at least once each year.

(5) All trucks licensed to hold garbage in the village shall be designated "Village Garbage Truck" by a proper sign on such truck plainly visible to the public showing the village license number and with letters not less than four inches in height.

(6) All garbage licensees shall be required to prepare and file with the Village Clerk, before picking up and transporting any garbage, a collection and route to be covered on said dates. Such schedule as filed shall be adhered to by each garbage licensee.

(Ord. 21, passed - -) Penalty, see § 51.99

#### **§ 51.08 SANITATION COMMISSIONER.**

There is hereby established the office of Sanitation Commissioner. The Sanitation Commissioner shall be appointed by the President and his or her appointment be approved by the Village Council. Sanitation Commissioner shall hold office at the pleasure of the President, and shall receive no compensation. It shall be the duty of the Sanitation Commissioner to supervise all licensees who are licensed to pick up and collect garbage, trash, and rubbish within the village. The Sanitation Commissioner shall make inspections from time to time of the equipment, facilities, and conveyances used by the various licensees to collect and dispose of garbage, trash, and rubbish within and from the village. The Sanitation Commissioner shall investigate all complaints received on the manner or method of collecting garbage, trash, and rubbish by the licensees under this subchapter. The Sanitation Commissioner shall report all violations by licensees of the provisions of this subchapter to the Village Council. The Sanitation Commissioner shall make recommendations from time to time to the Council for the improvement of trash, garbage, and rubbish collection service within the village. All applications for licensees under the provisions of this subchapter shall be referred by the Village Clerk to the Sanitation Commissioner, and the Sanitation Commissioner shall, in conjunction with the Chief of Police, make a thorough investigation of said applicant to determine whether he or she is able to meet the requirements of this subchapter, and shall make a report of his or her investigation along with his or her recommendation to the Village Council.

(Ord. 21, passed - -)

#### **§ 51.09 SERVICE FEES.**

Village collection service fees are hereby established as follows.

<i>Type</i>	<i>Charge</i>
Commercial and business	Shall deal directly with the contractor
Residential users	\$12.50 for the first can \$7.50 for the second can

(Ord. 1981-2, passed 11-9-1981; Ord. 1997-1, passed 3-10-1997)

#### **§ 51.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person, firm, or corporation who violates §§ 51.01 through 51.09 shall be subject to a fine of a sum not to exceed \$100 or imprisonment, not to exceed 90 days, or both, in the discretion of the court, together with the cost of prosecution for each violation of §§ 51.01 through 51.09, and in the event that the offender fails to pay any fine imposed or the cost of prosecution, or both, he or she may be imprisoned for any time not exceeding 90 days unless payment thereof be sooner made.

(Ord. 21, passed - -)

## **CHAPTER 52: WATER**

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### Section

#### *General Provisions*

52.01 Groundwater protection

52.02 Drilling wells

#### *Use Regulations*

52.15 Construction of water system

52.16 Estimate of cost

52.17 Borrow; bonds



- 52.18 Operation; repair; management
- 52.19 Charges; fees
- 52.20 Free service
- 52.21 Rates; expenses; upkeep; maintenance
- 52.22 Operating year
- 52.23 Revenues
- 52.24 Transfers between funds
- 52.25 Investments; sale of bonds
- 52.26 Maintaining the system; book of records and accounts; insurance
- 52.27 Additional bonds
- 52.28 Village Clerk authorized to issue and sell bonds
- 52.29 Publication
- 52.30 Fluoridation
- 52.31 Cross-connections
  
- 52.99 Penalty

**Cross-reference:**

- Artificial bodies of water, see § 150.07*
- Land usage, general provisions, see Chapter 150*
- Sewer, see Chapter 53*
- Utilities generally, see Chapter 50*
- Zoning, adopted by reference, see § 150.02*

## GENERAL PROVISIONS

### § 52.01 GROUNDWATER PROTECTION.

The Village Council hereby commits to the development and implementation of a local Wellhead Protection Program within three years after the grant application is submitted to the MDEQ.

(Ord. 2000-5, passed 6-5-2000)

### § 52.02 DRILLING WELLS.

(A) No wells of any kind shall be drilled, from the effective date of this section forward, within the village without a permit issued by the village through the Clerk's office.

(B) Prior to the issuance of any permit by the Village Clerk's office, the site for any well drilling after the effective date of this section shall be approved by the Superintendent of Public Works.

(Ord. 1994-5, passed 10-10-1994) Penalty, see § 52.99

## USE REGULATIONS

### § 52.15 CONSTRUCTION OF WATER SYSTEM.

The Village Council hereby determines it to be necessary for, and to secure the public health, safety, convenience, and welfare of said village to acquire and construct a water supply and distribution system for the village, consisting of the necessary wells, distribution mains, pumps, tanks, fire hydrants, meters, and other necessary appurtenances thereto, in accordance with detailed maps, plans, specifications, and estimates heretofore prepared by R.W. Petrie, consulting engineer of Benton Harbor, Michigan, all as authorized by the electors of the village at the general election held in said village on April 4, 1949.

(Ord. 201, passed - -)

### § 52.16 ESTIMATE OF COST.

The Village Council has caused an estimate to be made of the cost of said water supply and distribution system by the consulting engineer, R.W. Petrie, and it is hereby determined that the total estimated cost of such system, including engineering, financial, and legal expenses and capitalized interest to and including January 1, 1954, is the sum of \$130,000, and the period of usefulness of said proposed



improvements is estimated to be 50 years.

(Ord. 201, passed - -)

## **§ 52.17 BORROW; BONDS.**

(A) (1) To pay the cost of acquiring and constructing such water supply and distribution system, including the payment of engineering, financial, legal, and other expenses incident thereto and incident to the issuance of said bonds, including interest on said bonds to and including January 1, 1954, it is hereby determined that the village shall borrow the sum of \$130,000, and that revenue bonds be issued therefor under the provisions of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended.

(2) Wherever the words *THE SYSTEM* or *SYSTEM* are used in this subchapter they shall be understood to mean the complete water supply and distribution system of the village, acquired under the provisions of this subchapter and all extensions and improvements hereafter constructed.

(3) Wherever the words *REVENUES* and *NET REVENUES* are used in this subchapter, they shall be understood to have the meaning as defined in Public Act 94 of 1933, § 3, as amended.

(B) (1) Said bonds shall be designated water supply system revenue bonds, and shall be, not general obligations of the village, but revenue bonds, payable out of the net revenues of the system after provision has been made for payment of expenses of operation and shall consist of 130 bonds of \$1,000 each, numbered in direct order of maturity from 1 to 130, inclusive, dated July 1, 1952, and payable serially as follows:

- (a) Two thousand dollars January 1 of each of the years 1956 to 1965, inclusive;
- (b) Three thousand dollars January 1 of each of the years 1966 to 1975, inclusive;
- (c) Four thousand dollars January 1 of each of the years 1976 to 1980, inclusive;
- (d) Five thousand dollars January 1 of each of the years 1981 to 1986, inclusive; and
- (e) Six thousand dollars January 1 of each of the years 1987 to 1991, inclusive.

(2) Said bonds to bear interest at a rate or rates not exceeding 4% per annum, payable on January 1, 1953, and semiannually thereafter on July 1 and January 1 of each year, both principal and interest to be payable in lawful money of the United States of America at a bank or trust company to be designated by the purchaser of the bonds.

(3) Outstanding bonds of this issue may be called for redemption prior to maturity, at the option of the village, in inverse numerical order, on any interest payment date on or after January 1, 1958, at par and accrued interest plus a premium as follows:

- (a) Forty dollars on each bond called for redemption on or before January 1, 1963;
- (b) Thirty dollars on each bond called for redemption after January 1, 1963, but on or before January 1, 1968;
- (c) Twenty dollars on each bond called for redemption after January 1, 1968, but on or before January 1, 1973;
- (d) Ten dollars on each bond called for redemption after January 1, 1973, but on or before January 1, 1978;
- (e) Five dollars on each bond called for redemption after January 1, 1978, but on or before January 1, 1983; and
- (f) No premiums shall be paid on bonds called for redemption after January 1, 1983.

(4) (a) Thirty-days' notice of the call of any bonds for redemption shall be given by publication in a paper circulated in the state which carries, as part of its regular service, notices of sale of municipal bonds, and, in case of registered bonds, 30 days' notice shall be given by mail to the registered address.

(b) Bonds so called for redemption shall not bear interest after the date fixed for redemption, provided funds are on hand with the paying agent to redeem said bonds.

(5) Said bonds may be registered as to principal only in the manner and with the effect set forth on the face thereof, as hereinafter provided.

(6) Said bonds shall be signed by the President and countersigned by the Village Clerk, and shall have interest coupons attached bearing the facsimile signature of the Village Treasurer.

(C) Said bonds and the attached coupons shall not be a general obligation or indebtedness of the village, but shall be payable solely from the net revenues derived from the operation of the system; and, to secure such payment, there is hereby created a statutory first lien upon the whole of the net revenues of said system, to continue until the payment in full of the principal and interest on said bonds.

(D) (1) The holder or holders of said bonds or coupons representing in the aggregate not less than 20% of the entire issue than outstanding may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce the statutory first lien upon the revenues of said system and may by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties of the officers of the village, including the fixing of sufficient rates, the collection of revenues, the proper segregation of the revenues of the system, and the proper application thereof; provided, however, that the statutory lien upon said revenues shall not be construed to compel the sale of the system.

(2) If there be any default in the payment of the principal or interest upon any of said bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate said system on behalf of the village, and under the direction of said court,

and by an with the approval of said court to perform all of the duties of the officials of said village, more particularly set forth herein and in Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended.

(3) The holder or holders of any such bonds or any coupons therefrom shall have all other rights and remedies given by said Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended, for the collection and enforcement of said bonds and the security therefor.

(Ord. 201, passed - -)

#### **§ 52.18 OPERATION; REPAIR; MANAGEMENT.**

The operation, repair, and management of the system, and the acquiring of the project herein authorized shall be under the immediate supervision and control of the Village Council.

(Ord. 201, passed - -)

#### **§ 52.19 CHARGES; FEES.**

(A) All utility rates and charges will be reviewed annually in the month of January and set by resolution and majority vote of the Village Council.

(B) Resolution 2015-4, passed on 9-21-2015 addressing water and wastewater rates, fees, charges and policies is incorporated by reference.

(Ord. 2014-1, passed 8-27-2014)

#### **§ 52.20 FREE SERVICE.**

No free service shall be furnished by said system to any person, firm, or corporation, public or private, or to any public agency or instrumentality.

(Ord. 201, passed - -)

#### **§ 52.21 RATES; EXPENSES; UPKEEP; MAINTENANCE.**

(A) The rates hereby fixed are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the said system as are necessary to preserve the same in good repair and working order, to provide for the payment of the interest upon and the principal of all the bonds as and when the same become due and payable, and the creation of the reserve thereof required by this subchapter, and to provide for such other expenditures and funds for said system as this subchapter may require.

(B) Such rates shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed at all times to fix and maintain such rates for services furnished by the system as shall be sufficient to provide for the foregoing.

(C) Resolution 2015-4, passed on 9-21-2015 addressing water and wastewater rates, fees, charges and policies is incorporated by reference.

(Ord. 201, passed - -)

#### **§ 52.22 OPERATING YEAR.**

The system shall be operated on the basis of an operating year commencing on March 1 and ending on February 28.

(Ord. 201, passed - -; Ord. 1978-1, passed 4-10-1978)

#### **§ 52.23 REVENUES.**

(A) *Receiving Fund.* The revenues of the system are hereby ordered to be set aside, as collected, and deposited in a bank duly qualified to do business in the state, in an account to be designated Water Supply System Receiving Fund (hereinafter referred to as the "Receiving Fund"), and said revenues so deposited are pledged for the purpose of the following funds and shall be transferred from the Receiving Fund periodically in the manner and at the times hereinafter specified.

(B) *Operation and Maintenance Fund.*

(1) Out of the revenues in the Receiving Fund there shall be first set aside, quarterly, into a separate depository account designated Operation and Maintenance Fund, a sum sufficient to provide for the payment of the next quarter's current expenses of administration and operation of the system and such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order.

(2) The Village Council, prior to the commencement of each operating year, shall adopt a budget covering the foregoing expenses for each year, and such total expenses shall not exceed the total amount specified in said budget, except by a vote of two-thirds of the members of the Village Council.

(C) *Bond and Interest Redemption Fund.*

(1) There shall next be established and maintained a separate depository account designated as the Bond and Interest Redemption Fund, which shall be used solely for the purpose of paying the principal of, and the interest upon, the bonds hereby authorized. The monies in the Bond and Interest Redemption Fund (including the Bond Reserve Account hereinafter established) shall be kept on deposit with the bank or trust company where the principal and interest on the bonds herein authorized are currently payable.

(2) Out of the revenue remaining in the Receiving Fund, after provision has been made for expenses of operation and maintenance of the system, there shall next be set aside, quarterly, in the Bond and Interest Redemption Fund, a sum proportionately sufficient to provide for the payment of the principal of, and interest upon, all outstanding bonds payable from the revenues of the system, as and when the same become due and payable. The amount so set aside for interest each quarter during the first six months of each operating year shall not be less than one-half of the total amount of interest maturing on the following July 1, and during the last six months of each operating period shall be not less than one-half of the total amount of interest maturing on the following January 1. The amount so set aside for principal during each quarter during each operating year, commencing January 1, 1955, shall be not less than one-fourth of the amount of principal maturing on the January 1 following such operating year. If there shall be any deficiency in the amount previously required to be set aside, then the amount of such deficiency shall be added to the current requirements.

(3) There is hereby established in the Bond and Interest Redemption Fund a separate account, to be known as the Bond Reserve Account, into which there shall be paid, quarterly, all of the revenues of the system, after provision has been made for the Operation and Maintenance Fund and the Bond and Interest Redemption Fund, until such time as there has been accumulated in said Bond Reserve Account the sum of \$7,400, which Bond Reserve Account shall be established in the full amount herein required not later than the close of the operating year commencing January 1, 1956. The money in the said Bond Reserve Account shall be used solely for the payment of the principal and interest on said bonds as to which there would otherwise be default.

(4) If, at any time, it shall be necessary to use monies in the Bond Reserve Account for such payment, then the monies so used shall be replaced from the net revenues first received thereafter which are not required by this subchapter to be used for operation and maintenance or for current principal and interest requirements: provided, however, that such Bond Reserve Account shall not be regarded as monies otherwise appropriated or pledged for the purpose of determining the sufficiency of funds available for redemption of callable bonds.

(5) No further payments need to be made into the Bond and Interest Redemption Fund after enough of the bonds have been retired so that the amount then held in said Fund (including the Bond Reserve Account) is equal to the entire amount of principal and interest which will be payable at the time of maturity of all the bonds then remaining outstanding.

*(D) Replacement Fund.*

(1) There shall next be established and maintained a separate depository account designated as the Replacement Fund, which shall be used solely for the purpose of making unforeseen major repairs and replacements to the system which may become necessary. There shall be deposited into said account, in quarterly installments, after providing for all requirements for all requirements of the Operation and Maintenance Fund and the Bond and Interest Redemption Fund (including the Bond Reserve Account), all of the revenues of said system until such Fund shall total \$5,000. If, at any time, it shall be necessary to use monies in said Fund for such purpose, the monies so used shall be replaced from the net revenues in the Receiving Fund which are not required by this subchapter to be used for the Operation and Maintenance Fund or the Bond and Interest Redemption Fund (including the Bond Reserve Account).

(2) Monies remaining in the Receiving Fund at the end of any operating year, after full satisfaction of the foregoing requirements, shall be transferred to the Bond and Interest Redemption Fund and used for the purpose of calling bonds of this issue prior to maturity at the times and at the prices hereinbefore set forth. All monies from time to time in the Bond and Interest Redemption Fund over and above the current requirements of said fund required by law and this subchapter, and the Bond Reserve Account, may be used to call bonds for redemption prior to maturity, and shall be so used when such funds total \$10,000 or more; provided, however, that if there be any deficit in the Operation and Maintenance Fund, Bond and Interest Redemption Fund (including the Bond Reserve Account), or the Replacement Fund by reason of defaults in setting aside the amounts hereinbefore required, then transfers shall be made from the surplus remaining in the Receiving Fund at the end of any operating year, to such funds, in the order named to the extent of such deficit.

(Ord. 201, passed - -)

#### **§ 52.24 TRANSFERS BETWEEN FUNDS.**

In the event the monies in the Receiving Fund are sufficient to provide for the current requirements of the Operation and Maintenance Fund or the Bond and Interest Redemption Fund, any monies and/or securities in other funds of the system shall be transferred, first, to the Operation and Maintenance Fund, and second, to the Bond and Interest Redemption Fund to the extent of any deficit therein.

(Ord. 201, passed - -)

#### **§ 52.25 INVESTMENTS; SALE OF BONDS.**

(A) Monies in the Bond and Interest Redemption Fund over and above those being accumulated for the payment of principal and interest next maturing and monies in any other fund, except the Receiving Fund and the Operation and Maintenance Fund, may be invested in obligations of the United States of America. In the event such investments are made, the securities representing the same shall be kept on deposit with the bank or trust company having on deposit the fund or funds from which such purchase was made. Income received from such investments shall be credited to the fund from which said investments were made.

(B) Said bonds shall be sold and the proceeds applied in accordance with the provisions of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended.

(C) (1) The proceeds of the sale of the bonds authorized to be issued shall be deposited in Farmers and Merchants National Bank in

Benton Harbor, Michigan, a Federal Reserve System member bank. Out of such proceeds, there shall first be deposited in the Bond and Interest Redemption Fund any accrued interest and an amount sufficient to pay the interest on the bonds for the period for which it was capitalized, to wit, one and one-half years. The balance of such proceeds shall be applied solely in payment of the cost of the project hereinbefore described and any engineering, financial, legal, and other expenses incident thereto and to the financing thereof. Payments for construction, either on account or otherwise, shall not be made unless the registered engineer in charge of such work shall file with the Village Council a signed statement that the work has been completed in accordance with the plans and specifications therefor, that it was done pursuant to and in accordance with the contract therefor, and that such work is entirely satisfactory.

(2) Any unexpended balance of the proceeds of sale remaining, after completion of the project herein authorized may, in the discretion of the Village Council, and to the extent of \$19,500, be used for further improvements, enlargements, and extensions to the system, provided that at the time of such expenditure, such use be approved by the Municipal Finance Commission. Any remaining balance after such expenditure shall be paid into the Bond and Interest Redemption Fund and shall be used for the redemption of callable bonds, or prior to the first call date only, purchasing bonds on the open market at not more than the fair market value thereof, and at a price in any event not exceeding the first call price.

(Ord. 201, passed - -)

#### **§ 52.26 MAINTAINING THE SYSTEM; BOOK OF RECORDS AND ACCOUNTS; INSURANCE.**

The village covenants and agrees with the successive holders of the bonds and coupons that, so long as any of the bonds remain outstanding and unpaid as to either principal or interest, the village will do as follows.

(A) The village will maintain the system in good repair and working order and will operate the same efficiently and will faithfully and punctually perform all duties with reference to the system required by the Constitution and laws of the state, including the making and collecting of sufficient rates for water services rendered by the system, and the segregation and application of the revenues of the system in the manner provided in this subchapter. The initial schedule of rates herein established will not be reduced in any event until such time as the Bond Reserve Account is established in its full required amount, and bonds maturing in the years 1985 to 1991, have been retired.

(B) The Village Council will maintain and keep proper books of records and account, separate from all other records and accounts, in which shall be made full and correct entries of all transactions relating to the system. Not later than three months after the close of each operating year, the Village Council will cause to be prepared, on forms furnished by the Municipal Finance Commission, if such forms be available, a statement in reasonable detail, sworn to by its Chief Accounting Officer, showing the cash income and disbursements of the system during each operating year, the assets and liabilities of the system at the beginning and close of the fiscal year, and such other information as is necessary to enable any taxpayer of the village, user of the service furnished, or any holder or owner of the bonds or anyone acting in their behalf, to be fully informed as to all matters pertaining to the financial operation of the system during such year. A certified copy of such statement shall be filed with the Municipal Finance Commission, and such statement and books of record and account shall at all reasonable times be open to inspection by any taxpayer of the village, user of the service or holder or holders of any bonds or anyone acting in their behalf. The Village Council will also cause an annual audit of such books of record and account for the preceding operating year to be made by a recognized independent certified public accountant, and will make such audit available to the holders of any of the bonds. Such audit shall be completed and so made available not later than three months after the close of each operating year.

(C) The village will maintain and carry, for the benefit of the holders of the bonds, insurance on all physical properties of the system, of the kinds and in the amounts normally carried by public utility companies and municipalities engaged in the operation of water supply systems. All monies received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damaged or destroyed, and to the extent not so used, shall be used for the purpose of calling bonds.

(D) The village will not sell, lease, or dispose of the system, or any substantial part thereof, until all of the bonds have been paid in full, both as to principal and interest. The village, further, will cause the operation of the system to be carried on as economically as possible, will cause to be made to the system, all repairs and replacements necessary to keep the same in good repair and working order and will not do or suffer to be done any act which would affect the system in such a way as to impair or affect unfavorably the security of the bonds.

(Ord. 201, passed - -)

#### **§ 52.27 ADDITIONAL BONDS.**

(A) The right is reserved, in accordance with the provisions of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended, to issue additional bonds payable from the revenues of the system, which shall be of equal standing with the bonds herein authorized for the following purposes and on the following conditions and limitations: for completion of the project in accordance with the plans and specifications therefor; and such bonds shall not be authorized unless R.W. Petrie, or his or her successor engineer in charge of construction, shall execute a certificate evidencing the fact that additional funds are needed to complete the project in accordance with the plans and specifications therefor. If such certificate shall be so executed and filed with the Village Clerk, it shall be the duty of the Village Council to provide for and issue additional revenue bonds in the amount stated in said certificate to be necessary to complete the project in accordance with the plans and specifications. Except, as herein authorized, no additional bonds having equal standing with the bonds of this issue, shall be authorized as issued.

(B) Said bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MICHIGAN

COUNTY OF BERRIEN  
VILLAGE OF EAU CLAIRE  
WATER SUPPLY SYSTEM REVENUE BOND

No. \_\_\_\_\_ \$1,000.00

KNOW ALL MEN BY THESE PRESENTS that the VILLAGE OF EAU CLAIRE, County of Berrien, State of Michigan, for value received, hereby promises to pay to the bearer, or if registered, to the registered holder hereof, but only out of the revenues of the Water Supply System of the Village, including all appurtenances, extensions and improvements thereto, the sum of

ONE THOUSAND DOLLARS

on the first day of January, A.D. 20\_\_\_, with interest thereof from the date hereof until paid at the rate of \_\_\_ per cent per annum, payable on January 1, 1953, and semiannually thereafter on the first day of July and January of each year, on presentation and surrender of the proper interest coupons hereto annexed as they severally become due. Both principal of and interest on this bond are payable in lawful money of the United States of America at \_\_\_\_\_ and, for the prompt payment thereof, the gross revenues of the Water Supply System of the Village of Eau Claire, including all appurtenances, extensions and improvements thereto, after provisions has been made for reasonable and necessary expenses of operation, administration and maintenance are hereby irrevocably pledged and a statutory first lien thereon is hereby created.

This bond is one of a series of one hundred thirty (130) bonds of even date and like tenor except as to date of maturity \_\_\_\_\_ aggregating the sum of \$130,000.00, issued pursuant to Ordinance No. \_\_\_\_\_, duly adopted by the Village Council on \_\_\_\_\_ 1952, and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying the cost of acquiring and constructing a water supply and distribution System for the Village.

For a complete statement of the revenues from which, and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of equal standing may hereafter be issued, and the general covenants and provisions pursuant to which this bond is issued, reference is made to the above-described Ordinance.

Outstanding bonds of this issue may be called for redemption prior to maturity, at the option of the Village, in inverse numerical order, on any interest payment date on or before January 1, 1958, at par and accrued interest plus a premium as follows:

\$40.00 on each bond called for redemption on or before January 1, 1963.

\$30.00 on each bond called for redemption after January 1, 1963, but on or before January 1, 1968.

\$20.00 on each bond called for redemption after January 1, 1968, but on or before January 1, 1973.

\$10.00 on each bond called for redemption after January 1, 1973, but on or before January 1, 1978.

\$5.00 on each bond called for redemption after January 1, 1978, but on or before January 1, 1983.

No premium shall be paid on bonds called for redemption after January 1, 1983.

Thirty-days' notice of the call of any bonds for redemption shall be given by publication in a paper circulated in the State of Michigan which carries, as part of its regular service, notices of sale of municipal bonds, and, in case of registered bonds, 30-days' notice shall be given by mail to the registered address. Bonds so called for redemption shall not bear interest after the date fixed for redemption, provided funds are on hand with the paying agent to redeem said bonds.

This bond is a self-liquidating bond, and is not a general obligation of the Village of Eau Claire, and does not constitute an indebtedness of the Village of Eau Claire within any constitutional or statutory limitation, and is payable, both as to principal and interest, solely from the revenues of the Water Supply System of the Village. The principal and interest on this bond are secured by the statutory lien hereinbefore mentioned.

The Village of Eau Claire hereby covenants and agrees to fix and maintain, at all times, while any of such bonds shall be outstanding, such rates for service furnish by said Water Supply System as shall be sufficient to provide for payment on the interest upon and the principal of all such bonds as and when the same become due and payable, to create a Bond and Interest Redemption Fund (including a Bond Reserve Account) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of said Water Supply System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for said System as are required by said Ordinance.

This bond and the interest thereon are exempt from any and all taxation whatsoever by the State of Michigan or by any taxing authority within said State.

This bond may be registered as to principal only on the books of the Village Treasurer in the name of the holder, and such registration noted on the back hereof by the Village Treasurer, after which no transfer shall be valid unless made on the books and noted hereon in like manner, but transferability by delivery may be restored by registration to bearer. Such registration shall not affect the negotiability of the interest coupons.

It is hereby certified and recited that all acts, conditions and things required by law precedent to and in the issuance of this bond and the series of bonds of which this is one have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF the Village Council of the Village of Eau Claire, County of Berrien, State of Michigan, has caused this bond

to be signed in the name of said Village by the President and countersigned by the Village Clerk and the corporate seal of the Village to be affixed hereto, and the coupons hereto attached to be signed by the Village Treasurer, as of the first day of July, A.D. 1952.

VILLAGE OF EAU CLAIRE

By \_\_\_\_\_

President

(Seal)

Countersigned:

\_\_\_\_\_

Village Clerk

(Form of Coupon)

No. \_\_\_\_ \$ \_\_\_\_\_

On the first day of \_\_\_\_\_ A.D. 20 \_\_, unless the bond to which this coupon pertains shall have been called for redemption, the VILLAGE OF EAU CLAIRE, Berrien County, Michigan, will pay to the bearer the sum of \_\_\_\_\_ Dollars, in the manner and out of the revenues described in said bon, at \_\_\_\_\_ being the semiannual interest then due on its Water Supply System Revenue Bond, dated July 1, 1952, No. \_\_\_\_\_.

This coupon is not a general of the Village of Eau Claire, but is payable from certain revenues as set forth in the bond to which it pertains.

\_\_\_\_\_

Village Treasurer

REGISTRATION

Nothing to be Written Hereon Except by the

Village Treasurer

Date of Registration: Name of Registered Owner: Registrar:

(Ord. 201, passed - -)

#### **§ 52.28 VILLAGE CLERK AUTHORIZED TO ISSUE AND SELL BONDS.**

The Village Clerk is hereby authorized and directed to make application to the Municipal Finance Commission for authority to issue and sell said bonds, and for approval of the form of notice of sale of said bonds in accordance with the provisions of Public Act 202 of 1943, as amended, and of Public Act 94 of 1933, being M.C.L.A. §§ 141.101 through 141.138, as amended.

(Ord. 201, passed - -)

#### **§ 52.29 PUBLICATION.**

This subchapter shall be published in full in *Benton Harbor News Palladium*, a newspaper of general circulation in the village, qualified under state law to publish legal notices, within one week of its adoption.

(Ord. 201, passed - -)

#### **§ 52.30 FLUORIDATION.**

In accordance with Public Act 346 of 1968, being M.C.L.A. §§ 325.191 and 325.192, wherein it is stated in § 2 of said Act, the county, city, township, or village, or any combination thereof supplying water to the public, to which water fluoride is not presently added and which may be consumed by humans, shall add fluoride to such water in the manner and amount to be prescribed by the Department of Public Health within five years after the effective date of said Act, unless such addition of fluoride has been rejected by ordinance of the local governing body and it appearing from the records of the village that fluoridation of the village's water supply has been rejected by majority of the governing body of this village at a regular Council meeting held in the Village Hall on July 9, 1973, at 8:00 p.m., the addition of fluoride to the village municipal water supply is rejected.

(Ord. 1973-2, passed 7-10-1973)

#### **§ 52.31 CROSS-CONNECTIONS.**

(A) The village adopts by reference the water supply cross-connection rules of the State Department of Public Health being M.A.C. R 325.431 through R 325.440.

(B) It shall be the duty of the village to cause inspections to be made of all properties served by the public water supply where cross-connections with the public water supply is deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the village and as approved by the State Department of Public Health.



(C) The representative of the village shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the village for the purpose of inspecting the piping system or systems thereof cross-connections. On request, the owner, lessees, or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections.

(D) The village is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this subchapter exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross-connection(s) has been eliminated in compliance with the provisions of this subchapter.

(E) The potable water supply available on the properties served by the public water supply shall be protected from possible contamination as specified by this subchapter and by the State and Village Plumbing Code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

“WATER UNSAFE FOR DRINKING”

(F) This subchapter does not supersede the State Plumbing Code and Village Plumbing Code but is supplementary to them.

(Ord. 1973-3, passed 11-27-1973) Penalty, see § 52.99

### **§ 52.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person or customer found guilty of violating any of the provisions of § 52.31, or any written order of the village, in pursuance thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$25 not more than \$100 for each violation. Each day upon which a violation of the provisions of § 52.31 shall occur shall be deemed a separate and additional violation for the purpose of § 52.31.

(Ord. 1973-3, passed 11-27-1973)

## **CHAPTER 53: SEWER**

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**GENERAL PROVISIONS**

**§ 53.001 PURPOSE AND SCOPE.**

(A) The purposes of this chapter are:

(1) To establish uniform requirements for discharges by all users to the village's publicly owned treatment works ("POTW"), and to enable the POTW to comply with applicable state and federal laws as required by the Federal Water Pollution Control Act (also known as the "Clean Water Act"), as amended, 33 U.S.C. §§ 1251 et seq.; the General Pretreatment Regulations (40 C.F.R. part 403); Public Act 451 of 1994, part 31, being M.C.L.A. §§ 324.3101 et seq., as amended ("Water Resources Protection"); and the rules, M.A.C. R 323.2301 et seq., as amended, promulgated pursuant to Public Act 451 of 1994, part 31, §§ 3103, 3106, and 3109, as amended;

(2) To prevent the discharge of pollutants into the POTW that do not meet applicable pretreatment standards and requirements; that would interfere with the operation of the POTW; that would pass-through the POTW into the receiving waters or the atmosphere, the environment, or otherwise be incompatible with the POTW; that would inhibit or disrupt the POTW's processing, use, or disposal of sludge; that would cause health or safety problems for POTW workers; or that would result in a violation of the POTW's NPDES permit or of other applicable laws and regulations;

(3) To improve the opportunity to recycle and reclaim wastewaters and sludges from the POTW;

(4) To regulate the discharge of wastewater and/or pollutants to the POTW and to enforce the requirements of this chapter through the issuance of permits and through other means as provided by this chapter;

(5) To authorize and require all inspection, monitoring, reporting, and enforcement activities as necessary to ensure compliance with applicable pretreatment standards and requirements and other applicable laws and regulations; and

(6) To provide for the equitable distribution and recovery of costs from users of the POTW sufficient to administer regulatory activities and to meet the costs of the operation, maintenance, improvement, and replacement of the POTW.

(B) This chapter applies to any person, whether located within the village or outside the village, that discharges to the POTW.

(C) This chapter also applies to any person owning, using, constructing, or maintaining any private system or facility intended or used for the disposal of sewage or wastewater within the village or under the village's jurisdiction.

(D) Any other local unit of government that discharges into the POTW shall, as a condition to discharge, be required to adopt, and to keep continually in force and up to date, an ordinance that, except as specifically approved in advance by the POTW, must be identical to the sewer use ordinance as provided by this chapter (and as this chapter is amended from time to time by the village).

(E) It shall be unlawful for any person to discharge any wastewater or pollutant to the POTW or to any storm sewer or natural outlet within the village or in any area under the jurisdiction of the village, except in accordance with the provisions of this chapter and other applicable laws and regulations.

(F) If any user discharges or proposes to discharge wastewaters or pollutants that are prohibited or limited by this chapter, the village may take any action as provided by this chapter or other applicable laws or regulations to assure and require compliance with the provisions of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## § 53.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACT.** The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.

**AUTHORIZED REPRESENTATIVE.** When used in reference to a non-domestic user, **AUTHORIZED REPRESENTATIVE** means as follows:

(1) If the user is a corporation, a **RESPONSIBLE CORPORATE OFFICER** means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) If the user is a partnership or proprietorship, a general partner or proprietor, respectively;

(3) If the user is a federal, state, or local governmental entity, the principal executive officer, ranking elected official, or director having responsibility for the overall operation of the discharging facility; and

(4) A duly authorized representative of an individual designated in divisions (1), (2), or (3) above, if the representative is responsible for the overall operation of the facilities from which the discharge to the POTW originates.

(a) To be considered duly authorized, the authorization must be made in writing by an individual designated in divisions (1), (2), or (3) above. The authorization must specify either an individual or a position having responsibility for the overall operation of the facility (such as the position of plant manager, operator of a well or well field, or a position of equivalent responsibility, or having overall responsibility for the environmental matters for the company or entity). The written authorization must be submitted to the POTW Manager prior to or together with any reports to be signed by the **AUTHORIZED REPRESENTATIVE**.

(b) If an authorization under division (4)(a) above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company or entity, a new written authorization must be submitted to the POTW Manager prior to or together with any reports to be signed by the newly **AUTHORIZED REPRESENTATIVE**.

**BEST MANAGEMENT PRACTICE** or **BMP.** Any practice, program, procedure, control, technique, or measure (used singularly or in combination) that a user is required to adopt or implement to control, contain, treat, prevent, or reduce the discharge of wastewater, pollutants, or other substances to the POTW, as determined necessary by the POTW Manager. **BMPs** include, but are not limited to: schedules of activities; pollution treatment practices or devices; prohibitions of practices; good housekeeping practices; pollution prevention, minimization, and reduction measures; educational practices and programs; maintenance procedures; other management programs, practices, or devices; treatment requirements; notice, reporting, and record-keeping requirements; and operating procedures and practices to control or contain site runoff, spillage or leaks, batch discharges, sludge or water disposal, or drainage from product and raw materials storage. **BMPs** may be structural, nonstructural, or both. In determining what **BMPs** will be required of a user in a particular case, the POTW Manager may consider all relevant technological, economic, practical, and institutional considerations as determined relevant and appropriate by the Manager, consistent with achieving and maintaining compliance with the requirements of this chapter and other applicable laws and regulations.

**BOD** (denoting **BIOCHEMICAL OXYGEN DEMAND**). The quantity of dissolved oxygen used in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20°C, expressed in milligrams per liter.

**BUILDING DRAIN.** The part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside the walls of a building and conveys it to a building sewer. The **BUILDING DRAIN** shall be deemed to begin five feet outside the inner face of the building wall.

**BUILDING SEWER.** The extension from the building drain to the public sewer or other place of disposal (such as a grinder pump). The **BUILDING SEWER** shall be deemed to begin five feet outside the inner face of the building wall.

**CATEGORICAL PRETREATMENT STANDARD** or **CATEGORICAL STANDARD.** Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the Clean Water Act, 33 U.S.C. § 1317, which apply to a specific category of users and which appear in 40 C.F.R. chapter I, subchapter N, parts 405 through 471.

**CATEGORICAL USER.** A user subject to a categorical pretreatment standard.

**CESSPOOL.** An underground pit into which domestic waste is discharged and from which the liquid seeps into the surrounding soil or is otherwise removed.

**C.F.R.** Code of Federal Regulations.

**CHLORINE DEMAND.** The difference between the amount of chlorine used or present at the beginning of the disinfection process and that available at the end of the contact time, expressed in mg/l.

**COD.** A measure of oxygen-consuming capacity of inorganic and organic matter present in water or wastewater. It is expressed as the

amount of oxygen consumed from a chemical oxidant in a specified test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with biochemical oxygen demand. Also known as **OXYGEN CONSUMED (OCR)** and **DICHROMATE OXYGEN CONSUMED (DCO)**, respectively.

**COMBINED SEWER.** A sewer intended to receive both wastewater and stormwater.

**COMPATIBLE POLLUTANT.** A pollutant that, as determined by the POTW Manager, is susceptible to effective treatment by the POTW, as designed, and which will not interfere with, or pass-through, the POTW, and which is otherwise not incompatible with the treatment processes or in excess of the capacity at the POTW. The term **COMPATIBLE** is a relative concept that must be determined on a case-by-case basis. In determining whether or not a pollutant is compatible with the POTW, the Manager may consider, without limitation, the nature and qualities of the pollutant, and the concentration, mass, and flow rate at which the pollutant is (or is proposed to be) discharged. Thus, for example, even pollutants such as BOD, fats, oils or grease, phosphorous, suspended solids, and fecal coliform bacteria, which are typically considered **COMPATIBLE** may be determined incompatible, if discharged in concentrations or flows that would cause interference or pass-through or exceed the POTW's capacity. Specifically excluded from the definition of **COMPATIBLE POLLUTANT** are heavy metals, PCBs, and any pollutants that will likely contribute or cause operational or sludge disposal problems or unacceptable discharges to the receiving waters.

**COMPOSITE SAMPLE.** A series of individual samples, collected on a flow or time proportional basis, taken at regular intervals over a specific time period and combined into a single sample (formed either by continuous sampling or by mixing discrete samples) representative of the average stream during the sampling period. For categorical, a **COMPOSITE SAMPLE** shall consist of at least a minimum of one individual aliquot or grab taken every two hours during the discharge period, with a minimum of four individual samples taken during discharge periods of eight hours or less within a 24-hour period.

**COOLING WATER.** Water used for cooling purposes only, including both contact and noncontact **COOLING WATER**.

**COOLING WATER (CONTACT).** Water used for cooling purposes only that may become contaminated or polluted either through the use of water treatment chemicals (such as corrosion inhibitors or biocides) or by direct contact with process materials and/or wastewater.

**COOLING WATER (NONCONTACT).** Water used for cooling purposes only that has no direct contact with any raw material, intermediate product, final product, or waste, and that does not contain a detectable level of contaminants higher than that of the intake water (for example, the water discharged from uses such as air conditioning, cooling, or refrigeration, or to which the only pollutant added is heat).

**DAILY MAXIMUM.** The maximum discharge of pollutants or flow (expressed in terms of concentration, mass loading, pounds, gallons, or other unit of measurement) that shall not be exceeded on any single calendar day. Where **DAILY MAXIMUM** limitations are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day, except pH and dissolved oxygen. Where **DAILY MAXIMUM** limitations are expressed in units of mass, the daily discharge is the total mass discharged during the day. If a composite sample is required for a parameter, the determination whether the **DAILY MAXIMUM** limitation for that parameter has been exceeded on a single calendar day shall be based on the composite sample collected for that parameter on that calendar day. If grab samples are required for a parameter, the determination whether the **DAILY MAXIMUM** limitation for that parameter has been exceeded on a calendar day shall be based on the average of all grab samples collected for that parameter on that calendar day. If only one grab sample is collected for a parameter on a given day, the determination whether the **DAILY MAXIMUM** limitation for that parameter has been exceeded for the day shall be based on the results of that single grab sample.

**DAYS.** For purposes of computing a period of time prescribed or allowed by this chapter, consecutive calendar **DAYS**.

**DILUTE.** To weaken, thin down, or reduce the concentration of pollutants in wastewater.

**DISCHARGE.** The introduction of waste, wastewater, effluent, or pollutants into the POTW, whether intentional or unintentional, and whether directly (such as through an approved sewer connection or other approved **DISCHARGE** point as authorized by this chapter) or indirectly (including, but not limited to, sources such as inflow and infiltration).

**DOMESTIC USER.** A user that discharges only segregated normal strength domestic waste into the POTW.

**DOMESTIC WASTE.** Wastewater (or water-carried waste) of human origin generated by personal activities from toilet, kitchen, laundry, or bathing facilities, or by other similar facilities used for household or residential dwelling purposes ("sanitary sewage"). **DOMESTIC WASTE** shall not include any waste resulting from industrial or commercial processes including, without limitation, any hazardous or toxic pollutants. Wastes that emanate from sources other than residential dwelling units may be considered **DOMESTIC WASTES** only if they are of the same nature and strength and have the same flow rate characteristics as wastes that emanate from residential dwelling units.

**EFFLUENT.** Wastewater or other liquid, partially or completely treated, flowing from a reservoir, basin, treatment process, or treatment plant.

**EPA.** The United States Environmental Protection Agency.

**EXCESSIVE.** At such a flow, rate, magnitude, or amount that, in the judgment of the POTW Manager, it may: cause damage to any facility or the POTW; be harmful to the wastewater treatment processes; adversely affect the management or operation of the POTW or POTW sludge management or disposal; cause pass-through or interference; violate any pretreatment standard or requirement; adversely affect the quality of the receiving waters or the ambient air quality; endanger worker health and safety; constitute a public nuisance; may be inconsistent with the requirements, purposes, or objectives of this chapter; or otherwise adversely impact the public health, safety, or welfare or the environment.

**EXISTING SOURCE.** Any source of discharge that is not a new source as defined by this chapter.

**FATS or FOG.** Fats, oil, or grease consisting of any hydrocarbons, fatty acids, soaps, fats, waxes, oils, or any other nonvolatile material of animal, vegetable, or mineral origin that is extractable by solvents in accordance with standard methods.

**FLOW-PROPORTIONAL COMPOSITE SAMPLE.** A combination of individual samples of equal volume taken at equal intervals of flow without consideration of the time between individual samples.

**GARBAGE.** Solid wastes from the preparation, cooking, serving, or dispensing of food, from the handling, storage, processing, or sale of produce, or from the canning or packaging of food. It is composed largely of putrescible organic matter and its natural or added moisture content.

**GENERAL USER PERMIT.** A permit issued to any user other than a significant industrial user as provided by this chapter to control discharges to the POTW and to ensure compliance with applicable pretreatment standards and requirements.

**GRAB SAMPLE.** An individual sample that is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

**GRINDER PUMP.** In a **GRINDER PUMP** system, the device to which the building sewer connects and which grinds and pumps the sewage to the public sewer for transportation to the POTW.

**GRINDER PUMP SYSTEM.** The publicly owned grinder pump, controls, and pressure discharge pipe, including all control boards, controls, floats, pumps, storage tanks, and appurtenances thereto which provides the connection between the privately owned building sewer and the public sewer system.

**HAZARDOUS WASTE.** Any substance discharged or proposed to be discharged into the POTW, that: if otherwise disposed of would be a hazardous waste under 40 C.F.R. part 261 or under the rules promulgated under the State Hazardous Waste Management Act (Public Act 451 of 1994, part 111, being M.C.L.A. §§ 324.11101 et seq., as amended); or is otherwise a waste or a combination of waste and other discarded material including solid, liquid, semisolid, or contained gaseous material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed, as determined by the POTW.

**HOLDING TANK WASTE.** Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

**INCOMPATIBLE POLLUTANT.** Any pollutant that is not a compatible pollutant.

**INDUSTRIAL USER.** Any non-domestic user that, by any means, contributes, causes, or permits the contribution, introduction, or discharge of wastewater or pollutants into the POTW, whether intentional or unintentional, and whether directly or indirectly.

**INDUSTRIAL USER PERMIT.** A permit issued to a significant industrial user, or to such other user as determined appropriate by the POTW Manager, as provided by this chapter to control discharges to the POTW and to ensure compliance with applicable pretreatment standards and requirements.

**INFILTRATION.** Any waters entering the POTW from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. **INFILTRATION** does not include, and is distinguished from, inflow.

**INFLOW.** Any waters entering the POTW from sources such as, but not limited to: building downspouts; roof leaders; cellar, yard, and area drains; foundation and footing drains; cooling water discharges; drains from springs and swampy areas; manhole covers; cross connections from storm sewers and combined sewers; catch basins; stormwaters; surface runoff; street wash waters; or drainage.

**INSPECTOR.** Any person (and such person's representatives) designated by the village or the POTW Manager to observe the construction of and/or connection to the public sewer system, to ensure conformance with the requirements of this chapter, and to otherwise act as provided by this chapter.

**INSTANTANEOUS MAXIMUM LIMIT.** The maximum concentration or other measure of pollutant magnitude of a pollutant allowed to be discharged at any instant in time (independent of the flow rate or duration of the sampling event). If the concentration or other measure of pollutant magnitude determined by analysis of any grab sample, composite sample, or discrete portion of a composite sample exceeds the **INSTANTANEOUS MAXIMUM LIMIT**, the **INSTANTANEOUS MAXIMUM LIMIT** shall be deemed to have been exceeded.

**INSTANTANEOUS MINIMUM LIMIT.** The lowest measure of pollutant magnitude of a pollutant allowed to be discharged at any instant in time (independent of the flow rate or duration of the sampling event). If the concentration or other pollutant magnitude determined by analysis of any grab sample, composite sample, or discrete portion of a composite sample is below the specified **INSTANTANEOUS MINIMUM LIMIT**, the **INSTANTANEOUS MINIMUM LIMIT** shall be deemed to have been violated.

**INTERFERENCE.** A discharge which, alone or in conjunction with a discharge or discharges from other sources:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; or
- (2) Is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations) § 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA)), and



including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act, being 42 U.S.C. §§ 6901 et seq., the Clean Air Act, being 42 U.S.C. §§ 7401 et seq., the Toxic Substances Control Act, being 15 U.S.C. §§ 2601 et seq., and the Marine Protection, Research, and Sanctuaries Act, being 16 U.S.C. §§ 1431 et seq. and 1401 et seq..

**LATERAL SEWER.** The portion of the sewer system located under the street or within the public right-of-way from the property line to the trunk line and which collects sewage from a particular property for transfer to the trunk line.

**LOCAL LIMITS.** A specific enforceable prohibition, standard, or requirement (numerical or non-numerical) on discharges by non-domestic users established by the POTW to meet the purposes and objectives of this chapter and to comply with applicable state and federal laws and regulations.

**M.A.C.** The Michigan Administrative Code.

**MAY.** The act referred to is permissive.

**MDEQ.** The Michigan Department of Environmental Quality.

**MEDICAL WASTE.** Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, or dialysis wastes, and includes any medical or infectious wastes as defined by the State Department of Environmental Quality.

**mg/l.** Milligrams per liter.

**MONTHLY AVERAGE.** The sum of the concentrations (or mass loadings, expressed in terms of pounds per day, or such other unit of measurement) of a pollutant divided by the number of samples taken during a calendar month. The concentrations (or loadings) that are added are single numbers for single calendar days for all days during the calendar month for which analyses are obtained (whether by the user or the POTW), but the concentrations (or loadings) may be based upon a sample or samples taken over either all or part of that day and upon single or multiple analyses for that day, as determined by the POTW Manager. If no samples are taken during particular months because less than monthly sampling is required for a pollutant parameter (e.g., a specified quarterly monitoring period), the **MONTHLY AVERAGE** for each month within the specified monitoring period shall be deemed to be the sum of concentrations (or loadings) for the monitoring period divided by number of samples taken during the monitoring period.

**NAICS or NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM.** The system of classification for business establishments adopted by the U.S. Office of Management and Budget, as amended.

**NATURAL OUTLET.** Any naturally formed outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

**NEW SOURCE.**

(1) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section provided that:

(a) The building, structure, facility, or installation is constructed at a site at which no other source is located;

(b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a **NEW SOURCE** if the construction does not create a new building, structure, facility, or installation meeting the criteria of divisions (1)(b) or (1)(c) above, but otherwise alters, replaces, or adds to existing process or production equipment. Commencement of construction of a **NEW SOURCE** shall be determined in a manner consistent with 40 C.F.R. § 403.3(k)(3).

**ng/l.** Nanograms per liter.

**NONCONTACT COOLING WATER.** See **COOLING WATER (NONCONTACT)**.

**NON-DOMESTIC USER.** Any user other than a domestic user (i.e., any user that discharges anything other than segregated normal strength domestic waste into the POTW). The determination of whether or not a user is a **NON-DOMESTIC USER** shall be made by POTW Manager at the Manager's sole discretion as determined necessary by the Manager to achieve the purposes and objectives of this chapter. Any user that has the reasonable potential, as determined by the POTW Manager, to discharge any waste other than normal strength domestic waste into the POTW, may be deemed a **NON-DOMESTIC USER** for purposes of this chapter.

**NON-DOMESTIC WASTE.** Any wastewater (or water- or liquid-carried waste) other than domestic waste. The determination of whether or not a waste is a **NON-DOMESTIC WASTE** shall be made by POTW Manager at the Manager's sole discretion as determined necessary by the Manager to achieve the purposes and objectives of this chapter. Any waste that has the reasonable potential, as determined by the POTW Manager, to be not entirely composed of normal strength domestic waste may be deemed **NON-DOMESTIC WASTE** for purposes of this chapter.

**NORMAL STRENGTH DOMESTIC WASTE.** A domestic waste flow for which the levels of pollutants (including, without limitation, BOD, TSS, ammonia nitrogen, or phosphorous) are below the surcharge levels for any parameter as established by this

chapter. Further, to be considered normal strength, the wastewater must have a pH between 6.5 and 8.5, must not exceed any local limit, and must not contain a concentration of other constituents that would interfere with POTW treatment processes. The determination of whether or not a waste stream is **NORMAL STRENGTH DOMESTIC WASTE** shall be made by POTW Manager at the Manager's sole discretion as determined necessary by the Manager to achieve the purposes and objectives of this chapter.

**NPDES PERMIT.** A national pollutant discharge elimination system permit issued pursuant to § 402 of the Act.

**OPERATION AND MAINTENANCE COSTS.** All costs, direct and indirect (other than debt service), necessary to ensure adequate wastewater treatment on a continuing basis, to conform with all related federal, state, and local requirements, and to assure optimal long-term facility management. **OPERATION AND MAINTENANCE COSTS** include depreciation and replacement costs.

**OUTFALL.** The point (or points) of discharge by a user to the POTW, approved by the POTW and specified in a user permit.

**PASS-THROUGH.** A discharge that exits the POTW into waters of the state (or waters of the United States) in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit or of any requirement of applicable local, state, or federal laws and regulations (including an increase in the magnitude or duration of a violation), or otherwise detrimentally impacts the receiving stream.

**PERSON.** Any individual, partnership, co-partnership, firm, company, association, society, corporation, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representatives, agents, or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

**pH.** The logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.

**POLLUTANT.** Includes, but is not limited to, any of the following:

- (1) Any material that is discharged into water or other liquid including, but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste;
- (2) Properties of materials or characteristics of wastewater including, but not limited to, pH, heat, TSS, turbidity, color, BOD, COD, toxicity, and odor;
- (3) Substances regulated by categorical standards;
- (4) Substances discharged to the POTW that are required to be monitored by a user under this chapter, that are limited in the POTW's NPDES permit, or that are required to be identified in the POTW's application for an NPDES permit; and
- (5) Substances for which control measures on users are necessary to avoid restricting the POTW's residuals management program; to avoid operational problems at the POTW; or to avoid POTW worker health and safety problems.

**POTW (PUBLICLY OWNED TREATMENT WORKS).** The complete sewage disposal, transportation, and treatment system of the village as defined by the Act and this chapter, including any devices, processes, and systems used in the storage, treatment, recycling, or reclamation of wastewater, sewage, or sludge, as well as sewers (including all main, lateral, and intercepting sewers), pipes, and other conveyances used to collect or convey wastewater or sewage to the treatment works, as now or hereafter added to, extended, or improved. The term **POTW** shall also include any sewers that convey wastewaters to the **POTW** from persons who are, by contract or agreement with the village, users of the **POTW**. References in this chapter to approvals, determinations, reviews, and the like, "by the POTW" shall mean by the POTW Manager, or the Manager's authorized representatives. The term **POTW** may also be used to refer to the village as the municipality that has jurisdiction over the discharges to, and discharges from, the treatment works, or to the wastewater treatment plant and its designated representatives, as appropriate to the context in which the term is used.

**POTW MANAGER** or **MANAGER.** The Chairperson of the Village Sewer Committee. This person is responsible to supervise the operation, maintenance, alteration, repair, and management of the POTW, administer the village's industrial pretreatment program, and who is charged with certain duties and responsibilities as provided by this chapter. References to **POTW MANAGER** or **MANAGER** shall include the **MANAGER'S** authorized representatives.

**POTW TREATMENT PLANT.** The portion of the POTW that is designed to provide treatment (including recycling or reclamation) of wastewater.

**PREMISES.** A lot, tract, or parcel of land, or a building or structure, having any connection, directly or indirectly, to the POTW, or from which there is a discharge to the POTW.

**PRETREATMENT.** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes; process changes; or other means, except for the use of dilution (unless expressly authorized by any applicable pretreatment standard or requirement and the POTW Manager). Appropriate **PRETREATMENT** technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings, subject to applicable requirements of local, state, and federal laws and regulations.

**PRETREATMENT REQUIREMENT.** Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on a non-domestic user.

**PRETREATMENT STANDARD.** Any regulation containing pollutant discharge limits promulgated in accordance with § 307(b) and (c) of the Act or Public Act 451 of 1994, part 31, being M.C.L.A. §§ 324.3101 et seq., including general and specific prohibitive discharge limits and local limits established in this chapter pursuant to M.A.C. R 323.2303, and categorical standards.

**PRIVATE WASTEWATER DISPOSAL SYSTEM.** A cesspool, septic tank, or similar device which discharges to a suitable drainage field.

**PROCESS WASTEWATER.** Any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

**PROPERLY SHREDDED GARBAGE OR OTHER SOLID MATERIAL.** Garbage or other solid material that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in the POTW (or so as to otherwise not result in interference), with no particle greater than one-half inch in any dimension.

**PUBLIC SEWER.** A sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

**REASONABLE POTENTIAL.** A determination of **REASONABLE POTENTIAL** by the POTW Manager means a determination made by the Manager that a certain condition, state, result, or circumstance exists, or is likely to exist, based upon the quantitative or qualitative factors or information deemed by the Manager to be relevant and appropriate to the determination, consistent with the purposes and objectives of this chapter.

**REPLACEMENT.** The replacement in whole or in part of any equipment or facilities in the POTW to ensure continuous treatment of wastewater in accordance with the village's NPDES permit and other applicable local, state, and federal laws and regulations.

**RESIDENTIAL DWELLING.** Any structure designed for habitation including, but not limited to, houses, mobile homes, apartment buildings, condominiums, and townhouses where each dwelling unit contains, at a minimum, sleeping facilities, a toilet, a bath or shower, and a kitchen.

**SANITARY SEWAGE.** See **DOMESTIC WASTE**.

**SANITARY SEWER.** A sewer intended to carry liquid- and water-carried wastes from residences, commercial buildings, industrial plants and institutions, and to which storm, surface, and groundwaters are not intentionally admitted.

**SEEPAGE PIT.** A cistern or underground enclosure constructed of concrete blocks, bricks, or similar material loosely laid with open joints so as to allow the overflow or effluent to be absorbed directly into the surrounding soil.

**SEPTIC TANK.** A watertight receptacle receiving sewage and having an inlet and outlet designed to permit the separation of suspended solids from sewage and to permit such retained solids to undergo decomposition therein.

**SERVICE CONNECTION.** The portion of the public sewer which extends either to or onto the parcel of land adjacent to the path of the public sewer, and includes the sewer main, tee/wye, valve, check valve, connector pipes, the sewer lead, the grinder pump system, electrical controls, and connections at the electric meter (but not including the meter) and appurtenances, but not including the building sewer.

**SEVERE PROPERTY DAMAGE.** Substantial physical damage to property, or damage to treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. **SEVERE PROPERTY DAMAGE** does not mean an economic loss caused by delays in production.

**SEWAGE.** See **WASTEWATER**.

**SEWER.** Any pipe, tile, tube, or conduit for carrying wastewater or drainage water.

**SEWER LEAD.** The portion of the service connection that connects to the sewer main located in the public right-of-way and extends to the property line.

**SHALL.** The act referred to is mandatory.

**SIC** or **STANDARD INDUSTRIAL CLASSIFICATION CODE.** A classification pursuant to the *Standard Industrial Classification Manual* issued by the U.S. Office of Management and Budget.

**SIGNIFICANT INDUSTRIAL USER** or **SIU.**

(1) Any non-domestic user:

(a) Subject to categorical pretreatment standards; or

(b) Any other non-domestic user that:

1. Discharges to the POTW an average of 25,000 gallons per day or more of process wastewater (excluding sanitary, noncontact cooling, and boiler blow-down wastewater);

2. Contributes a process waste stream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

3. Is otherwise designated by the POTW as a significant industrial user on the basis that the user has a reasonable potential to adversely affect the operation of the POTW, to violate any pretreatment standard or requirement, or because the POTW determines that an industrial user permit for the user's discharge is required to meet the purposes and objectives of this chapter.

(2) The POTW Manager may determine that a user that meets the criteria of divisions (b)1. and (b)2. of this definition above is not currently an **SIU**, if the Manager finds that the user has no reasonable potential to adversely affect the operation of the POTW, to violate any pretreatment standard or requirement, or that an industrial user permit is not required to meet the purposes and objectives of this chapter. A determination that a user is not an **SIU** (or that a permit is therefore not required) shall not be binding and may be reversed by

the Manager at any time based on changed circumstances, new information, or as otherwise determined necessary by the Manager to meet the purposes and objectives of this chapter.

**SLUDGE.** Accumulated solid material separated from liquid waste as a result of the wastewater treatment process.

**SLUG.** Any discharge of a nonroutine, episodic nature including, but not limited to, an accidental spill or a non-customary batch discharge.

**STATE.** The State of Michigan. The term shall include, where applicable, any administrative agency of the state having jurisdiction in the subject matter of this chapter including, but not limited to, the State Department of Environmental Quality (DEQ).

**STORM SEWER** or **STORM DRAIN.** A sewer or drain, either natural or artificial, intended to carry stormwater, snowmelt, and surface runoff and drainage, but not wastewater.

**STORMWATER.** Any flow (such as stormwater runoff, snow melt runoff, and surface runoff and drainage) occurring during or following, and resulting from, any form of natural precipitation, and is that portion of flow in excess of that which infiltrates into the soil of the drainage area.

**SURCHARGE.** The additional charges made by the POTW for the treatment of wastewater containing pollutants in excess of specified concentrations, loadings, or other applicable limits, or for other purposes specified by this chapter.

**SUSPENDED SOLIDS (SS)** or **TOTAL SUSPENDED SOLIDS (TSS).** Solids that float on the surface of, or are suspended in, water, wastewater, or other liquids and which can be removed by laboratory filtering or other standard methods.

**TIME-PROPORTIONAL COMPOSITE SAMPLE.** A combination of individual samples of equal volume taken at equal intervals of time, without consideration of the volume or rate of flow.

**TOXIC POLLUTANT.** Any pollutant or combination of pollutants that is or can potentially be harmful to the public health, the POTW, or the environment including, without limitation, those listed in 40 C.F.R. § 401.15 as toxic under the provisions of the Clean Water Act, or listed in the Critical Materials Register promulgated by the State Department of Environmental Quality, or as provided by local, state, or federal laws, rules, or regulations.

**TRUCKED OR HAULED WASTE OR POLLUTANTS.** Any waste proposed to be discharged to the POTW from a mobile source including, without limitation, holding tank waste.

**TRUNK LINE.** The main sewer line located under any street or within any public right-of-way that collects and transmits the sewage of the various properties served by the sewer system.

**ug/l.** Micrograms per liter.

**UPSET.** An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An **UPSET** does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**USER.** Any person who contributes, causes, or permits the contribution, introduction, or discharge of wastewater into the POTW, whether intentional or unintentional, and whether directly or indirectly.

**USER DEBT RETIREMENT CHARGE.** The charge levied on all users of the POTW for the cost of any bond debt of which debt repayment is to be met from the revenues of such works.

**USER OPERATING AND MAINTENANCE CHARGE.** The charge levied on all users of the POTW for the cost of operation and maintenance, including replacement and depreciation of such treatment works.

**USER PERMIT.** An industrial user permit or a general user permit.

**VILLAGE.** The Village of Eau Claire, Berrien County, Michigan, as represented by the Eau Claire Village Council, and/or the Village Council's designated representatives.

**WASTEWATER.** The liquid and water-carried industrial or domestic waste from residential dwellings, commercial buildings, industrial facilities, and institutions (including, without limitation, contaminated groundwater and landfill leachate), whether treated or untreated, that is contributed, introduced, or discharged into the POTW. The term includes any water that has in any way been used and degraded or physically or chemically altered.

**WATERCOURSE.** A channel in which a flow of water occurs, either continuously or intermittently.

**WATERS OF THE STATE.** All rivers, streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface, or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof, and as otherwise specified by applicable laws and regulations.

**WATERS OF THE UNITED STATES.** All waters as defined by 40 C.F.R. § 122.2 and as otherwise specified by applicable laws and regulations.

**WYE BRANCH.** A local service connection to the sewer that is made at an angle similar to a "wye" so that a sewer cleaning rod will not come into the sewer at a right angle and penetrate the far side, but will travel down the course of the sewer.

(Ord. 2009-5, passed 7-20-2009)

**§ 53.003 PUBLICATION.**

This chapter shall be published by publishing a summary of the chapter in a newspaper circulated in the village, including the designation in the publication of the location in the village where a true copy of the chapter can be inspected or obtained, as authorized by state law.

(Ord. 2009-5, passed 7-20-2009)

**§ 53.004 EFFECTIVE DATE.**

This chapter became effective become effective 20 days after passage and publication.

(Ord. 2009-5, passed 7-20-2009)

**USE OF PUBLIC SEWERS REQUIRED**

**§ 53.015 UNLAWFUL DEPOSITION.**

It shall be unlawful for any person to place, deposit, or permit to be deposited any human or animal excrement, garbage, wastewater pollutants, or other objectionable waste upon or below the surface of public or private property within the jurisdiction of the village, except by discharging such wastewater into an approved connection to a public sanitary sewer where available or an approved private wastewater disposal system.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

**§ 53.016 DISCHARGE PROHIBITED WITHOUT REQUIRED APPROVALS, PERMITS, AND TREATMENT.**

Except as otherwise expressly permitted by local, state, and federal laws and regulations, and subject to obtaining all required permits and approvals from governmental agencies (including, without limitation, the village, the State Department of Environmental Quality, and the EPA) and providing any required treatment, it shall be unlawful to discharge, or permit or cause to be discharged, either directly or indirectly:

(A) Polluted water, sewage, or wastewater to any natural outlet within the village, to any waters of the state (or waters of the United States), or to any public sewer;

(B) (1) Unpolluted water of any kind including, without limitation, stormwater, surface water, groundwater, roof runoff, artesian well water, drainage water (surface or subsurface), industrial noncontact cooling water, air-conditioning water, swimming pool water, or industrial process waters to any sanitary sewer.

(2) Unpolluted water may be discharged only to a sewer that is specifically designated as a storm sewer or to a natural outlet, and only if all applicable permits and approvals have first been obtained from the POTW and other governmental bodies or agencies and only if not prohibited by applicable local, state, or federal laws or regulations.

(C) If any person drains any unpolluted water from his or her property by means of conductors, eaves troughs, roof downspouts, or otherwise, into a combined sewer, storm sewer, or natural outlet in violation of applicable laws or regulations or without securing the prior approval of the village, or into a sanitary sewer, the village shall order its disconnection at the property owner's expense, and if the property owner refuses to obey the order of the village, then the village shall disconnect the connection and the costs shall be charged to the property owner.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

**§ 53.017 UNLAWFUL CONSTRUCTION.**

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for disposal of sewage.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

**§ 53.018 REQUIRED CONNECTION TO AVAILABLE SANITARY SEWER.**

The owner of any house, building, or property used for human occupancy, employment, recreation, or other purposes, situated within the village, and abutting on any street, alley, or right-of-way, in which there is located, or may in the future be located, a public sanitary sewer or combined sewer within 200 feet of the property line, is hereby required, at the owner's expense, to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer, in accordance with the provision of this chapter, when given official notice to do so, provided that such connection shall not be required to be made less than six months after the sewer is made available for connection thereto.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

**§ 53.019 WASTE DISCHARGE PROHIBITED EXCEPT THROUGH APPROVED SEWER CONNECTION.**

All discharges to a sewer shall be through an approved sewer connection or at another discharge point expressly approved by the POTW in accordance with this chapter. No person shall discharge any waste or other substances into a manhole, catch basin, or inlet.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **PRIVATE WASTEWATER DISPOSAL**

### **§ 53.030 PRIVATE TREATMENT AND DISPOSAL REQUIREMENTS.**

(A) If a public sanitary or combined sewer is not available under the provisions of §§ 53.015 through 53.019, the building sewer shall be connected to a private sewage disposal system complying with all requirements of this subchapter and of the County Health Department.

(B) Before beginning the construction or installation of a private sewage system, the person owning the property shall first apply for and obtain from the County Health Department a soil evaluation test and a construction permit.

(C) No permit shall be issued for any private wastewater disposal systems employing subsurface soil absorption facilities where the area of the lot is less than determined necessary by the village and county or state health officials, as applicable.

(D) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the County Health Department. All persons receiving a permit for a private sewage disposal system shall provide the POTW Manager with copies of all final approved inspection reports issued by the County Health Department.

(E) The type, capacities, location, and layout of a private wastewater disposal system shall comply with all local, county, state, and federal requirements.

(F) No septic tank, cesspool, subsurface disposal facility, or other private sanitary sewer system shall be permitted to discharge to any public sewer or natural outlet.

(G) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the village.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.031 ADDITIONAL PUBLIC HEALTH REQUIREMENTS.**

Nothing in this subchapter shall be construed to interfere with any additional requirements that may be imposed by the village, the State Department of Public Health, or any other governmental agency.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.032 PUBLIC SEWER BECOMES AVAILABLE.**

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in §§ 53.015 through 53.019, a direct connection shall be made to the public sewer in compliance with this chapter at the user's sole expense; and any septic tanks, cesspools, and similar private sewage disposal facilities shall be cleaned of any sludge, abandoned, and filled with clean bank-run gravel or dirt, at the user's sole expense.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **BUILDING SEWERS AND CONNECTIONS**

### **§ 53.045 PERMIT REQUIRED.**

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any part or appurtenance of the sanitary sewer system without first obtaining a written permit from the village.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.046 BUILDING SEWER PERMITS.**

There shall be three classes of building sewer permits: residential; commercial; and industrial. In any case, the owner or his or her agent shall make application on a special form furnished by the village. The permit application shall be supplemented by any plans, specifications, or other information considered necessary and appropriate in the judgment of the POTW Manager. A minimum permit and inspection fee of \$10 for a residential, \$25 for a commercial, and \$50 for an industrial building sewer permit shall be paid to the village at the time the application is filed. Agents of the village, State Department of Environmental Quality, or the EPA shall have the right to enter all properties for the purpose of inspecting and copying all records which are required to be kept pursuant to this chapter. Resolution 2015-4, passed on 9-21-2015 addressing water and wastewater rates, fees, charges and policies is incorporated by reference.

(Ord. 2009-5, passed 7-20-2009; Res. 2015-4, passed 9-21-2015) Penalty, see § 53.999

### **§ 53.047 CONNECTION COSTS.**

Resolution 2015-4, passed on 9-21-2015 addressing water and wastewater rates, fees, charges and policies is incorporated by reference. Penalty, see § 53.999

### **§ 53.048 MULTIPLE BUILDINGS; SEPARATE USES WITHIN BUILDINGS.**

A separate and independent building sewer shall be provided for every building. Independent building sewers or control manholes may also be required for separate uses within a building, as determined necessary by the POTW Manager and the Inspector. Exceptions may be considered by the POTW Manager only for preexisting buildings that cannot otherwise be connected to the sanitary sewer system. Exceptions may also be considered by the POTW Manager for integrated manufacturing facilities with process or assembly connections between buildings.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.049 EXISTING BUILDING SEWERS.**

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Inspector, to meet all requirements of this chapter and adopted Plumbing Code standards.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.050 CONSTRUCTION SPECIFICATIONS.**

(A) The size, slope, alignment, materials, or construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, connecting, testing, and backfilling the trench shall all conform to the requirements of the current building and plumbing codes, manufacturer's specifications, and other applicable rules and regulations of the village, and shall be subject to the final approval of the Inspector. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing Materials (ASTM) and the Water Pollution Control Federation (WPCF) Manual of Practice No. 9 shall apply.

(B) The building sewer shall be constructed of the type of pipe specified by the Inspector that meets current ASTM specifications. If installed in filled or unstable ground, the building sewer shall be of cast iron extra heavy pipe, except that other types of pipe may be used if laid on a suitable improved bed or cradle as approved by the Inspector.

(C) All building drains shall have check valves or other backflow preventers or the village shall be immune from liability for and shall not pay any claims resulting from any backflow of wastewater into the building.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.051 BUILDING SEWER ELEVATION AND LOCATION.**

Whenever possible, the building sewer shall be brought to the buildings at an elevation below the basement floor. No building sewer shall be laid parallel to, or within three feet of, any bearing wall that might thereby be weakened. The depth shall be sufficient to afford protection from frost. All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the Inspector. Pipe laying and backfill shall be performed in accordance with current ASTM specifications, except that no backfill shall be placed until the work has been inspected by the Inspector.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.052 LOW BUILDING SEWERS.**

In all buildings in which any building sewer is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drains shall be lifted by artificial means and discharged to the building sewer, at the owner's expense, and subject to approval by the Inspector.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.053 CONNECTION SPECIFICATIONS.**

(A) (1) All building sewer joints and connections shall be made gastight and watertight and shall conform to the requirements of the current building and plumbing codes, manufacturer's recommendations, other applicable rules and regulations of the village, and the procedures set forth in appropriate specifications, and shall be subject to the approval of the Inspector.

(2) No deviation from the prescribed procedures and materials shall be allowed unless approved by the Inspector before installation.

(B) The connection of the building sewer into the public sewer shall be made at the wye branch designated for the property if such branch is available at a suitable location. Any connection not made at the designated wye branch in the main sewer shall be made only as directed by the Inspector.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.054 NOTIFICATION; BUILDING SEWER INSPECTION.**

The applicant for the building sewer permit shall notify the Inspector when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Inspector.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.055 PROTECTION AND RESTORATION.**

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from



hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the village at the expense of the owner.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.056 CAPACITY REQUIRED.**

Connection to a public sewer shall not be allowed unless there is capacity available (in both wastewater volume and strength) at the POTW treatment plant and in all downstream sewers, pump stations, interceptors, and force mains including, but not limited to, adequate capacity to accept, treat, and dispose of BOD, TSS, or similar materials as required by applicable local, state, or federal laws, rules, or regulations, as determined by the POTW.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.057 CONNECTION TO SOURCES OF RUNOFF PROHIBITED.**

(A) No person shall connect (or allow to remain connected) roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain that in turn is connected directly or indirectly to a public sanitary sewer.

(B) Any such connection shall be permanently disconnected at the sole expense of the owner of the premises.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.058 PRETREATMENT OF ANY DISCHARGE MAY BE REQUIRED.**

Pretreatment of any discharge to the public sewer including, but not limited to, grease, oil, and sand interceptors shall be provided when, in the opinion of the POTW Manager, they are necessary.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **CONDITIONS OF SERVICE**

#### **§ 53.070 SEWER MAINTENANCE.**

At the time of original construction of the public sewer, the POTW shall install that portion of the building sewer from the public sewer to the lot or easement line off all occupied premises. The POTW shall maintain, at its expense, the public sewer. Users making connections at the time of original construction of the public sewer shall install, at their expense, that portion of the building sewer from the lot or easement line to their premises. Users shall maintain, at their expense, the building sewers.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.071 CUSTOMER CONNECTION REQUIREMENTS.**

Users making connections subsequent to the time of original construction of the public sewer shall install, at their expense, that portion of the building sewer from the public sewer to the lot or easement line in addition to that portion of the building sewer from the lot or easement line to their premises.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.072 DISRUPTION OF SERVICE.**

The village shall not be held responsible for claims made against it by reason of the breaking of any mains or service laterals, or by reason of any other interruption of the service caused by the breaking of machinery or stoppage for necessary repairs; and no person shall be entitled to damages nor have any portion of a payment refunded for any interruption.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.073 SERVICE INSPECTIONS.**

All premises receiving sanitary sewer service shall at all times be subject to inspection by duly authorized village personnel.

(Ord. 2009-5, passed 7-20-2009)

### **REGULATION OF DISCHARGES TO THE POTW**

#### **§ 53.085 DISCHARGE PROHIBITIONS.**

(A) *Generally.* No user shall discharge to the POTW except in compliance with this chapter. The general discharge prohibitions under division (B) below and the specific discharge prohibitions under division (C) below apply to every user whether or not the user is subject to any other national, state, or local pretreatment standards or requirements, and whether or not the discharge is made pursuant to a user permit issued pursuant to this chapter.

(B) *General prohibitions.* No user shall contribute or cause to be contributed, directly or indirectly to the POTW, any pollutant or wastewater that will pass-through or interfere with the operation or performance of the POTW.



(C) *Specific prohibitions.* No user shall discharge or contribute to the POTW, directly or indirectly, any of the pollutants, substances, or wastewater as provided by this division (C). This division (C) sets forth the minimum requirements for a user's discharges to the POTW. Additional or more restrictive requirements may be required of particular users by a user permit, or as otherwise authorized or required by this chapter or other applicable laws and regulations:

(1) Pollutants in concentrations that exceed the instantaneous maximum, daily maximum, or monthly average concentrations listed below in this division (C)(1):

<i>Parameter</i>	<i>IMC (mg/l)<sup>1</sup></i>	<i>Daily Max. (mg/l)<sup>1</sup></i>	<i>Monthly Avg. (mg/l)<sup>1</sup></i>
<i>Parameter</i>	<i>IMC (mg/l)<sup>1</sup></i>	<i>Daily Max. (mg/l)<sup>1</sup></i>	<i>Monthly Avg. (mg/l)<sup>1</sup></i>
Ammonia nitrogen (NH <sub>3</sub> as N)	50.03	50.03	-
Arsenic (T)	-	0.026	0.017
BOD <sub>5</sub>	400.04	400.04	-
Cadmium (T)	-	0.040	0.027
Chromium (T)	-	2.85	2.85
Copper (T)	-	0.95	0.63
Cyanide (T)	-	0.19	0.19
Lead (T)	-	0.16	0.16
Mercury (T)	NQ2	NQ2	-
Molybdenum (T)	-	0.28	0.18
Nickel (T)	-	0.541	0.36
Phosphorous (T)	-	25.06	10.0
Silver (T)	-	0.047	0.031
TSS	350.05	350.05	-
Zinc (T)	-	2.20	2.20

Table notes:

IMC: instantaneous maximum concentration limit

T: total

1: (A) Discharges that contain more than one pollutant that may contribute to fume toxicity shall be subject to more restrictive limitations, as determined necessary by the POTW. The more restrictive discharge limits will be calculated based on the additive fume toxicity of all compounds identified or reasonably expected to be present in the discharge including, without limitation, the specific compounds, if any, listed in this division (C).

(B) Also, see § 53.089, regarding application of most restrictive or additional standards or requirements under local, state, and federal laws and regulations.

(C) The village may develop alternate limits for specific compatible pollutants, by special agreement between the village and a user, at the user's sole expense, but only if all of the following have conditions been met, as determined by the POTW.

(1) A maximum allowable headworks loading (MAHL) study has been done that is representative of the current flow and loading conditions at the POTW and that shows sufficient capacity for the change in the specific pollutant. This will take into consideration the total load from all users and the allocation of load from the study will be divided appropriately.

(2) Any resultant change to the load limits would not significantly hinder the capacity of the POTW to accept additional waste from new or existing domestic or non-domestic customers.

(3) Any resultant change to the load limits would not exceed the capacity of the POTW.

(4) The proposed change to the load limits has been submitted to the DEQ for review and approval before implementation.

2: NQ equals non-quantifiable concentration, defined as at or below the quantification level of 0.2 ug/l using EPA method 245.1 (or at or below other quantification levels applicable under alternative test methods required by the POTW or by other applicable laws or regulations). Mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring of a user's discharge shall be in accordance with EPA method 245.1, unless the POTW Manager requires EPA method 1631 (or other appropriate method). The quantification level shall be 0.2 ug/l for method 245.1 or 0.5 ng/l for method 1631, unless higher levels are approved by the POTW Manager because of sample matrix interference.

3: Any discharge of ammonia nitrogen in excess of 15 mg/l shall be subject to surcharge as provided by this chapter.

4: Any discharge of BOD in excess of 220.0 mg/l shall be subject to surcharge as provided by this chapter.

5: Any discharge of TSS in excess of 200.0 mg/l shall be subject to surcharge as provided by this chapter.

6: Any discharge of phosphorus in excess of 10 mg/l shall be subject to surcharge as provided by this chapter.

The IMC, daily maximum, and monthly average limits listed above in this division (C)(1) (or as listed elsewhere in this chapter or in any user permit or order) for each pollutant parameter are the concentrations which may not be exceeded and at which enforcement begins. The surcharge threshold concentrations as specified in notes 3 through 6 (above) are the concentrations above which surcharges may be imposed. Discharges exceeding the surcharge thresholds, but which are less than the IMC, daily maximum, and monthly average limits (and which do not violate any other applicable prohibitions, limitations, standards, or requirements), are not violations of this chapter, but are subject to surcharges as provided by this chapter. All violations of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements constitute a violation of this chapter, subject to applicable fines, penalties, and other enforcement actions. In no event shall the imposition of a surcharge for a discharge that does not meet the applicable prohibitions, limitations, or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of this chapter.

(2) Pollutants in concentrations that exceed the instantaneous maximum, daily maximum, or monthly average concentrations listed below in this division (C)(2):

(a) The instantaneous maximum concentration, daily maximum, and monthly average discharge limit for PCBs is non-detect;

(b) Except as otherwise required by the POTW Manager, compliance with this limit shall be determined as follows:

1. A compliance limit of non-detect shall be used for instantaneous maximum concentration, daily maximum, and monthly average. Any discharge of PCBs at or above the quantification level is a specific violation of this chapter; and

2. PCB sampling procedures, preservation and handling, and analytical protocol for compliance monitoring of a user's discharge shall be in accordance with EPA method 608. The quantification level shall be 0.1 ug/l, unless higher levels are determined appropriate by the POTW Manager because of sample matrix interference. Total PCBs shall be defined as the sum of the Aroclors 1016, 1221, 1232, 1242, 1248, 1254 and 1260. In addition, any detected Aroclor-specific measurements shall be reported.

(3) Any liquid, solid, gas, or other pollutant (including, but not limited to, gasoline, benzene, naphtha, fuel, or fuel oil) which by reason of its nature or quantity is sufficient either alone or by interaction with other substances to create a fire or explosion hazard or be injurious in any other way to persons, the POTW, or to the operation of the sewerage system including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F or 60°C using test methods specified in 40 C.F.R. § 261.21;

(4) Pollutants that may cause corrosive structural damage to the POTW, or that due to their corrosive properties are capable of causing injury to persons or POTW personnel or harm to fish, animals, or the environment. Discharges that have a pH lower than 6.5 s.u. (instantaneous minimum) or greater than 9.5 s.u. (instantaneous maximum) shall not be discharged, except as follows: if a user is not regulated by state or federal categorical pretreatment standards for pH, and pH is continuously monitored, then, subject to prior approval

of the POTW Manager, the user may discharge wastewater with a pH less than 6.0 s.u. but greater than 5.0 s.u. for a period of time up to 15 consecutive minutes. Dischargers that use this method are subject to enforcement under § 53.305(H);

(5) Any solid, insoluble, or viscous substance in concentrations or quantities which may cause obstruction to the flow in the POTW, may create an encumbrance to the POTW operations, or which otherwise may result in interference including, but not limited to, grease, animal entrails or tissues, bones, hair, hides or fleshings, whole blood, feathers, ashes, cinders, sand, cement, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, strings, fibers, spent grains, spent hops, wastepaper, wood, plastics, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes, or tumbling and deburring stones; or any material that can be disposed of as trash;

(6) Any pollutant including, but not limited to, oxygen demanding pollutants (BOD and the like), released at a flow rate and/or pollutant concentration that may cause pass-through or interference with the POTW or constitute a slug load, or is otherwise discharged to the POTW in excessive amounts;

(7) Wastewater (or vapor) having a temperature that will inhibit biological activity in the POTW resulting in interference, or heat in such quantities that the temperature at any lift station or at the POTW treatment plant exceeds 104°F (40°C). No discharge to the POTW shall have a temperature less than 40°F (4.4°C) or greater than 135°F (57.2°C), unless approved in advance by the POTW Manager;

(8) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass-through;

(9) Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. This prohibition includes, but is not limited to, wastewaters which contain liquids, solids, or gases that cause gases, vapors, or fumes from the discharge to exceed 10% of the immediately dangerous to life and health (IDLH) concentration. Discharges, which contain more than one pollutant that may contribute to fume toxicity, shall be subject to more restrictive limitations, as determined necessary by the POTW. The more restrictive discharge limits shall be calculated based on the additive fume toxicity of all compounds identified or reasonably expected to be present in the discharge;

(10) Trucked or hauled pollutants, except those introduced into the system at discharge points designated by the POTW, subject to the prior approval of the POTW Manager and prior issuance of a user permit:

(a) The POTW Manager shall determine whether to allow the discharge of trucked or hauled pollutants based on the particular nature, character, or quantity of the proposed discharge in accordance with the discharge prohibitions, limitations, and requirements provided by this chapter;

(b) The POTW Manager may impose any conditions on the discharge determined necessary to ensure compliance with this subchapter including, without limitation, conditions regarding the time, place, and manner of discharge, restrictions on the quantity and quality of the discharge, and sampling requirements;

(c) The discharge shall not commence without prior notice to, and authorization from, the POTW Manager, and a representative of the POTW shall be present at all times during the discharge;

(d) All trucked or hauled wastes to be discharged to the POTW must be accompanied by a completed waste manifest form signed by the permittee and the hauler as provided by the minimum requirements of this section. The permittee shall certify in writing on the manifest as to the source of all wastes in the load proposed to be discharged and that the wastes have been pretreated as required by applicable pretreatment standards and requirements. The hauler shall certify in writing on the manifest that no wastes other than those listed on the manifest have been accepted by the hauler. The manifest must be reviewed by the POTW Manager prior to commencing discharge of the load. Failure to accurately record every load, falsification of data, or failure to transmit the form to the POTW Manager for review prior to discharge shall constitute a violation of the permit and may result in revocation of the permit and/or the imposition of fines and penalties as provided by this subchapter;

(e) The permittee's discharge of hauled wastes shall be subject to sampling by the POTW at any time including, without limitation, prior to and during discharge. The POTW Manager may require the permittee to refrain from, or suspend, discharging until the sample analysis is complete;

(f) Trucked or hauled pollutants will be accepted only if transported to the POTW in compliance with state and federal hazardous waste and liquid industrial waste laws;

(g) Each discharge of trucked or hauled pollutants will be accepted only after payment to the POTW of a trucked or hauled pollutant discharge fee to cover the POTW's administrative expenses and any additional treatment, handling, or inspection expenses incurred by the POTW in connection with the discharge. The fee shall be established, paid, and collected as provided for IPP fees by §§ 53.360 through 53.364. This discharge fee shall be in addition to any sewer rates, fees, charges, or surcharges otherwise required by this chapter; and

(h) Prior to accepting a proposed discharge of trucked or hauled pollutants, the POTW may be required to evaluate the capacity of the POTW to accept such wastes by means including, but not limited to, a headworks analysis or treatability study, as determined necessary by the POTW. All such evaluation and analysis shall be at the sole cost of the user proposing the discharge and shall be paid in full by the user whether or not the discharge of the trucked or hauled pollutants is ultimately approved by the POTW. The POTW may require the user to post a deposit or other form of surety, as determined sufficient and appropriate by the POTW, to ensure payment by the user of all such costs.

(11) Wastewater with objectionable color or light absorbency characteristics that may interfere with treatment processes or analytical determinations including, without limitation, dye wastes and vegetable tanning solutions;

- (12) Any garbage or other solid material that has not been properly shredded;
- (13) Solvent extractibles including, without limitation, oil, grease, wax, or fat, whether emulsified or not, in excess of applicable local limits; or other substances that may solidify or become viscous (with a viscosity of 110% of water) at temperatures between 32°F and 150°F in amounts that may cause obstruction to the flow in sewers or other interference with the operation of the POTW;
- (14) Soluble substances in a concentration that may increase the viscosity to greater than 10% over the viscosity of the water or in amounts that will cause obstruction to the flow in the POTW resulting in interference;
- (15) Any substance that exerts or causes a high or unusual concentration of inert suspended solids including, but not limited to, lime slurries, diatomaceous earth, and lime residues;
- (16) Any wastewater that contains suspended solids of such character, quantity, or concentration that special attention is required, or additional expense incurred, to process such materials at the POTW;
- (17) Any substance that exerts or causes a high or unusual concentration of dissolved solids including, but not limited to, sodium chloride or sodium sulfate;
- (18) Noxious or malodorous liquids, gases, fumes, or solids that either singly or by interaction with other wastes are sufficient to create a public nuisance, cause workplace conditions in violation of any applicable workplace health or safety standard, pose a hazard to life, sufficient to prevent entry into the sewers for maintenance and repair, or cause any hazardous or unsafe conditions for the general public;
- (19) Antifreeze, motor oil, brake fluid, transmission fluid, hydraulic fluid, cleaning solvents, oil-based paint, water-based paint with mercury biocides, and paint thinners;
- (20) Any radioactive wastes or isotopes of a half-life or concentration that may exceed limits established by applicable state or federal laws, rules, or regulations;
- (21) Any pollutant that results in excess foaming during the treatment process. Excess foaming is any foam that, in the opinion of the POTW Manager, may interfere with the treatment process;
- (22) Wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard;
- (23) Any hazardous waste as defined by this chapter;
- (24) Any medical or infectious wastes, as defined by the State Department of Environmental Quality;
- (25) Any substance that may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation, reuse, or disposal, or otherwise interfere with the reclamation, reuse, or disposal process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations developed under § 405 of the Act; under the Solid Waste Disposal Act (SWDA) being 42 U.S.C. §§ 6901 et seq., (including Title II, more commonly referred to as RCRA, and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA); the Clean Air Act, being 42 U.S.C. §§ 7401 et seq.; the Toxic Substances Control Act, being 15 U.S.C. §§ 2601 et seq.; the Marine Protection, Research, and Sanctuaries Act, being 16 U.S.C. §§ 1431 et seq. and 1401 et seq.; or any more stringent state or local regulations, as applicable;
- (26) Any unpolluted water, noncontact cooling water, stormwater, surface water, groundwater, roof runoff, or subsurface drainage (except to a storm sewer or a combined sewer as authorized by this chapter and other applicable local, state, and federal laws and regulations and subject to the prior approval of the POTW Manager, and the MDEQ);
- (27) Any contaminated groundwater or landfill leachate determined by the POTW to have a reasonable potential to adversely affect the operation of the POTW, to result in pass-through or interference, or to violate any pretreatment standard or requirement;
- (28) Any substance that will cause the POTW to violate its NPDES permit, the receiving water quality standards, or associated local, state, or federal laws, rules, or regulations;
- (29) Any substance which causes a high chlorine demand including, but not limited to, nitrite, cyanide, thiocyanate, sulfite, and thiosulfate;
- (30) Any wastewater that exceeds applicable categorical pretreatment standards, requirements, or limits prescribed by local, state, or federal laws, rules, or regulations;
- (31) Any compatible or incompatible pollutant in excess of the allowed limits as determined by applicable local, state, or federal laws, rules, or regulations;
- (32) Any sludge, precipitate, or waste resulting from any industrial or commercial treatment or pretreatment of any person's wastewater or air pollutants;
- (33) Residue (total on evaporation) in an amount that will cause obstruction to the flow in the POTW resulting in interference;
- (34) Water or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment to only such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters;

(35) Any non-domestic wastewater before the POTW has approved a notice of intent submitted according to § 53.143;

(36) Waste not typically discharged to a sanitary sewer system unless specifically authorized by the POTW pursuant to policies and procedures established by the village and subject to limitations set forth in this chapter;

(37) Any mass, concentration, or volume of a substance in excess of the amount allowed in the user's user permit; and/or

(38) Any pollutant, substance, or wastewater that, either directly or indirectly, and either singly or by interaction with other pollutants, has a reasonable potential to:

- (a) Create a chemical reaction with any materials of construction to impair the strength or durability of sewer structures;
- (b) Cause a mechanical action that will damage or destroy sewer structures;
- (c) Impede or restrict the hydraulic capacity of the POTW;
- (d) Interfere with normal inspection or maintenance of sewer structures;
- (e) Place unusual demands upon the wastewater treatment equipment or processes by biological, chemical, or physical means; or
- (f) Cause a hazard to human life or create a public nuisance.

(D) *Pollutant reduction plans.* If the POTW Manager determines that a user has the reasonable potential to discharge any regulated pollutant (including, but not limited to, mercury or PCBs) to the POTW in quantities or magnitude that may cause interference or pass-through; adversely impact the POTW, its processes or beneficial use of biosolids; cause noncompliance with applicable federal or state laws or regulations; cause the POTW to violate its NPDES permit, or otherwise fail to meet the purposes and objectives of this chapter, then the POTW Manager may require the user to develop, submit for approval, and implement a reduction plan ("RP") for the pollutant, as provided by this section. The RP may be imposed as a condition to a user permit, or may be required independently and even if a user permit has not been issued to the user.

(1) At a minimum, the RP shall contain such requirements and conditions, as determined necessary by the POTW Manager to ensure that the pollutant reduction efforts will be effective in achieving the goals of this chapter (including, but not limited to: requirements and conditions regarding user source identification; best management practices; schedules of compliance; monitoring, sampling and analysis; reporting; treatment system for removal of the pollutant from the discharged wastewater; written procedures for disposal of contaminated wastes and wastewater; employee training, and ongoing employee training requirements regarding pollutant related issues; elimination, if feasible, of any purchased materials containing the pollutant; and any other elements determined necessary and appropriate under the circumstances by the POTW Manager).

(2) The goal of an RP shall be to maintain the amount of one or more pollutants or substances at or below the applicable discharge limits or levels, or such other goals as required by the POTW. The POTW Manager may, in the POTW Manager's discretion, consider cost effectiveness during the development and implementation of an RP.

(3) The POTW Manager may require any user to submit an RP that describes the control strategy designed to proceed toward achievement of the specified goal and shall at a minimum include, but shall not be limited to, all of the following as determined necessary by the POTW Manager on a case-by-case basis:

- (a) Periodic monitoring for the pollutant in the user's discharge;
- (b) Periodic monitoring of the potential sources of the pollutant in the user's discharge;
- (c) A commitment by the user that reasonable control measures and/or best management practices will be implemented when sources of the pollutant are discovered. Factors to be considered by the POTW may include the following:

1. Significance of sources;
2. Economic considerations;
3. Technical and treatability considerations; and
4. Such other factors as determined appropriate by the POTW Manager.

(d) An annual status report. The report shall be sent by the user to the POTW and shall include, at a minimum, all of the following:

1. All RP monitoring results for the previous year;
2. A list of potential sources of the pollutant in the user's discharge; and
3. A summary of all actions taken by the user to reduce or eliminate the identified sources of the pollutant or substance.

(4) As determined necessary by the POTW Manager, the Manager may require a user to develop, submit, and implement an RP for any pollutant or substance regulated by this chapter. The POTW Manager may also modify an approved RP at any time as determined necessary by the POTW Manager to meet the goals and objectives of this chapter.

(5) Failure to submit an approvable RP within the specified deadlines or to fully and timely comply with any condition or requirement of an approved RP shall constitute a violation of this chapter, subject to the fine, penalty, and other enforcement provisions of this chapter.

(6) Holding enforcement action in abeyance. Except as provided for in divisions (D)(6)(c)4. and (D)(6)(c)6. below, if the effluent sample analysis results of a user's discharge exceeds the applicable discharge limit, detection level, or quantification level for a pollutant, the POTW Manager may, in the POTW Manager's sole discretion, nevertheless allow that discharge to continue and may hold any enforcement action regarding the prohibited discharge in abeyance, subject to the terms, conditions, and requirements of this division (D)(6), as follows.

(a) If effluent sample analysis results exceeds the applicable discharge limit, detection level, or quantification level for a pollutant for which an approved RP is already in place, then the POTW Manager may, in the POTW Manager's sole discretion, nevertheless allow that discharge to continue and may hold any enforcement action regarding the prohibited discharge in abeyance for the period that the sample represents if the RP (and all terms, conditions, and requirements thereof) is being fully and continually performed in good faith by the user, as determined by the POTW Manager, and subject to all of the requirements and conditions of division (D)(6)(c) below.

(b) If effluent sample analysis results exceeds the applicable discharge limit, detection level, or quantification level for a pollutant for which an approved RP is not already in place, then the POTW Manager may, in the POTW Manager's sole discretion, nevertheless allow that discharge to continue and may hold any enforcement regarding the prohibited discharge in abeyance, subject to all of the requirements and conditions of division (D)(6)(c) below, and provided further as follows: the user with the noncompliant discharge shall develop and implement an RP approved by the POTW Manager to minimize the user's discharges of the pollutant in question to the POTW. The RP shall meet all of the requirements of this division (D).

(c) The following requirements and conditions shall apply to any situation under this division (D)(6) in which an enforcement action is held in abeyance as provided by this division (D)(6)(c) (regardless of whether or not an RP was in place at the time of the noncompliance).

1. The user with the noncompliant discharge shall have a POTW-accessible point for monitoring all discharges from the user to the POTW, as approved by the POTW. All costs and expenses for and related to the installation and maintenance of this monitoring point and any required sampling devices shall be paid for solely by the user.

2. The user with the noncompliant discharge shall routinely self monitor its discharges to the POTW for the pollutant in question using the sampling methods, procedures, preservation, and handling, and analytical protocol required by the POTW Manager and at the frequency specified by the POTW Manager. All costs and expenses of this sampling and analysis shall be paid for solely by the user.

3. The POTW may collect any additional samples of the user's discharge as determined necessary by the POTW Manager, all costs and expenses to be paid for by the user.

4. If the user complies with all of the requirements and conditions for the RP as specified by the POTW Manager; and if the POTW Manager determines that all reasonable and cost-effective actions based on the economic, technical, and treatability considerations including, but not limited to, all elements of the user's RP, have been, and continue to be, fully and satisfactorily implemented by the user; and if the user's discharge does not cause interference or pass-through; adversely impact the POTW, its processes or beneficial use of biosolids; cause noncompliance with applicable federal or state laws or regulations; cause the POTW to violate its NPDES permit; or otherwise fail to meet the purposes and objectives of this chapter: then the POTW may, in its discretion, hold enforcement action in abeyance and allow the user to continue the noncompliant discharge.

5. Notwithstanding any provision of this division (D)(6) to the contrary, and regardless of whether a user fully complies with all requirements and conditions of this section and/or of an approved RP, the POTW Manager shall have the unconditional right to prohibit and terminate any noncompliant discharge at any time and without prior notice, and to take any enforcement action in response thereto, including any enforcement action that had previously been held in abeyance under this division (D)(6).

6. Notwithstanding any provision of this division (D)(6) to the contrary, the POTW Manager shall not hold an enforcement action in abeyance as provided by this division (D)(6) for any pollutant parameter other than mercury and PCBs unless the POTW Manager has first obtained approval from the MDEQ to implement the requirements of this division (D)(6) for the specific pollutant parameter in question.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.086 PRETREATMENT STANDARDS AND REQUIREMENTS.**

(A) *Compliance with applicable standards and requirements.* The national categorical pretreatment standards as established for specific industries under 40 C.F.R. chapter I, subchapter N are hereby made a part of the requirements of this chapter in accordance with federal and state laws and regulations, and are incorporated by reference as if fully set forth in this chapter. A user shall comply with all categorical pretreatment standards and any other pretreatment requirements established under the Act that are applicable to that user. A user shall also comply with all other applicable pretreatment standards and requirements established under this chapter or under state and federal laws and regulations.

(B) *Deadlines for compliance.* Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified by 40 C.F.R. chapter I, subchapter N. Existing sources that become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of new source. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards and requirements before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards and requirements.

(C) *Alternative categorical limits.* Categorical pretreatment standards shall apply to a user subject to categorical standards, unless an enforceable alternative limit to the corresponding national categorical standards is derived using any of the methods specified in M.A.C.

R § 323.2313 (regarding removal credits, fundamentally different factor variances, net/gross calculations, equivalent mass per day limitations, and combined waste stream formula alternative limitations). The use of any alternative categorical limit shall be subject to the prior approval of the POTW Manager. If local limits are more stringent than derived alternative categorical limits, the local limits shall control.

(D) *Compliance with other applicable laws and regulations.* Users of the POTW shall comply with all local, state, and federal laws and regulations that may apply to their discharges to the POTW including, but not limited to, Article II, Air Pollution Control, Public Act 451 of 1994, part 55 (the Natural Resources and Environmental Protection Act).

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.087 VILLAGE'S RIGHT OF REVISION.**

The village reserves the right to establish more restrictive prohibitions, limitations, and requirements for discharges to the POTW to prevent interference or pass-through, to protect the POTW, to comply with applicable federal or state laws or regulations, to comply with the POTW's NPDES permit, or as otherwise determined necessary by the POTW Manager.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.088 POTW'S RIGHT TO REFUSE OR CONDITION DISCHARGE.**

The POTW may refuse to accept, or may condition its acceptance of, all or any portion of any proposed or existing discharge to the POTW from any person, regardless of whether or not a user permit has been issued for the discharge, if the POTW Manager determines that the discharge has a reasonable potential to: adversely affect the operation of the POTW; result in pass-through or interference; violate any pretreatment standard or requirement; cause the POTW to violate its NPDES permit; or if the impacts of the discharge on the POTW or the POTW's discharge are uncertain or unknown (because, for example, no local limits or headworks analysis has been conducted for particular pollutants in the discharge). If the POTW Manager denies any person permission to commence or continue all or any portion of a discharge to the POTW, the person shall refrain from commencing to discharge or shall immediately terminate the discharge to the POTW and shall not thereafter recommence discharge without written authorization from the POTW Manager. Similarly, if the POTW Manager denies any person permission to commence or continue all or any portion of a discharge to the POTW except subject to conditions determined necessary and appropriate by the POTW Manager, the person shall refrain from commencing or continuing the discharge except in full compliance with those conditions. This includes, but is not limited to, the POTW Manager's right to revise or revoke user permits.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.089 MOST RESTRICTIVE STANDARDS AND REQUIREMENTS APPLY.**

(A) Notwithstanding any provision of this chapter to the contrary, the most stringent or restrictive standard or requirement applicable to a user's discharge shall control, whether established by this chapter, by any notice, order, permit, decision, or determination promulgated, issued, or made by the POTW under this chapter, by state laws or regulations, including the POTW's NPDES permit, or by federal laws or regulations.

(B) Further, if state or federal laws or regulations provide for standards and requirements not covered by this chapter that are otherwise applicable to a user's discharge, those standards and requirements shall apply to the user in addition to those required by this chapter, and the most restrictive of those additional standards or requirements shall control and shall be complied with by the user within the time period required by the law or regulation.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.090 DILUTION PROHIBITED AS SUBSTITUTE FOR TREATMENT.**

Unless expressly authorized to do so by an applicable pretreatment standard or requirement and subject to the prior approval of the POTW Manager, no user shall ever increase the use of process water, mix separate waste streams, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a federal, state, or local standard, requirement, or limitation. The POTW may impose mass limitations on non-domestic users that are using dilution to meet applicable pretreatment standards or requirements and in other cases where the imposition of mass limitations is appropriate. No user intending to use dilution as a substitute for treatment shall do so without the prior approval of the POTW Manager consistent with the requirements of this section.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **USER PERMITS**

#### **§ 53.105 USER PERMIT REQUIRED.**

(A) It is unlawful and prohibited for any significant industrial user (SIU), or any other user as determined necessary by the POTW Manager to carry out the purposes of this chapter, to discharge to the POTW without an industrial user permit as provided by this subchapter.

(B) The POTW Manager may require any user other than a SIU to obtain a general user permit to discharge to the POTW, subject to such terms and conditions as are determined necessary and appropriate by the POTW to achieve the purposes, policies, and objectives of this chapter.



(1) A general user permit may contain, but shall not be required to contain, any of the terms and conditions that would apply to an industrial user permit issued to a SIU as provided by this subchapter to comply with the general and specific discharge prohibitions of this chapter including, but not limited to: discharge limitations and requirements regarding sampling and monitoring; pretreatment; pollution prevention, minimization or reductions plans; accidental discharge, spill prevention, and containment requirements; flow equalization; and implementation of best management practices or a best management practices plan.

(2) To the extent determined appropriate by the POTW Manager on a case-by-case basis, a general user permit issued under this division (B) shall be subject to provisions otherwise applicable to permits for SIUs. However, all general user permits shall be nontransferable, and are subject to the permit fee and permit appeals provisions of this chapter.

(3) It is unlawful and prohibited for any user required by the POTW Manager to obtain a general user permit to discharge to the POTW without a general user permit as provided by this subchapter.

(4) Failure to comply with a general user permit issued under this division (B) constitutes a violation of this chapter.

(5) In no case shall a general user permit be construed to authorize the illegal discharge or otherwise excuse a violation of this chapter.

(C) Any violation of the terms or conditions of a user permit is a violation of this chapter, subject to the fine, penalty, and other enforcement provisions of this chapter. Obtaining a user permit shall not relieve a user of its obligation to obtain other permits or approvals that may be required by other local, state, or federal laws or regulations.

(D) The issuance of a user permit shall not convey to a user any property rights or privilege of any kind whatsoever, nor shall it be construed to authorize any injury to private or public property or any invasion of personal rights, nor any violation of local, state, or federal laws or regulations.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.106 DETERMINATION OF USER STATUS.**

(A) The POTW may require any user to submit information to the POTW for its use in determining whether the user's status including, but not limited to, whether the user is a SIU, as well as to determine changes or the absence or inadequacy of changes in a user's facilities.

(B) The POTW shall notify a non-domestic user of the POTW's belief that the user is, or may be, a SIU. Upon such notification, the user must complete and submit an application for an industrial user permit on a form furnished by the POTW. The failure of the POTW to so notify a non-domestic user shall not relieve any SIU of the duty to obtain a permit as required by this chapter.

(C) Upon determination that user permit is required, no connection to the POTW shall be made and no discharge thereto shall occur until a permit is duly issued; provided, however, that the POTW may, at its discretion, issue a written authorization in place of a permit, which authorization shall be valid for a period not to exceed 60 days.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.107 PERMIT APPLICATION DEADLINES.**

(A) Each user must file an application for a user permit on the form provided by the POTW within the following deadlines.

(1) *Existing SIUs.* Any SIU discharging into the POTW as of the effective date of this chapter shall submit a completed permit application form to the POTW as provided by this subchapter within 60 days of being so directed and provided a form by the POTW.

(2) *Proposed new SIUs.* Any SIU proposing to commence (or recommence) discharging into the POTW after the effective date of this chapter shall, at least 60 days prior to the anticipated date on which discharging will commence (or recommence), request a permit application form and submit the completed application to the POTW.

(3) *Categorical users subject to new standard.* A user which becomes subject to a new or revised national categorical pretreatment standard, and which has not previously submitted an application for a permit as required herein, shall apply to the POTW for an industrial user permit within 90 days after the promulgation of the applicable national categorical pretreatment standard. The POTW may also initiate this action; however, the failure of the POTW so to do shall not relieve a user of its obligation to obtain a permit.

(4) *Other users.* Any other user directed by the POTW to complete and submit a user permit application shall do so within 60 days of being so directed by the POTW and provided a form by the POTW.

(B) Any user not required to obtain a user permit for existing discharges must apply for and receive a user permit prior to changing the user's discharge in such a manner that the resulting discharge would require a user permit.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.108 PERMIT APPLICATION REQUIREMENTS.**

(A) All users shall submit the information required by this section on the user permit application form supplied by the POTW (or attached thereto) at a level of detail and in units and terms as determined necessary by the POTW to adequately evaluate the application, accompanied by payment of a permit application review fee.

(B) A separate application and supporting documentation shall be submitted for each separate location for which a user permit is required.

(C) The information required is as follows:

- (1) The name, address, and location of the facility or premises from which discharge will be made, including the names of the owner(s) and operator(s) of the facility or premises;
- (2) Corporate or individual name, federal employer identification number, address, and telephone number of the applicant;
- (3) Whether the user is a corporation, partnership, proprietorship, or other type of entity, and the name of the person(s) responsible for discharges by the user;
- (4) Name and title of the local authorized representative of the user who will have the authority to bind the applicant financially and legally, and who is authorized by the applicant as its agent to accept service of legal process, and the address and telephone number of such representative;
- (5) The Standard Industrial Classification (SIC) numbers of all processes at the location for which application is made, according to the *Standard Industrial Classification Manual*, as amended (or, if applicable, the North American Industrial Classification System (NAICS) designation);
- (6) Actual or proposed wastewater constituents and characteristics for each parameter listed in the permit application including, but not limited to, any pollutants that are limited or regulated by any federal, state, or local standards or requirements. The information provided for such parameters shall include all of the following:
  - (a) Pollutants having numeric or narrative limitations as provided by this chapter;
  - (b) Pollutants limited by national categorical pretreatment standards regulations for similar industries;
  - (c) For each parameter, the expected or experienced maximum and average concentrations during a one-year period shall be provided;
  - (d) For industries subject to national categorical pretreatment standards or requirements, the data required shall be separately shown for each categorical process waste stream and shall include all information required in § 53.136(A) for a baseline monitoring report; and
  - (e) Combined waste streams proposed to be regulated by the combined waste stream formula shall be specified.
- (7) For purposes of information required by the application, sampling and analysis shall be performed in accordance with the following: procedures established by the EPA pursuant to § 304(g) of the Act, and as contained in 40 C.F.R. part 136, as amended. If 40 C.F.R. part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures in the EPA publication *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, April 1977, and amendments or revisions thereto, or where appropriate and applicable, in accordance with any other sampling and analytical procedures approved by the EPA;
- (8) A listing and description of the following: plant activities; plant facilities; and plant processes on the premises for which the permit is being applied. Processes that are subject to national categorical pretreatment standards or requirements shall be so designated, and identification of which pollutants are associated with each process shall be stated;
- (9) A listing of raw materials and chemicals that are either used in the manufacturing process or could yield the pollutants referred to in this section. Any user claiming immunity from having to provide such information shall furnish proof of such immunity that is acceptable to the POTW Manager and in accordance with all applicable local, state, and federal laws and regulations;
- (10) (a) A statement containing information on the spill containment and prevention of accidental/spill discharges program for each of the pollutants referred to in this section. The information provided shall include the following:
  1. The approximate average and maximum quantities of such substances kept on the premises in the form of the following: raw materials; chemicals; and/or wastes therefrom; and
  2. The containment capacity for each of the above items.
- (b) The following requirements apply for purposes of the spill containment and prevention statement required by this division (C) (10).
  1. For raw materials, chemical solutions, or waste materials that do not contain any substance on the critical materials register promulgated by the State Department of Environmental Quality, only substances which are in a form which could readily be carried into the sewerage system and which constitute a concentration of 5% or greater on a dry weight basis in the raw material, chemical solution, or waste material are required to be included in the statement. Volumes of less than 55 gallons or the equivalent need not be included unless lesser quantities could cause interference or pass-through to the sewerage system.
  2. For raw materials, chemical solutions, or waste materials that contain any amount of any substance on the critical materials register promulgated by the State Department of Environmental Quality, the statement shall include the name of the substance and the expected concentration so that the POTW Manager can determine whether or not it may constitute a threat to the POTW if a spill occurs.
- (11) The name and address of each laboratory performing analytical work for the user submitting the application;
- (12) A description of typical daily and weekly operating cycles for each process in terms of starting and ending times for each of the seven days of the week;
- (13) Average and maximum 24-hour wastewater flow rates, including 30-minute peak wastewater flow rates, and daily, monthly,

and seasonal variations, if any; and a list of each national categorical process waste stream flow rate and the cooling water, sanitary water, and stormwater flow rates separately for each connection to the POTW, and list showing each combined waste stream;

- (14) A drawing showing all sewer connections and sampling manholes by the size, location, elevation, and points or places of discharges into the POTW;
- (15) A flow schematic drawing showing which connections receive each national categorical process waste stream or other process waste streams, and which connections receive stormwater, sanitary water, or cooling water;
- (16) A schematic drawing showing which sewers handle each combined waste stream;
- (17) Each product produced by type, amount, process, or processes and the rate of production as pertains to processes subject to production-based limits under national categorical standards or requirements shall be specified;
- (18) Actual or proposed hours of operation of each pretreatment system for each production process;
- (19) A description and schematic drawing showing each pretreatment facility, identifying whether each such facility is of the batch type or continuous process type;
- (20) If other than potable water is used, identification of the user's source of intake water together with the types of usage and disposal method of each water source and the estimated wastewater volume from each source;
- (21) A statement regarding whether the requirements of this chapter and the national categorical pretreatment standards and requirements are being met on a consistent basis; and if not, what additional operation and maintenance work and/or additional construction is required for the user to comply with applicable standards and requirements;
- (22) A list of all environmental permits (and, if requested by the POTW Manager, a copy of any environmental permit) held by the user applicable to the premises for which the user permit is being sought;
- (23) Whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the user to meet all applicable federal, state, and local pretreatment standards and requirements. If additional O and M or additional pretreatment will be required to meet the applicable standards and requirements, then the user shall indicate the shortest time schedule necessary to accomplish installation or adoption of the additional O and M and/or pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule.
  - (a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (including, without limitation, hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation). No increment referred to above shall exceed nine months, nor shall the total compliance period exceed 18 months.
  - (b) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between submission of the progress reports to the POTW.
- (24) Any other information determined necessary by the POTW to adequately evaluate the application. To the extent that actual data is not available for a new source, the applicant shall supply estimated or expected information; and
- (25) All applications (and reapplications) shall be signed and certified by an authorized representative of the user as defined by this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.109 PERMIT ISSUANCE, DENIAL, OR DETERMINATION THAT PERMIT NOT REQUIRED.**

(A) The POTW shall evaluate the application information furnished by a user and may require additional information as necessary to complete and properly review the application. No action shall be taken by the POTW on an application (and the 120-day review period as provided by this division (A) shall not begin to run) until the application is determined to be complete by the POTW Manager. Within 120 days after the submission of a complete application (unless the POTW and the applicant agree to extend this time period), the POTW shall either issue a user permit subject to terms and conditions provided by this chapter, deny the application, or determine that a permit is not required as provided by this chapter.

(B) A user permit may be denied by the POTW:

- (1) If the POTW determines that the proposed discharge, or continued discharge, will not comply with all applicable standards and requirements of this chapter;
- (2) If the user refuses, fails, or declines to accept the terms and conditions of a permit as proposed to be issued by the POTW;
- (3) For any reason that would support a suspension or revocation of the permit as provided by this chapter;
- (4) If the POTW determines that the POTW cannot adequately or reasonably treat the user's discharge (due to insufficient capacity, the quality or quantity of the pollutants, available POTW resource, and the like);
- (5) If the POTW is not satisfied that the user has not taken all reasonable steps to prevent, minimize, or reduce pollutants in the

user's discharge;

(6) To prevent the discharge of pollutants into the POTW, singly or in combination with other pollutants, for which there is a reasonable potential, as determined by the POTW Manager, to:

- (a) Not meet applicable pretreatment standards and requirements;
- (b) Interfere with the operation of the POTW;
- (c) Pass-through the POTW into the receiving waters or the atmosphere;
- (d) Inhibit or disrupt the POTW's processing, use, or disposal of sludge;
- (e) Cause health or safety problems for POTW workers; or
- (f) Result in a violation of the POTW's NPDES permit or of other applicable laws and regulations.

(7) If the POTW determines that there is not, or will not be, sufficient capacity available (in both wastewater volume and strength) for a proposed discharge in all downstream sewers, pump stations, interceptors, and force mains including, but not limited to, adequate capacity to accept, treat, and dispose of BOD, TSS, or similar materials as required by applicable local, state, or federal laws, rules, or regulations; or

(8) For any other reason determined by the POTW Manager as necessary and appropriate to protect the POTW or to meet the purposes and intent of this chapter.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.110 PERMIT CONDITIONS.**

(A) User permits shall be subject to all provisions of this chapter and all other applicable regulations, user charges, and fees established by the POTW. Further, user permits incorporate by reference all provisions, regulations, and requirements of this chapter without setting them forth in full therein.

(B) Industrial user permits shall at a minimum include all of the conditions required by M.A.C. R 323.2306(a)(iii). In addition, user permits shall include any conditions determined reasonably necessary by the POTW Manager to prevent pass-through or interference, to protect the quality of the receiving waters, to protect worker health and safety, to facilitate POTW sludge management and disposal, to protect ambient air quality, to protect against damage to the POTW, or to otherwise achieve the objectives of this chapter including, but not limited to, the following:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (2) Limits on the average and/or maximum concentration, mass, or other measure of identified wastewater constituents or properties;
- (3) Requirements for installation of pretreatment technology or construction of appropriate containment devices, or similar requirements designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (4) Development and implementation of slug discharge control plans, spill control plans, or other special conditions, including additional management practices necessary to adequately prevent accidental or unanticipated discharges;
- (5) Requirements for installation, maintenance, repair, calibration, and operation of inspection and sampling facilities and discharge flow monitors;
- (6) Specifications for monitoring programs which shall include, but are not limited to, sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules;
- (7) Compliance schedules;
- (8) Requirements for submission of technical reports or discharge reports;
- (9) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the POTW and affording the POTW access to those records;
- (10) Requirements for notifying the POTW if self-monitoring indicates a violation as provided by § 53.139, and for repeat sampling and analysis as provided by § 53.166;
- (11) Requirements for notification of any new introductions of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the POTW, including listed or characteristic hazardous waste for which the user has submitted initial notification under M.A.C. R 323.2310(15);
- (12) Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the permittee;
- (13) Requirements for notification of accidental or slug discharges, or discharges that exceed a discharge prohibition;
- (14) Requirements for notification and need for prior approval from the POTW Manager for any proposed change in a sampling location;

(15) A statement regarding limitations on transferability of the permit;

(16) A statement of the duration of the permit;

(17) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable pretreatment standards and requirements, including those that become effective during the term of the permit;

(18) Requirements for a written certification signed by the permittee that acknowledges that the permittee has read and fully understands all terms and conditions of the permit; and acknowledges that the permittee accepts all of the terms and conditions of the permit as written and accepts full responsibility for complying with the permit as approved;

(19) A statement of applicable civil and criminal penalties for violation of discharge limitations, pretreatment standards and requirements, and compliance schedules;

(20) Requirements regarding development by a user of a pollutant prevention, minimization, or reduction plan (e.g., for mercury or PCBs) or requirements regarding use of best management practices to control, contain, treat, prevent, or reduce the discharge of wastewater, pollutants, or other substances to the POTW, or otherwise meet the purposes, policies, and objectives of this chapter; and/or

(21) Other conditions as determined necessary by the POTW Manager to ensure compliance with this chapter and other applicable laws, rules, and regulations.

(C) If the POTW determines that a user is discharging substances of a quality, in a quantity, or in a location that may cause problems to the POTW or the receiving stream, the POTW has the authority to develop and enforce effluent limits applicable to the user's discharge.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.111 PERMIT MODIFICATIONS.**

(A) A user permit may be modified by the POTW at any time and for any reason determined necessary by the POTW Manager to assure compliance with the requirements of this chapter and other applicable laws and regulations including, without limitation, any of the following reasons:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements, or other applicable requirement of law or regulation;

(2) Material or substantial changes or additions to the permittee's operations, processes, or the character or quality of discharge that were not considered in drafting or issuing the existing permit. It shall be the duty of a user to request an application form and to apply for a modification of the permit within 30 days of any such change(s). The POTW may modify a permit on its own initiative based on its findings or upon reasonable cause to believe that any such change(s) has occurred or threatens to occur;

(3) A change in any condition in the permittee's discharge, facility, production, or operations, or in the POTW, that requires either a temporary or permanent reduction or elimination of the permittee's discharge to assure compliance with applicable laws, regulations, or the POTW's NPDES permit;

(4) Information indicating that the permitted discharge poses a threat to: collection or treatment systems; the POTW's processing, use, or disposal of sludge; POTW personnel; or the receiving waters;

(5) Violation of any terms or conditions of the user's permit;

(6) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required report or notice;

(7) Revision of, or a grant of a variance from, applicable categorical standards pursuant to 40 C.F.R. § 403.13;

(8) To correct typographical or other errors in the permit;

(9) To reflect transfer of the facility ownership and/or operation to a new owner or operator;

(10) To add or revise a compliance schedule for the permittee;

(11) To reflect changes or revisions in the POTW's NPDES permit;

(12) To ensure POTW compliance with applicable sludge management requirements promulgated by the EPA;

(13) To incorporate any new or revised requirements resulting from reevaluation of the POTW's local limits; and

(14) To incorporate a request for modification by the permittee, as determined appropriate by the POTW, and provided the request does not create a violation of any applicable requirement, standard, law, rule, or regulation.

(B) The permittee shall be informed of any changes in the permit at least 30 days prior to the effective date of the change, unless a shorter time is determined necessary by the POTW to meet applicable laws, to protect human health or the environment, or to facilitate an enforcement action.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.112 PERMIT DURATION.**

(A) Industrial user permits shall be issued for a specified time period, not to exceed five years, subject to modification, reissuance,

suspension, or revocation as provided by this subchapter. At the discretion of the POTW, an industrial user permit may be issued for a period less than five years and may be stated to expire on a specific date.

(B) General user permits may be issued for any time period determined appropriate by the POTW Manager, subject to modification, reissuance, suspension, or revocation as provided by this subchapter.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.113 PERMIT REISSUANCE.**

(A) To apply for reissuance of an existing user permit, a user must submit a complete permit application to the POTW accompanied by payment of an application fee at least 90 days prior to the expiration of the user's existing permit (or at least 180 days prior to the expiration of a five-year permit). The application shall be submitted in a form prescribed by the POTW. It shall be the responsibility of the user to make a timely application for reissuance.

(B) All user permits issued to a particular user are void upon the issuance of a new user permit to that user.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.114 CONTINUATION OF EXPIRED PERMITS.**

An expired user permit will continue to be effective until the permit is reissued only if: the user has submitted a complete permit application at least 90 days prior to the expiration date of the user's existing permit (or at least 180 days prior to the expiration date of a five-year permit); and the failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the user; provided, however, in no case may a permit continue for a period of more than five years from the date of issuance. In all other cases, discharge to the POTW following expiration of a permit is unlawful.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.115 PERMIT SUSPENSION AND REVOCATION.**

(A) User permits may be suspended or permanently revoked by the POTW for any reason determined necessary by the POTW to assure compliance with the requirements of this chapter, the POTW's NPDES permit, or other applicable laws and regulations including, without limitation, any of the following reasons:

- (1) Falsifying self-monitoring reports;
- (2) Tampering with monitoring equipment;
- (3) Failure to allow timely and reasonable access to the permittee's premises and records by representatives of the POTW for purposes authorized by this chapter including, without limitation, inspection or monitoring;
- (4) Failure to meet effluent limitations;
- (5) Failure to pay fines or penalties;
- (6) Failure to pay sewer charges;
- (7) Failure to pay permit fees;
- (8) Failure to meet compliance schedules;
- (9) Failure to comply with any term or condition of the permit, an order, the requirements of this chapter, or any final judicial order entered with respect thereto;
- (10) Failure to comply with any reporting or notice requirement;
- (11) Failure to disclose fully all relevant facts in the permit application or during the permit issuance process, or misrepresentation of any relevant fact at any time;
- (12) Failure to complete a wastewater survey or the user permit application; and
- (13) As determined by the POTW, the discharge permitted by the permit has a reasonable potential to endanger human health or the environment and the threat can be abated only by suspension or revocation of the permit.

(B) Upon suspension or revocation of a permit, a user shall immediately terminate its discharge to the POTW and shall not thereafter recommence discharge without further authorization from the POTW Manager as provided by this chapter. The POTW may reissue a revoked permit upon a showing satisfactory to the POTW Manager that the permittee has corrected the violation or condition that led to the revocation. A person who has had a permit revoked may apply for a new permit.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.116 LIMITATIONS ON PERMIT TRANSFER.**

(A) A user permit is issued to a specific user for discharge from a specific facility and operation and shall not be assigned or transferred or sold to a new or different owner, operator, user, discharger, facility, or premises, or to a new or changed facility or operation, without the prior written approval of the POTW. If the transfer of a permit is approved, any succeeding transferee permittee



must also comply with the terms and conditions of the existing permit. The POTW shall approve the transfer of a permit only if all of the following conditions are met:

(1) The transferor (permittee) shall give at least 60 days' advance notice to the POTW of the proposed transfer of the permit (unless a shorter notice period is approved by the POTW in advance). The notice shall include a written certification signed by the proposed transferee that: states that the transferee has no present intent to change the facility's operations and processes; identifies the specific date on which the transfer is to occur; acknowledges that the transferee has read and fully understands all terms and conditions of the permit; and acknowledges that the transferee accepts all of the terms and conditions of the permit as written and accepts full responsibility for complying with the existing permit if the transfer is approved;

(2) As of the date of the proposed transfer, there are no unpaid charges, fines, penalties, or fees of any kind due to the POTW from the transferor or the transferee related to use of the POTW;

(3) Except as to the identity of the new discharger (the transferee), the application materials for the permit to be transferred as originally filed by the transferor, as well as the terms and conditions of the permit itself, are completely accurate with respect to, and fully applicable to, the discharge, facilities, and activities of the transferee; and

(4) The permit transfer fee as established by the POTW has been paid to the village.

(B) If the transfer of a permit is approved and the permit transfer fee has been paid to the village, the POTW shall make the necessary minor modifications to the permit to show the transferee as the permittee, and a copy of the permit shall be provided to the transferee for signature and certification by the transferee as provided by § 53.146. The transferor (permittee) shall remain liable for any discharges to the POTW from the facility (along with any other persons actually discharging from the facility to the POTW) until a transfer of the permit has been approved as provided by this section.

(C) This section is not intended to, and shall not be construed to, limit in any way the transfer of ownership of the property involved.

(D) Any attempt to transfer a user permit that does not comply with the requirements of this section renders the permit void as of the date of the invalid transfer.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.117 DUTY TO PROVIDE INFORMATION.**

Users shall furnish to the POTW any available information that the POTW requests to determine whether cause exists for modifying, revoking, and reissuing, or terminating a user permit, to determine compliance with a permit, to determine whether a permit is required, or as otherwise determined necessary by the POTW. Users shall also, upon request, furnish to the POTW copies of any records required to be kept by a permit. The information and records requested by the POTW shall be provided by the user to the POTW within 24 hours of the request, unless an alternative time frame is specified by the POTW when making the request or unless the POTW allows additional time for the user to submit the requested information based on a showing by the user of good cause for any delay. The user's failure to submit the requested information to the POTW within 24 hours (or within any alternate time period approved by the POTW as provided by this section) shall constitute a violation of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.118 PERMIT APPEALS.**

(A) Except as otherwise provided by this section, an appeal to the POTW Board of Appeals of any final decision made by the POTW Manager in connection with issuing or implementing a user permit shall be governed by §§ 53.325 through 53.330.

(B) An appealing party must specify in its notice of appeal the action of the POTW being appealed and the grounds for the appeal.

(C) If a particular permit provision is objected to, the notice of appeal must specify the reasons for the objection, and the alternative provision, if any, sought to be placed in the permit.

(D) The effectiveness of a permit or any final decision made by the POTW Manager shall not be stayed pending a decision by the POTW Board of Appeals.

(E) If, after considering the record on appeal including any statements provided by the POTW in response to the appeal, the POTW Board of Appeals determines that a permit or any provision of a permit should be reconsidered, the POTW Board of Appeals shall remand the matter to the POTW Manager for further action as determined appropriate by the POTW Board of Appeals. Specific provisions of a permit that are remanded by the POTW Board of Appeals for reconsideration by the POTW Manager shall be stayed pending further final action taken by the POTW Manager as required by the decision of the POTW Board of Appeals. A decision of the POTW Board of Appeals not to remand any matter shall be considered final administrative action for purposes of judicial review.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.119 PERMITS NOT STAYED.**

Except as otherwise expressly provided by § 53.118, no action taken or request filed by any permittee shall operate to stay the effect of any permit or of any provision, term, or condition of any permit including, without limitation, a request for permit modification, reissuance, or transfer, or a notification of planned changes or anticipated noncompliance.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.120 PERMIT FEES.**



User permit fees shall be established, paid, and collected as provided by this subchapter and §§ 53.360 through 53.364.

(Ord. 2009-5, passed 7-20-2009)

## REPORTING AND NOTICE REQUIREMENTS

### § 53.135 GENERALLY.

All users shall comply with the minimum reporting and notice requirements provided by this subchapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### § 53.136 REPORTS BY NON-DOMESTIC USERS REGARDING CATEGORICAL PRETREATMENT STANDARDS AND REQUIREMENTS.

(A) *Baseline monitoring reports.* Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under M.A.C. R 323.2311(2), whichever is later, an existing non-domestic user subject to the categorical pretreatment standards and that currently discharges or is scheduled to discharge to the POTW shall submit a report to the POTW as required by M.A.C. R 323.2310(2). At least 90 days prior to commencement of discharge, new sources, and sources that become non-domestic users subsequent to the promulgation of an applicable categorical pretreatment standard, shall submit the reports to the POTW as required by M.A.C. R 323.2310(2). Any changes to the information required to be submitted by a non-domestic user pursuant to M.A.C. R 323.2310(2)(a) through (e) shall be submitted by the user to the POTW within 60 days of when the user becomes aware of the change.

(B) *Reports on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical pretreatment standard or, in the case of a new source, following commencement of the discharge to the POTW, any non-domestic user subject to categorical pretreatment standards and requirements shall submit the reports to the POTW required by M.A.C. R 323.2310(3).

(C) *Periodic reports on continued compliance.*

(1) Any non-domestic user subject to a categorical pretreatment standard, after the compliance date of the categorical pretreatment standard, or, in the case of a new source, after commencement of the discharge into the public sewer or POTW, shall submit the periodic reports to the POTW required by M.A.C. R 323.2310(4).

(2) These periodic reports shall be submitted at least once every six months (during the months of June and December unless alternate months are approved by the POTW), unless required more frequently by the applicable pretreatment standard, by the POTW, or by the state.

(3) The reports shall include a record of all average and maximum daily flows during the prior six-month reporting period, except that the POTW may require more detailed reporting of flows. All flows shall be reported on the basis of actual measurement unless the POTW agrees, due to cost or non-feasibility, to accept verifiable estimates of the average and maximum flows estimated using techniques approved by the POTW. The combined waste stream formula may be used for reporting purposes after the initial information has been furnished to the POTW, provided there has been no change to the elements composing the combined waste stream. The results of sampling of the discharge and analysis of pollutants appearing in the report shall be cross-referenced to the related flow and mass to determine compliance with national categorical pretreatment standards. In cases where the pretreatment standard requires compliance with a best management practice (or pollution prevention alternative), the user shall submit documentation required by the POTW or the pretreatment standard necessary to determine the compliance status of the user.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### § 53.137 REPORTS REQUIRED FOR NON-DOMESTIC USERS NOT SUBJECT TO CATEGORICAL PRETREATMENT STANDARDS.

(A) All non-domestic users not subject to categorical pretreatment standards shall submit to the POTW periodic reports providing information regarding the quality and quantity of wastewater and pollutants discharged into the POTW (including, without limitation, information regarding the nature, concentration (or mass), and flow of the discharge). These reports shall be based on sampling and analysis performed in the period covered by the report in accordance with the sampling, analysis, and monitoring requirements provided by §§ 53.160 through 53.170.

(B) For significant industrial users, the reports shall be submitted at least once every six months for the preceding six months (during the months of April and October unless alternate months are specified by the POTW), unless required more frequently by the POTW. Criteria for selecting dates may depend on site specific factors.

(C) If required by the POTW for non-domestic users other than significant industrial users, the reports shall be submitted at least once every 12 months for the preceding 12 months (during the month of October unless an alternate month is specified by the POTW), unless required more frequently by the POTW.

(D) The reports for all non-domestic users shall be submitted on forms provided by (or in a format required by) the POTW, and shall include, without limitation: the volume of wastewater; the concentration of pollutants; the names of all person(s) responsible for operating and maintaining any pretreatment equipment, pretreatment processes, or responsible for wastewater management at the user's facilities, with a brief description of each person's duties; information regarding materials or substances that may cause interference or pass-through; and any other information deemed necessary by the POTW to assess and assure compliance with applicable discharge requirements or to safeguard the operation of the POTW.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.138 NOTICE BY USER OF POTENTIAL PROBLEMS.**

All non-domestic users, whether or not subject to categorical pretreatment standards, shall notify the POTW immediately by telephone of all discharges by the user that could cause problems to the POTW including, without limitation, accidental discharges, slug loadings, discharges of a nonroutine, episodic nature, non-customary batch discharge, or discharges that exceed a discharge prohibition or limitation provided by this chapter. The notification shall include available information regarding the location of the discharge, its volume, duration, constituents, loading and concentrations, corrective actions taken and required, and other available information as necessary to determine what impact the discharge may have on the POTW. A detailed written report providing the same and any additional available information (including specifying the measures that will be taken by the user to prevent similar future discharges) shall also be provided by the user to be received by the POTW Manager within five days of the incident.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.139 NOTICE BY USER OF VIOLATION OF PRETREATMENT STANDARDS.**

If sampling performed by a non-domestic user indicates a violation, the user shall notify the POTW within 24 hours of becoming aware of the violation (and shall comply with other applicable requirements provided by § 53.166 regarding repeat sampling and analysis).

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.140 NOTICE BY USER OF CHANGED DISCHARGE OR CHANGE IN USER STATUS.**

(A) A non-domestic user shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in its discharge, or of any facility expansion, production increase, or process modifications that could result in a substantial change in the volume or character of pollutants in its discharge.

(B) For purposes of this section, **PROMPTLY** means as soon as reasonably possible, but in no event less than 60 days before the change.

(C) For purposes of this section, **SUBSTANTIAL CHANGE** includes, without limitation, any of the following:

- (1) The discharge of any amount of a pollutant not identified in the user's permit application or in the permit issued;
- (2) An increase in concentration (or degree) of any pollutant that exceeds 10% of the concentration (or degree) for the pollutant as indicated in any report required under §§ 53.136 or 53.137;
- (3) An increase in discharge volume that exceeds 10% of the volume as indicated in any report required under §§ 53.136 or 53.137;
- (4) Any increase in the amount of any hazardous wastes discharged including, without limitation, the hazardous wastes for which the user has submitted initial notification under § 53.141;
- (5) The discharge of any groundwaters purged for a removal or remedial action;
- (6) The discharge of any pollutants that are present in the discharge due to infiltration;
- (7) A change in discharge that may convert a non-domestic user into a significant industrial user, or a non-domestic user into a categorical user; and/or
- (8) A change in discharge that would cause a change in the categorical standards that apply to the user.

(D) In determining whether to accept any changed discharge, or, if so, under what conditions, the POTW shall evaluate the changed discharge pursuant to the general and specific discharge prohibitions under § 53.085 and other applicable provisions of this chapter. The user may be required to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a user permit application.

(E) No user shall implement the planned changed conditions until and unless the POTW Manager or his or her designee has responded to the user's notice.

(F) This section shall not be construed to authorize a discharge that exceeds a discharge prohibition or limitation provided by this chapter or a permit.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.141 NOTICE BY USER REGARDING WASTES THAT ARE OTHERWISE HAZARDOUS.**

Any non-domestic user that discharges to the POTW a substance that, if disposed of other than by discharge to the POTW, would be a hazardous waste under 40 C.F.R. part 261 or under the rules promulgated under the State Hazardous Waste Management Act (Public Act 451 of 1994, part 111, being M.C.L.A. §§ 324.11101 et seq., as amended) shall notify the POTW Manager, the EPA Region V Waste Management Subdivision Director, and the Chief of the Waste Management Section of the State Department of Environmental Quality of the discharge as required by M.A.C. R 323.2310(15).

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.142 NOTICE BY USER REGARDING INSTALLATION OF NEW PRETREATMENT FACILITIES.**

(A) Within five days after completing installation of new pretreatment facilities, the user shall notify the POTW Manager in writing of the time and date when it intends to commence operation of the new facilities, and the identity of the person who will conduct any tests to be performed.

(B) The pretreatment facilities shall not be placed in regular operation until adequate tests have been conducted to establish that the discharges will comply with the requirements of this chapter and other applicable laws and regulations.

(C) Upon prior written request by the POTW Manager, the user shall allow a representative of the POTW to observe the tests at the time they are conducted. The cost of the tests shall be paid by the user.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.143 NOTICE OF INTENT.**

(A) At least 60 days before commencing or changing a discharge, each of the following persons shall submit a notice of intent to the POTW for approval by the POTW Manager:

- (1) A person proposing to discharge any non-domestic wastewater not previously reported to the POTW;
- (2) A person taking possession or control of an existing facility that discharges or may discharge process wastewater into the POTW;
- (3) A person constructing a new facility that will discharge process wastewater into the POTW; and
- (4) A person commencing or modifying a discharge of hazardous wastes that requires reporting under § 53.141.

(B) The notice of intent shall be submitted in writing on a form provided by the POTW and shall be accompanied by a payment of any fees established by the village. It shall include sufficient information to allow the POTW Manager to evaluate the effect of the proposed discharge on the POTW and operations and to assure compliance with this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.144 OTHER REPORTS AND NOTICES REQUIRED BY THIS CHAPTER OR BY OTHER APPLICABLE LAWS AND REGULATIONS.**

Users shall comply with all other reporting or notice requirements as provided by this chapter, by any notice, order, or permit issued under this chapter, or as required by any other applicable law or regulation including, without limitation, the reporting and notice requirements in connection with accidental discharge (§§ 53.185 through 53.193), upset (§§ 53.205 and 53.206), bypass (§§ 53.220 through 53.223), and any other reports or notice requirements determined necessary by the POTW to assess and assure compliance with the requirements of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.145 REQUIREMENTS APPLICABLE TO ALL REQUIRED REPORTS, NOTIFICATIONS, AND APPLICATIONS.**

All reports, notifications, and applications submitted by a user to the POTW as required by this chapter (or by any order, permit, or determination issued or made pursuant to this chapter) shall meet the following requirements.

(A) All reports required by this chapter shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report. The data shall be representative of conditions occurring during the applicable reporting period. If a pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the user shall submit documentation as required by the POTW or the applicable standard to determine compliance with the standard.

(B) If a user monitors any pollutant (or measures flow) more frequently than required by this chapter or a user permit, using the monitoring, sampling, and analytical procedures as required by § 53.161, the results of all such additional monitoring shall be included in any report or notification submitted pursuant to this chapter.

(C) The POTW Manager may require that reports, notifications, and other required documents and data be submitted in a standardized format, as specified by the POTW Manager.

(D) If the POTW, instead of a user, collects all of the information, including flow data, required for a report required by §§ 53.136 and 53.137, the POTW Manager may, in his or her discretion, waive the requirement that the report be submitted by the user.

(E) The reports, notifications, and other documents and data required to be submitted or maintained by this chapter shall be subject to all of the provisions as specified by M.A.C. R 323.2310(13).

(F) Written reports, notifications, and applications will be deemed to have been submitted to the POTW, unless otherwise specified by the POTW Manager, as follows:

- (1) If mailed, on the date postmarked;
- (2) The date of receipt of the report shall govern for reports, notifications, or applications which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service including, but not limited to, reports, notifications, or applications that are hand-delivered, faxed, or e-mailed; and
- (3) Written reports, notifications, and applications may be submitted to the POTW by fax or e-mail (or by any means other than mail or hand-delivery) only with the prior approval of the POTW on a case-by-case basis. The report or notification shall be sent to the fax

number or e-mail address specified by the POTW.

(G) All written reports, notifications, and applications submitted by mail or hand-delivery shall be sent or delivered to the address stated in the user permit, or if there is no user permit, then to the following address:

Village of Eau Claire  
Wastewater Treatment Plant  
6625 E. Main Street  
P.O. Box 338  
Eau Claire, MI 49111

(H) Failure to provide the reports, notifications, and applications required by this chapter constitutes an independent violation of this chapter. However, compliance with applicable reporting and notification requirements shall not relieve a user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such report or notification relieve a user of any fines, penalties, or other liability that may be imposed by applicable laws or regulations. Further, the reporting and notification requirements required by this chapter shall not be construed to authorize a discharge that exceeds a discharge prohibition or limitation under this chapter or other applicable laws or regulations.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.146 SIGNATURE AND CERTIFICATION REQUIREMENTS.**

All written reports, notifications, and applications required by this chapter shall be signed and certified as follows.

(A) *Required signatures.* The reports, notifications, and applications shall be signed by an authorized representative of the user as defined in § 53.002.

(B) *Required certification.* The reports, notifications, and applications shall include the following certification statement.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(C) *Exception.* If the POTW elects to perform, instead of the user, all or any portion of the sampling or analysis otherwise required for a report or notification, the user will not be required to comply with the certification requirements for the sampling and analysis (or portion thereof) performed by the POTW.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **SAMPLING, ANALYSIS, AND MONITORING REQUIREMENTS**

### **§ 53.160 GENERALLY.**

This subchapter provides the sampling, analysis, and monitoring requirements applicable to users of the POTW. It does not apply to domestic users except as may be determined appropriate in specific cases by the POTW. All users required by this chapter (or by any permit, order, decision, or determination issued or made under this chapter) to sample, monitor, and analyze their discharges to the POTW shall do so according to the minimum requirements provided by this subchapter. Additional or more restrictive sampling, analytical, or monitoring requirements may be required for a particular user by a permit, order, decision, or determination issued or made under this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.161 SAMPLING AND ANALYTICAL TECHNIQUES AND PROCEDURES.**

All sampling, measurements, tests, and analyses of the characteristics of discharges to the POTW shall be performed in accordance with the procedures approved by the EPA contained in 40 C.F.R. part 136. If, as determined by the POTW Manager, the sampling and analytical techniques contained in 40 C.F.R. part 136 are not available, do not apply to the discharge or pollutants in question, are not appropriate under the circumstances for application to the discharge or pollutants in question, or where one or more alternate techniques are available under 40 C.F.R. part 136, sampling and analysis shall be performed using validated sampling and analytical methods and procedures approved or required by the POTW Manager.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.162 SAMPLING FREQUENCY.**

Users shall sample their discharges to the POTW at a frequency necessary to assess and assure compliance with the requirements of this chapter, any permit or order issued pursuant to this chapter, all applicable pretreatment standards and requirements, other applicable state and federal laws and regulations, or as otherwise determined necessary by the POTW Manager consistent with the purposes and intent of this chapter. At a minimum, all significant industrial users shall sample their effluent two times per year (once every six months) or as often as provided by their permits, whichever is more frequent, and report the results to the POTW. Each discharge point to the POTW shall be sampled and reported individually. Data collected to assess and assure compliance shall be representative of conditions occurring during the reporting period.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.163 SAMPLE TYPES.**

(A) For facilities for which historical sampling data does not exist, representative samples shall include a minimum of four grab samples for pH, temperature, cyanide, phenols (T), oil and grease, sulfide, and volatile organics (and any other parameters designated by the POTW Manager), unless a greater number of grab samples is required in advance by the POTW Manager; for facilities for which historical sampling data are available, the POTW may authorize a lower minimum number of grab samples. In all cases, users shall take the minimum number of grab samples determined necessary by the POTW to assess and assure compliance by users with applicable pretreatment standards and requirements. Grab samples may be required to show compliance with instantaneous minimum or instantaneous maximum discharge limits. For all other pollutants and sampling, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 C.F.R. part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the POTW, as appropriate.

(B) The POTW Manager may require any user (categorical or non-categorical) to conduct continuous pH monitoring instead of using grab samples. A user required to conduct continuous monitoring will be subject to enforcement under § 53.305(H).

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.164 SAMPLING METHODS, EQUIPMENT, AND LOCATION.**

(A) *General.* A user shall use the sampling methods, sampling equipment, and sampling location specified by the user's user permit, or, in the absence of a permit, as otherwise required by the POTW Manager.

(B) *Contaminated groundwater.* For discharges to the POTW from remedial actions related to leaking underground storage tanks or other sources of contaminated groundwater, the POTW Manager may require the following analyses or such other analyses as determined appropriate by the Manager:

- (1) Analysis for benzene, ethylbenzene, toluene, and xylene using the latest methods approved by the EPA;
- (2) For total petroleum hydrocarbons, samples shall be analyzed according to the latest methods approved by the EPA; and
- (3) The analysis required will be specific to the type of contamination present at the remedial action site. Parameters requiring analysis may include, but are not limited to, heavy metals, volatile and/or semi-volatile organics, pesticides, polychlorinated biphenyls (PCBs), chlorinated hydrocarbons, phenolic compounds, and polynuclear aromatic hydrocarbons.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.165 COSTS OF MONITORING, SAMPLING, AND ANALYSES.**

All required monitoring, taking of samples, and sample analyses, whether performed by the POTW or by a user including, but not limited to, the costs or fees associated with inspection or surveillance, shall be at the sole cost of the user.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.166 SELF-MONITORING.**

(A) Except as otherwise provided by this chapter, self-monitoring shall be conducted by each non-domestic user to ensure compliance with all applicable requirements of this chapter and other applicable laws and regulations.

(B) A user performing its own sampling shall submit the samples for analysis to a laboratory (which may include the user's own laboratory) approved by the POTW.

(C) A user performing its own sampling or monitoring shall record and maintain for all samples and monitoring (including any sampling and monitoring associated with best management practices): the date, exact location (which shall match sampling locations identified in the user's user permit, as applicable), time (including start time and stop time), and method of sampling or measurement, and the name(s) of person(s) taking the samples or measurements; sampler programming information; the sample preservation techniques or procedures used; the full chain-of-custody for each sample; the dates the analyses were performed and completed; who performed the analyses; the analytical techniques and methods used; the detection limits and/or quantification level used per parameter; quality assurance/quality control (QA/QC) procedures used and QA/QC data; and the results of the analyses.



(D) If sampling performed by a user indicates a violation, the user shall notify the POTW Manager within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW within 30 days after becoming aware of the violation. If the POTW has performed the sampling and analysis in lieu of the user, the POTW must perform the repeat sampling and analysis unless the POTW notifies the user of the violation and requires the user to perform the repeat sampling and analysis. The user shall not be required to resample if: the POTW performs sampling at the user at a frequency of at least once per month; or the POTW performs sampling at the user between the time when the user performs its initial sampling and the time when the user or the POTW receives the results of the sampling that indicates the violation.

(E) If a user uses its own laboratory for sample analysis, the POTW Manager may require the user to send split samples to an independent laboratory at a frequency specified by the Manager as a quality control check.

(F) Users required to do monthly sampling shall submit sample results to the POTW Manager by the tenth day of the following month, unless specified otherwise in the user's user permit.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.167 SAMPLING AND ANALYSES PERFORMED BY POTW.**

(A) The sampling and analysis required by this chapter may be performed by the POTW instead of the user, as determined necessary by the POTW Manager for purposes of this chapter. The POTW shall provide the user with copies of analytical results prepared by the POTW. If the results of any sampling and analysis performed by the POTW instead of the user show that a pretreatment standard has been violated, the POTW shall provide the user with copies of the analytical results within ten days after the results are available.

(B) If the POTW performs the required sampling and analysis for a user, the user shall pay a sampling fee to the POTW to fully reimburse the POTW for the sampling, including administrative and overhead costs. The POTW may contract with an independent firm to perform the sampling and analysis and the user shall fully reimburse the POTW for amounts paid by the POTW to the independent firm.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.168 SPLIT SAMPLES AND SAMPLE RESULTS.**

(A) If requested by the POTW, the POTW shall be provided with splits of any sample taken by a user. Splits shall be provided by the user to the POTW at no cost to the POTW.

(B) If requested by a user prior to the collection of a sample of the user's discharge, the POTW shall leave a portion of the sample of the discharge taken from any sampling point on or adjacent to the premises for the user's independent analysis.

(C) In cases of disputes arising over split samples, the portion taken and analyzed by the POTW shall be controlling unless proven invalid. The burden of proving the POTW's results invalid shall be on the user and at the user's sole cost.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.169 MAINTENANCE, REPAIR, AND CALIBRATION OF EQUIPMENT.**

(A) A user who performs self-monitoring shall contract with an independent company (unless the requirement to use an independent company is waived in advance by the POTW Manager as determined appropriate by the Manager) to maintain, repair, and calibrate the sampling and flow measurement equipment and instruments used to monitor the user.

(B) The maintenance, repair, and calibration shall be performed as often as necessary to ensure that monitoring data is accurate and representative, and consistent with the accepted capability of the type of equipment used, and shall be at the sole cost of the user.

(C) A user shall keep a complete and accurate written record of all calibrations, inspections, and maintenance done (including, without limitation, the date and time of the activity, a description of what was done and the methods used, the names of persons conducting the activity, and any required or recommended follow-up). The record shall also include a description of all problems discovered regarding the equipment whether in response to a regularly scheduled inspection or otherwise.

(D) The POTW, in any event, may inspect and test a user's sampling and flow measurement equipment and instruments at all times.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.170 REQUIRED SAMPLING STRUCTURES AND DEVICES.**

(A) The POTW may require any user to install suitable control structures (such as sampling manholes or sampling vaults) and necessary measuring and sampling devices (including automatic devices) to facilitate the observation, sampling, and measurement of the quantity, composition, and concentrations of discharges to the POTW. The POTW may require the user to install control structures and measuring and sampling devices at every discharge point and/or outfall. Further, multiple separate and discrete control structures, and measuring and sampling devices may be required for a single user, premises, building, facility, or user, as determined necessary by the POTW Manager. The structures and devices shall be maintained at all times in a safe, clean, and proper operating condition at the sole expense of the user. All buildings of significant industrial users constructed after January 1, 1993, shall include monitoring facilities approved by the POTW Manager at every outfall that may discharge non-domestic wastewater.

(B) There shall be ample room in or near the control structure to allow accurate monitoring, measuring, sampling, and preparation of samples for analysis, as determined necessary by the POTW Manager. At a minimum, all sewers shall have an inspection and sampling manhole or structure with an opening of no less than 24 inches in diameter and an internal diameter of no less than 36 inches containing

flow measuring, recording, and sampling equipment as required by the POTW Manager to assure compliance with this chapter.

(C) Any temporary or permanent obstruction for safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the verbal or written request of the POTW. The costs of clearing such access shall be born by the user.

(D) The location and complexity of the required control structure or devices may vary with sampling requirements determined necessary by the POTW Manager to protect the POTW and to comply with applicable laws and regulations.

(E) The required sampling structures and devices shall be constructed and installed at the user's sole expense in accordance with plans submitted to the POTW, and in compliance with all applicable local construction standards and specifications. Users shall submit to the POTW plans and specifications for construction or modification of monitoring facilities at least 30 days before the proposed commencement of construction or modification. If a user constructs or modifies monitoring facilities before POTW approval or without an inspection during construction and the POTW determines that the monitoring facilities are not acceptable, then the user shall, at its cost, reconstruct or modify the monitoring facilities according to the requirements of the POTW. Construction shall be completed within 90 days following written notification by the POTW, or within such other shorter or longer time period specified by the POTW Manager as required by the particular circumstances to meet the requirements of this chapter. The structures and devices shall be operated and maintained by the user at the user's sole expense so as to be safe and accessible to POTW personnel at all times and so as to provide accurate and representative monitoring data. If a user fails to install or maintain a required structure or device, the POTW may do so and charge the costs to the user.

(F) The sampling structures and devices must be provided on the user's premises as approved by the POTW, but the POTW may, if it determines that such a location would be impractical or cause undue hardship to the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

(G) Samples shall be taken at a control structure approved by the POTW. However, in the absence of a suitable control structure as required by this section, samples shall be taken immediately downstream from pretreatment facilities if pretreatment facilities exist, or immediately downstream from the regulated process if no pretreatment facilities exist. If other wastewaters are mixed with a regulated process waste stream prior to pretreatment, the user must measure the flows and concentrations necessary to allow use of the combined waste stream formula under M.A.C. R 323.2311(7) or other methods required by the POTW to evaluate compliance with applicable pretreatment standards and requirements.

(H) No user shall change monitoring points or monitoring methods without first notifying and receiving the approval of the POTW Manager. The POTW Manager shall not approve any change in a user's monitoring point or points that would allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

(I) A user shall allow the POTW access to all sampling and monitoring facilities as provided by § 53.300(B).

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **ACCIDENTAL DISCHARGES**

### **§ 53.185 GENERAL.**

(A) This subchapter sets forth minimum requirements for non-domestic users (and any other users as required by the POTW Manager) to prepare for, respond to, and report, accidental discharges to the POTW.

(B) Additional or more restrictive requirements may be required for particular users under a user permit, a slug control plan, or by other applicable laws and regulations.

(1) Each non-domestic user shall provide and continuously maintain protection from accidental discharge of materials or other substances regulated by this chapter as provided by this subchapter.

(2) Detailed plans showing facilities and operating procedures to provide the protections required by this subchapter shall be submitted to the POTW for review. All existing users shall submit the required plans and information with their permit applications or upon request of the POTW. For new sources, facilities and operating procedures to provide the protections required by this subchapter shall be approved by the POTW prior to commencing discharge. No user who commences discharging to the POTW after the effective date of this chapter shall be permitted to introduce pollutants into the system until accidental discharge facilities and procedures as provided by this section are in place and have been approved by the POTW.

(3) Facilities to prevent accidental discharge of regulated materials or substances shall be provided and maintained at the user's cost and expense. Review and approval by the POTW of plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. Compliance with the requirements of this subchapter shall not relieve a user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, or for any other damage to persons or property, or for any other liability that may be imposed under this chapter or under other applicable laws and regulations.

(4) No change shall be made in any plan or procedure approved by the POTW as provided by this section without the prior review and approval of the POTW.

(5) All users shall notify the POTW in writing within five days of any change in the information required to be provided to the POTW as set forth below in this section (including, without limitation, information regarding the person in charge of discharge operations, the description of chemicals stored, used, or manufactured by the user, the description of user discharges, and the description of user premises).



(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.186 DESIGNATION OF PERSON IN CHARGE OF DISCHARGE OPERATIONS.**

Each non-domestic user shall designate at least one person to be in charge of and responsible for the user's discharges to the POTW, including responsibility for maintaining pretreatment facilities and operations, if any, and prevention of accidental discharges ("person in charge"). The person so designated shall be an individual or a position with knowledge of all toxic wastes or hazardous substances routinely or potentially generated by the user, and of all process alterations that could, in any manner, increase or decrease normal daily flow or waste strength to the POTW. The names of the person (or persons) designated as provided by this section and a phone number where the person can be reached for 24-hour contact shall be submitted by each user to the POTW.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.187 DESCRIPTION OF CHEMICALS STORED, USED, OR MANUFACTURED BY USER; USER DISCHARGES; USER PREMISES.**

Unless the following information has already been appropriately provided to the POTW pursuant to other requirements of this chapter, each non-domestic user shall:

(A) Catalog all chemicals stored, used, or manufactured by the user at the user's premises. The list of chemicals shall include specific chemical names (not just manufacturer's codes) and shall be provided to the POTW;

(B) Provide the POTW with a written description of the user's discharge practices, including an estimate of daily average flows, waste strengths, and flow types, separated according to appropriate categories including process, cooling, sanitary, and the like; and

(C) Provide to the POTW a sketch of the user's plant building(s), including the location of pretreatment equipment, process and chemical storage areas, waste storage areas, floor drains located near process and storage areas, manhole or other control structures, and sewer locations at the user's point of discharge into the POTW.

(D) Have or maintain a book of safety data sheets (SDS sheets) from chemical manufacturers, which must be maintained and updated at all times.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.188 SEGREGATION OF WASTEWATERS REQUIRING PRETREATMENT.**

Non-domestic users shall segregate wastewaters requiring pretreatment (including, without limitation, spent concentrates, toxics, and high strength organic wa'stes) as necessary to prevent pollutants from interfering with or passing through the POTW. All sludges generated by pretreatment shall be used and disposed of only as permitted by applicable local, state, and federal laws and regulations.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.189 SECONDARY CONTAINMENT REQUIREMENTS.**

(A) Each non-domestic user must provide and maintain, at the user's sole expense, secondary spill containment structures (including diking, curbing, or other appropriate structures) adequate to protect all floor drains from accidental spills and discharges to the POTW of any pollutants or discharges regulated by this chapter.

(B) The containment or curbing shall be sufficient to hold not less than 150% of the total process area tank volume and not less than 150% of liquid polluting material stored or used, unless a lesser containment area or alternate control measures are approved in advance by the POTW Manager.

(C) The containment area shall be constructed so that no liquid polluting material can escape from the area by gravity through the building sewers, drains, or otherwise directly or indirectly into the POTW. All floor drains found within the containment area must be plugged and sealed.

(D) Spill troughs and sumps within process areas must discharge to appropriate pretreatment tanks.

(E) Emergency containment shall also be provided for storage tanks that may be serviced by commercial haulers and for chemical storage areas.

(F) Solid pollutants shall be located in security areas designed to prevent the loss of the materials to the POTW.

(G) Detailed plans showing facilities and operating procedures to provide the protection required by this section shall be submitted to the POTW Manager for review, and shall be approved by the Manager before construction. Construction of approved containment for existing sources shall be completed within the time period specified by the POTW Manager.

(H) No new source shall be permitted to discharge to the POTW until emergency containment facilities have been approved and constructed as required by this section.

(I) The POTW Manager may order a user to take interim measures for emergency containment as determined necessary by the Manager under the circumstances.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.190 SUBMISSION OF POLLUTION INCIDENT PREVENTION PLAN.**

(A) Each user required to develop a pollution incident prevention (“PIP”) plan as provided by part 5 of the State Water Resources Commission Rules, 1979 A.C.R. §§ 323.1151 et seq., as amended (promulgated pursuant to Public Act 451 of 1994, part 31, being M.C.L.A. §§ 324.3101 et seq., as amended), shall submit a copy of that plan to the POTW Manager.

(B) The PIP plan shall be submitted to the Manager within 60 days of the effective date of this chapter for an existing source, or 30 days prior to the date of discharge for a new source.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.191 POSTING OF ACCIDENTAL DISCHARGE INFORMATION.**

(A) All non-domestic users shall post a clearly legible set of instructions in the area where the user manages wastewater so that the applicable reporting and notice requirements are made known and are available to the user’s employees.

(B) In addition, all non-domestic users shall instruct their employees on the applicable reporting and notice requirements of this section.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.192 NOTICE OF ACCIDENTAL DISCHARGE.**

(A) In the case of an accidental discharge, a user shall immediately notify the POTW of the incident by telephone.

(B) The notification shall include the name of the person placing the call, the name of the user, and all available information regarding the location of the discharge, its volume, duration, constituents, loading and concentrations, corrective actions taken and required, and other available information as necessary to determine what impact the discharge may have on the POTW.

(C) A detailed written report providing the same and any additional available information (including specifying the measures that will be taken by the user to prevent similar future discharges) shall also be provided by the user to the POTW Manager within five days of the incident.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.193 SLUG CONTROL PLAN.**

(A) Each significant industrial user shall prepare and implement an individualized slug control plan. Existing significant industrial users shall submit a slug control plan to the POTW for approval within 90 days of the effective date of this chapter. New sources that are significant industrial users shall submit a slug control plan to the POTW for approval before beginning to discharge. Upon written notice from the POTW, non-domestic users that are not significant industrial users may also be required to prepare and implement a slug control plan, and the plan shall be submitted to the POTW for approval as specified in the notice. All slug control plans shall contain at least the following elements:

(1) A description of discharge practices, including nonroutine batch discharges;

(2) A description of stored chemicals, raw materials, and waste;

(3) The procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate any discharge prohibition, limitation, or requirement under this subchapter, and procedures for follow-up written notification within five days of the discharge; and

(4) The procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment for emergency response.

(B) If a user has submitted to the POTW plans or documents pursuant to other requirements of local, state, or federal laws and regulations which meet all applicable requirements of division (A) above, the POTW may, in its discretion, determine that the user has satisfied the slug plan submission requirements of this section.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **UPSET AND ADDITIONAL AFFIRMATIVE DEFENSES**

#### **§ 53.205 UPSET.**

(A) *Generally.* An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if all of the requirements of division (B) below are met. However, in the event of an upset, the user may still be liable for surcharges for exceeding applicable discharge limitations as provided by this chapter. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(B) *Conditions necessary to demonstrate upset.* A user seeking to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, all of the following:

(1) An upset occurred and the user can identify the cause(s) of the upset;

(2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation

and maintenance procedures; and

(3) The user has submitted the following information to the POTW within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission containing the same information must be provided within five days of becoming aware of the upset):

(a) A description of the discharge and cause of noncompliance;

(b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(c) The steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(C) *User responsibility in case of upset.* The user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards and other applicable limits upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.206 ADDITIONAL AFFIRMATIVE DEFENSES.**

(A) A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions under § 53.085(B) and specific prohibitions under § 53.085(C)(5), (C)(6), (C)(7) or (C)(8) if the user can demonstrate that all of the conditions necessary to establish the defense under M.A.C. R 323.2303(3)(a) and (b) are met.

(B) However, even if the affirmative defense is established, the user may still be liable for surcharges for exceeding applicable discharge limitations as provided by this chapter.

(C) In any enforcement proceeding, the user seeking to establish the affirmative defenses provided by M.A.C. R 323.2303(3) shall have the burden of proof.

(Ord. 2009-5, passed 7-20-2009)

### **BYPASS**

#### **§ 53.220 BYPASS NOT VIOLATING APPLICABLE PRETREATMENT STANDARDS OR REQUIREMENTS.**

A non-domestic user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if the bypass is for essential maintenance to assure efficient operation. A bypass that meets the requirements of the preceding sentence of this section is not subject to the provisions in §§ 53.221 through 53.223. However, nothing in this section shall be construed to authorize a discharge that exceeds a discharge prohibition or limitation under this chapter or other applicable laws or regulations; nor to relieve a user for any expense, loss, damage, or liability that may be incurred as a result of the bypass, such as damage to the POTW, fish kills, or any other damage to person or property; nor to relieve the user of any fines, penalties, or other liability that may be imposed by applicable laws or regulations as a result of the bypass.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.221 BYPASS PROHIBITED.**

Except as provided by § 53.220, the bypass of industrial wastes from any portion of a user's facility is prohibited, and shall be subject to enforcement action, unless all of the following apply:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime (This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance.); and

(C) The user submitted the notices as required under § 53.222.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.222 REQUIRED NOTICES.**

(A) *Anticipated bypass.* If a user knows in advance of the need for a bypass, he, she, or it must submit prior notice of the bypass to the POTW. Such notice shall be submitted to the POTW as soon as the user becomes aware of the need for the bypass and, if possible, at least ten days before the date of the bypass.

(B) *Unanticipated bypass.* A user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the POTW within 24 hours from the time the user becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain: a description of the bypass and its cause; the duration of the bypass, including exact dates and times and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW Manager may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.223 POTW APPROVED BYPASS.**

(A) The POTW Manager may approve an anticipated bypass after considering its adverse effects, if the Manager determines that it meets the conditions set forth in § 53.221(A), (B), and (C).

(B) It shall be a violation of this chapter for a user to allow an anticipated bypass to occur without the prior approval of the Manager.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **CONFIDENTIAL INFORMATION**

### **§ 53.235 CONFIDENTIAL INFORMATION.**

The following provisions shall apply regarding the treatment by the POTW of confidential information submitted to or obtained by the POTW in the administration of this chapter.

(A) Information and data regarding a user obtained from reports, questionnaires, permit applications, permits and monitoring programs, and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests at the time of submission and is able to demonstrate to the satisfaction of the POTW Manager, and in accordance with applicable state and federal laws and regulations, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the user.

(B) Information submitted by a user for which confidentiality is requested shall be clearly marked on each page as to the portion or portions considered by the user to be confidential and shall be accompanied by a written explanation of why the user considers the information to be confidential or why the release of the information would divulge information, processes, or methods of production entitled to protection as trade secrets of the user.

(C) Information that may disclose trade secrets or trade secret processes, and for which the user has requested, and been granted, confidentiality as provided by this section, shall not be made available for inspection by the general public; however, that information shall be made available upon written request to governmental agencies for uses related to matters regulated by this chapter and shall be made available for use by the state, any state agency, or the POTW in judicial review or enforcement proceedings that involve the user that furnished the information. The POTW shall notify the user ten days in advance if it intends to release confidential information to another governmental agency as authorized by this section.

(D) Information furnished to the POTW on the volume or characteristics of wastewater or pollutants discharged or proposed to be discharged into the POTW shall be available to the public or other governmental agency without restriction.

(E) If a user has mass-based limits as allowed by certain categorical pretreatment standards on a production basis, the production data necessary to determine compliance must also be provided by the user to the POTW, and shall be available to the public. If application of the combined waste stream formula is necessary to apply categorical pretreatment standards to a user, the flow measurements and other data used in the calculation must be provided by the user to the POTW, and shall be available to the public.

(F) Observations made by POTW Inspectors shall be subject to the confidentiality provisions of this section as if they were in writing, if the user specifies to the POTW in writing for which particular observations made by the Inspector the user seeks confidentiality.

(G) All confidential information and/or data with respect to a particular user that is on file with the POTW shall be made available upon written request by that user or its authorized representative during regular business hours.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **RECORDS RETENTION**

### **§ 53.250 MAINTENANCE OF RECORDS.**

(A) *Generally.* All users shall retain and preserve records including, without limitation, all books, documents, memoranda, reports, correspondence, and similar materials, related to matters regulated by this chapter as provided by the minimum requirements of this section or as provided by a permit or order issued pursuant to this chapter.

(B) *Discharge records.* A non-domestic user shall retain, preserve, and make available to the POTW for inspection and copying, for the period specified in division (D) below, all records related to matters regulated by this chapter including, without limitation: all documents, memoranda, correspondence, and similar materials; copies of all required reports, notifications, and applications; all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of results of all sampling, monitoring, measurements, and analyses; all documentation associated with best management practices; and records of all data used to complete the application for a permit. Any non-domestic user subject to the sampling, monitoring, analysis, or reporting requirements of this chapter shall maintain copies of all records and information pertaining to those requirements or resulting from any monitoring activities (whether or not such monitoring activities are required by this chapter). For all samples, the records shall include, at a minimum, the information required to be recorded by § 53.166.

(C) *Hazardous or solid waste.* A non-domestic user shall retain and preserve all records regarding its generation, treatment, storage, or disposal of hazardous waste or solid waste for the period specified in division (D) below, and shall make them available to the POTW for inspection and copying, subject to the provisions in this chapter regarding confidential information. (As used in this section, the terms hazardous waste and solid waste shall have the same definition as provided in the State Hazardous Waste Management Act, Public Act

451 of 1994, part 111, being M.C.L.A. §§ 324.11101 et seq., as amended, and the rules promulgated under that act.)

(D) *Retention period.* Users subject to the reporting requirements of this chapter (or of any permit or order issued pursuant to this chapter) shall retain the records specified in divisions (B) and (C) above for a period of at least three years from: the date the record was created; or the date the record was first used or relied upon by the user, whichever is later. The three-year retention period shall be extended during any administrative or judicial action, enforcement proceeding, or litigation regarding matters regulated by this chapter (or regarding discharges of the POTW under its NPDES permit), until all such actions, proceedings, or activities have concluded and all periods of limitation with respect to any and all appeals have expired. The three-year retention period may also be extended at any time at the request of the POTW, the State Department of Environmental Quality, or the EPA. The POTW shall retain all records, notices, and other information regarding discharges to the POTW submitted to it by non-domestic users of the POTW for a period of not less than three years.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

## **ADMINISTRATION OF THE POTW**

### **§ 53.265 OPERATION AND MANAGEMENT OF POTW.**

(A) Except as otherwise expressly provided by this chapter, the operation, maintenance, alteration, repair, and management of the POTW shall be under the direct supervision and control of the POTW Manager.

(B) The POTW Manager is charged with the duty of investigating, preventing, and abating violations and enforcing the provisions of this chapter, and may establish any rules, regulations, and procedures as determined necessary to assure the efficient management and operation of the POTW.

(C) The village may employ additional persons as necessary to carry out the efficient management and operations of the POTW.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.266 POWERS OF POTW MANAGER.**

The POTW Manager is empowered, either directly or through authorized representatives, to take the following actions (subject to any required approvals from the Village Council, as expressly provided by this chapter):

(A) Supervise the implementation of this chapter;

(B) Review plans submitted by users for pretreatment equipment;

(C) Make inspections and tests of existing and newly installed, constructed, reconstructed, or altered sampling, metering, or pretreatment equipment to determine compliance with the provisions of this chapter;

(D) Verify the completeness, accuracy, and representativeness of self-monitoring data submitted and/or maintained by users;

(E) Investigate complaints of violations of this chapter, make inspections and observations of discharges, and maintain a record of the investigations, complaints, inspections, and observations;

(F) Issue orders and notices of violation and take other actions as necessary to require compliance with this chapter;

(G) Develop and implement a control authority enforcement response (CAER) plan as required by 40 C.F.R. § 403.8(f)(5). The CAER plan shall provide procedures for the POTW to investigate and respond to instances of noncompliance by users. The CAER plan and any associated regulations developed by the POTW Manager shall become effective upon approval by the Village Council;

(H) With the approval of the Village Council, and in conjunction with the Village Attorney and any special legal counsel, institute necessary civil or criminal judicial legal actions and proceedings in a court of competent jurisdiction against all users violating this chapter to prosecute violations of this chapter, to compel the abatement or prevention of violations, to compel compliance with this chapter and any order, determination, permit, or agreement issued or entered into under this chapter, and to pursue other necessary or advisable judicial relief or remedies with respect to violations of this chapter;

(I) Commence a municipal civil infraction action against any user violating this chapter, and issue municipal civil infraction citations and municipal civil infraction violation notices for violations of this chapter; and

(J) Perform any other actions authorized by this chapter, or as necessary or advisable for the supervision, management, and operation of the POTW and the enforcement of this chapter and other applicable laws and regulations (subject to the rights, powers, and duties in respect thereto that are reserved by law to the Village Council).

(Ord. 2009-5, passed 7-20-2009)

## **USER POLLUTION CONTROLS**

### **§ 53.280 PROVISION BY USERS OF NECESSARY PRETREATMENT FACILITIES.**

Users shall provide necessary wastewater treatment as required to comply with all applicable pretreatment standards and requirements within the time limitations specified by applicable law or regulation, and as required to comply with the requirements of a user permit or order issued pursuant to this chapter. All facilities required to pretreat wastewater shall be provided, operated, and maintained at the user's sole expense. Detailed, professionally signed and sealed plans showing the pretreatment facilities, specifications, and operating procedures shall be submitted to the POTW for review and approval prior to construction. The POTW may approve, approve with



conditions, or disapprove the plans, specifications, and operating procedures. A user shall not begin discharging from the treatment facilities until facilities have been approved and all conditions and requirements of the approval have been met as determined by the POTW. The review and approval by the POTW of such plans and operating procedures does not in any way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the POTW under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW prior to the user's initiation of the changes. (Users shall notify the POTW regarding the installation of new pretreatment facilities or modification of existing facilities as provided by § 53.142.)

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.281 PROPER OPERATION AND MAINTENANCE.**

A user shall at all times properly operate and maintain at the user's sole expense all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the user to comply with the requirements of this chapter. Proper operation and maintenance includes, without limitation, effective performance, adequate funding, adequate operator staffing, and adequate quality assurance/quality control (QA/QC) procedures for sampling and analysis.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.282 REMOVED SUBSTANCES.**

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in accordance with § 405 of the Clean Water Act, being 42 U.S.C. § 1345, and Subtitles C and D of the Resource Conservation and Recovery Act, being 42 U.S.C. §§ 6901 et seq. and 42 U.S.C. §§ 6941 et seq., and other applicable local, state, and federal laws and regulations.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.283 DUTY TO HALT OR REDUCE ACTIVITY.**

Upon reduction of efficiency of operation, or loss, or failure of all or part of a user's pretreatment equipment or facility, the user shall, to the extent necessary to maintain compliance with categorical pretreatment standards and other applicable standards, requirements, and limits, control its production and all discharges until operation of the equipment or facility is restored or an alternative method of treatment is provided. This requirement applies in situations including, without limitation, where the primary source of power for the pretreatment equipment or facility is reduced, lost, or fails. It shall not be a defense for a user in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.284 DUTY TO MITIGATE.**

A user shall take all reasonable steps to minimize or correct any adverse impact to the POTW or the environment resulting from noncompliance with this chapter, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.285 DUTY TO PRETREAT PRIOR TO DISCHARGE TO POTW.**

Except as otherwise expressly required by this chapter, by a user permit or order issued pursuant to this chapter, or other applicable law or regulation, the prohibitions and limitations provided by this chapter or a user permit shall apply at the point where wastewater and pollutants are discharged or caused to be discharged into the POTW and any required pretreatment shall, at a minimum, be completed before that point of discharge is reached.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.286 IMPLEMENTATION OF BEST MANAGEMENT PRACTICES OR BEST MANAGEMENT PRACTICES PLAN.**

(A) The POTW Manager may require any user to develop and implement best management practices to control, contain, treat, prevent, or reduce the discharge of wastewater, pollutants, or other substances from the user's premises to the POTW, as determined necessary by the manager.

(B) In addition, the POTW Manager may require a user to develop and submit a best management practices plan ("BMPP"), including an enforceable implementation schedule, for review and approval by the Manager. The BMPP shall be submitted within 30 days after notification by the Manager or as otherwise required by a user permit. The BMPP shall be directed at preventing the entrance of pollutants, directly or indirectly, into the POTW. The BMPP shall be available for inspection at all times at the user's premises. At a minimum, a user's BMPP shall contain all of the following elements, as determined necessary by the POTW Manager, at a level of detail and in units and terms as determined necessary by the Manager to adequately evaluate the plan:

- (1) A statement of the purpose and objectives of the plan;
- (2) A description of the strategies, methods, policies, and procedures to prevent, minimize, or reduce the introduction of pollutants into the user's discharge and to minimize waste generation;
- (3) A description of the options available to the user to control accidental spillage, leaks, and drainage;

- (4) A description of best available or practicable control technologies available for the user's specific circumstances;
- (5) A detailed facility layout and site diagram showing points of entry into the POTW;
- (6) A description of the waste handling, treatment, and discharge disposal facilities, including flow diagrams and process schematics;
- (7) A description of operating and maintenance processes and procedures;
- (8) Inventory of raw materials and a list of waste sources, including a list of all chemicals used or stored at the facility;
- (9) A description of employee training programs, policies, and procedures; continuing education programs; and participation;
- (10) A description of documentation, including record keeping and forms;
- (11) A description of monitoring activities;
- (12) Information log of facility personnel, organization chart, emergency phone numbers, contact persons, and maintenance or service representatives;
- (13) Certification by a qualified professional that the plan is adequate to prevent spills, leaks, slug loads, or non-customary discharges of regulated substances, directly or indirectly, to the POTW; and
- (14) Such other information, documents, or diagrams as required by the POTW Manager including, but not limited to, any of the information required under § 53.108.

(C) The BMPs or BMPP required of a user or approved for a user shall be incorporated in a user permit issued to the user. If the user already has a user permit, the existing permit may be modified to incorporate the BMP requirements. If the user does not currently have a user permit, a permit shall be issued for that purpose.

(D) The POTW Manager may require revisions to user's BMPP if the Manager determines that the plan contains elements that are inadequate, or as otherwise determined necessary by the Manager to ensure compliance with applicable requirements of this chapter. Review of a BMPP by the Manager shall not relieve the user from the responsibility to modify its facility as necessary to comply with local, state, and federal laws and regulations.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.287 GREASE, OIL, AND SAND INTERCEPTORS/TRAPS.**

##### *(A) Interceptors/traps required.*

(1) Grease interceptors/traps shall be provided and maintained in proper operating condition at all times at the expense of the property owner for the proper handling of liquid waste containing grease. Grease interceptors/traps shall be required for all food service establishments and may be required for other users as determined necessary by the POTW Manager. Grease interceptors/traps shall be sized, constructed, and installed as required by the POTW Manager's specifications and subject to the POTW Manager's approval. At a minimum, grease interceptors/traps shall be cleaned and maintained per the manufacturer's specifications and as provided by this section at the property owner's expense.

(2) Oil and sand interceptors/traps may be required in any establishment where sand, oil, and flammable wastes or other harmful ingredients could enter the wastewater. If a plug or backup occurs and is directly caused by sand and/or oil, the POTW Manager may require that establishment to install an oil and sand interceptor/trap. Oil and sand interceptors/traps are required for establishments engaged in the washing of motor vehicles.

(3) All interceptors/traps shall be of a type and capacity approved by the POTW Manager and shall be located as to be readily and easily accessible for cleaning and inspection. Grease, oil, and sand interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which, when bolted into place, shall be gastight and watertight. Grease interceptors shall provide a minimum capacity of 750 gallons.

(4) Where installed, all grease, oil, and sand interceptors/traps shall be cleaned and maintained by the owner, at the owner's sole expense, and shall be kept in continuously efficient operation at all times. At a minimum, any user required to install an interceptor shall comply with the best management practices as provided by division (B) below.

##### *(B) Best management practices ("BMPs") for interceptors/traps.*

(1) Any user required to install and maintain an interceptor/trap of any kind shall develop and carry out a system of maintenance and clean out of such device(s) and shall document and keep:

- (a) A maintenance schedule;
- (b) The identity of the person(s) who cleaned and maintained the interceptor; and
- (c) The method and location of grease, oil, and sand disposal.

(2) Any problems with or damage to an interceptor/trap shall be reported immediately to the owner and the POTW Manager.

(3) Any damage to an interceptor/trap shall be immediately repaired.



(4) No interceptor/trap clean out material shall be discharged into a sewer.

(5) No bacteria or enzyme products shall be used in the maintenance of interceptors/traps.

(6) All users shall implement BMPs for grease management to minimize the discharge of food grease to the POTW.

(7) Specific BMPs for grease interceptors/traps. All users required to install and maintain grease interceptors (traps) shall comply with the following minimum requirements.

(a) Under sink grease traps shall be cleaned weekly, at a minimum, or more frequently as needed or as required by the POTW Manager.

(b) Clean outs of all other interceptors/traps shall be scheduled such that the interceptor/trap does not exceed 25% solids content (including both the top and bottom layers of solids) and there is no visible discharge of grease or oil. At a minimum, an interceptor/trap shall be cleaned out at least once every three months.

(c) The clean out shall be accomplished by pumping to remove the entire grease mat, liquids, sludges, and solids from screens, baffles, air-relief chambers, and wash down of interior walls. The interceptor/trap shall be refilled with clear water before being returned to service.

(d) The user shall witness all clean out and maintenance of interceptors/traps.

(C) *Documentation.* The documentation required by this section shall be available for review by the POTW and copies shall be provided to the POTW upon request.

(D) *Inspection.* The POTW shall have the right to inspect a restaurant or other establishment where an interceptor/trap is required at any time for any reason.

(E) *Failure to comply.* If a user fails to provide or maintain a required interceptor/trap, the village may do so (or cause the same to be done) and charge the costs to the user. The failure of any establishment where an interceptor/trap is required to comply with this section may subject the violator to enforcement action and the remedies as may be available by law and the terms of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.288 ADDITIONAL PRETREATMENT MEASURES.**

The POTW may require users to take additional pretreatment measures, as determined necessary by the POTW including, but not limited to, the following.

(A) Whenever deemed necessary, the POTW may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.

(B) The POTW may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow.

(C) Users with the reasonable potential to discharge explosive or flammable substances may be required to install and maintain an approved explosion hazard meter, combustible gas detection meter, or similar device, as determined appropriate by the POTW.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **ENFORCEMENT**

#### **§ 53.300 POTW INSPECTION, SURVEILLANCE, AND MONITORING AUTHORITY; RIGHT OF ENTRY.**

(A) *In general.* The POTW is authorized to carry out all inspection, surveillance, sampling, and monitoring activities and procedures as necessary to determine, independent of information supplied by users or any other persons, compliance or noncompliance with applicable pretreatment standards and requirements with this chapter and with other applicable laws and regulations. This authority includes, without limitation, the authority:

(1) To verify the completeness, accuracy, and representativeness of self-monitoring data submitted by users;

(2) To determine compliance with the terms, conditions, and requirements of this chapter or of any permit, order, notice, or agreement issued or entered into under this chapter;

(3) To support enforcement actions taken by the POTW against noncompliant users;

(4) To determine if users have corrected problems identified in previous inspections;

(5) To identify which (and to what degree) users influence the quality of the POTW's influent, effluent, and sludge quality;

(6) To evaluate the impacts of the POTW's influent on its treatment processes and receiving stream;

(7) To evaluate the need for revised local limits;

(8) To maintain current data on each user;

- (9) To assess the adequacy of each user's self-monitoring program and user permit;
- (10) To provide a basis for establishing sampling and monitoring requirements for users;
- (11) To evaluate the adequacy of each user's operation and maintenance activities on its pretreatment system;
- (12) To assess the potential for spills and/or slug discharge control measures, and evaluate the effectiveness of spill and slug discharge control measures;
- (13) To gather information for user permit development;
- (14) To evaluate compliance with existing enforcement actions;
- (15) To require any user to submit one or more representative samples of the wastewater discharged or that the user proposes to discharge into the POTW; and
- (16) To determine compliance with requirements regarding implementation of best management practices; accidental discharge controls and protections; spill prevention or containment measures; and pollution prevention, minimization, or reduction measures.

(B) *Right of entry.*

(1) The POTW Manager and other authorized representatives of the village bearing proper credentials and identification are authorized to enter a non-domestic user's premises (and any other user's premises, as determined necessary by the POTW Manager) to conduct inspection, surveillance, and monitoring activities as necessary to determine compliance with this chapter, and in that regard shall have, without limitation, the following minimum authority:

(a) To enter into any premises of any user in which a discharge source, treatment system, or activity is located or in which records are required to be kept as provided by this chapter, for the purpose of inspecting, observing, measuring, sampling, and testing the wastewater discharge, removing samples of wastewater for analysis, and inspecting and making copies of required records. This shall include the right to take photographs;

(b) To set up and maintain on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and/or metering operations, or to require the user to do so, at the user's sole expense;

(c) To randomly sample and analyze the effluent from users and conduct surveillance activities to identify occasional and continuing noncompliance with applicable standards and requirements. The POTW shall inspect and sample the effluent from each significant industrial user at least once a year;

(d) To inspect any production, manufacturing, fabrication, or storage area where pollutants, subject to regulation under this chapter, could originate, be stored, or be discharged to the POTW; and

(e) To enter all private properties through which the POTW, the village, or other governmental agency holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the POTW or wastewater transmission facilities lying within the easement.

(2) POTW representatives entering a user's premises for purposes authorized by this chapter shall comply with the user's plant safety requirements regarding such matters as entry into confined spaces, use of safety glasses, and hearing protection requirements, as requested by the user. Entry shall be commenced and completed as expeditiously as practicable, consistent with the purposes for which the entry was made.

(C) *Access without delay required.* Users shall allow the POTW ready access at all times to all parts of the user's facility or premises where wastewater governed by this chapter is created, handled, conveyed, treated, or discharged, or where any production, manufacturing, fabrication, or storage area where pollutants regulated under this chapter could originate, be stored, or be discharged to the POTW, or where wastewater records are kept, for the purposes of inspection, sampling, records examination, or in the performance of any of the POTW's duties. If a user has security measures in force that would require proper identification and clearance before entry into the premises by the POTW, the user shall make necessary arrangements in advance with its security guards so that upon presentation of suitable identification, authorized representatives of the POTW (or authorized state or federal personnel) will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Upon arrival at a user's premises, POTW representatives shall inform the user or its employees that inspections, sampling, compliance monitoring, metering, or other POTW procedures are to be performed and that the user has the right to accompany the POTW employee/representative during the performance of his or her duties.

(D) *Refusal to allow entry.* If a user refuses to permit access (or unreasonably delays access) to an authorized POTW representative or to permit the representative to obtain, take, and remove samples or make copies of documents or undertake other authorized inspection, surveillance, and monitoring activities as provided by this chapter, the POTW Manager may order the termination of the discharge of wastewater to the POTW; order the user to permit access within a time certain; issue the user a notice of violation of this section; or take other appropriate action as provided by this chapter and other applicable laws and regulations (including, but not limited to, seeking the issuance of a search warrant). Further, the refusal to permit access (or causing an unreasonable delay in access) as provided by this section shall constitute a violation of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

**§ 53.301 NOTICE OF VIOLATION.**

(A) Any person found to be violating a provision of this chapter may be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction of the violation. The person shall, within the period of time stated in

notice, permanently cease all violations. The notice of violation (NOV) shall be served and shall contain the information as provided by § 53.303.

(B) Unless otherwise specified by the NOV, the following provisions shall apply: within 30 days of the date of the NOV, the user shall submit to the POTW a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of the required plan shall not in any way relieve the user of liability for any violations occurring before or after receipt of the notice of violation.

(C) Nothing in this section shall limit the authority of the village or the POTW to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation, or otherwise require the village or the POTW to first issue a notice of violation before initiating a civil or criminal action against a person for violating this chapter.

(D) Failure to comply with any requirement of a notice of violation shall constitute a separate violation of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.302 ORDERS AND SUPPLEMENTAL ENFORCEMENT TOOLS.**

(A) *Generally.* The POTW Manager may issue an order to any user as determined by the Manager to be appropriate under the circumstances, as provided by this section. Multiple orders may be issued simultaneously or in combination as a single order with respect to a single user.

(B) *Service.* An order shall be served upon a user and shall contain the information as provided by § 53.303. However, orders to immediately cease and desist discharge, or to terminate sewer services, or other emergency orders where delay might endanger human health, the environment, or the POTW, may be oral and may be served by telephone (to be followed within five days by written confirmation of the order by the POTW Manager).

(C) *Types of orders.* The POTW Manager may issue the following types of orders.

(1) *Order to immediately cease and desist discharge.* The POTW Manager may issue an order to cease and desist from discharging any wastewater, pollutant, or discharge not in compliance with this chapter. The order shall have immediate effect if the actual or threatened discharge to the POTW presents, or may present, imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes, or may cause, interference or pass-through. The POTW Manager shall implement whatever action is necessary to halt or prevent the discharge including, but not limited to, emergency suspension of service. The user shall be assessed for any penalties, fines, charges, surcharges, expenses, or losses incurred due to the actual or threatened discharge of pollutants as provided by this chapter.

(2) *Order to cease discharge within a time certain.* The POTW Manager may issue an order to cease and desist from discharging any wastewater, pollutant, or discharge not in compliance with this chapter by a certain time and date. The proposed time for remedial action shall be specified in the order. In addition to any other circumstances as determined appropriate by the POTW Manager, an order may be issued under this section for the failure to pay applicable permit fees or to comply with any term of a user permit.

(3) *Order to effect pretreatment.* The POTW Manager may issue an order to a user requiring the user to pretreat its discharge in accordance with this chapter. Any user subject to an order to pretreat shall prepare a plan to pretreat its discharge so that the discharge complies with the requirements of the order and this chapter. The plan shall be submitted to the POTW Manager within a reasonable period as specified in the order. The plan shall be prepared in accordance with good engineering practice and shall state whether construction is necessary, as well as identify measures that can be completed without construction. The plan shall contain a schedule of compliance for completion of each of the various phases necessary to implement full pretreatment. The schedule of compliance must be approved by the POTW Manager. The schedule of compliance shall consist of one or more remedial measures, including enforceable timetables for a sequence of actions or operations leading to compliance with an effluent standard, or other prohibition or standard. The following steps or phases shall be included in the schedule of compliance as determined necessary by the POTW Manager:

- (a) Retain a qualified engineer and/or consultant;
- (b) Obtain any engineering or scientific investigation or surveys deemed necessary;
- (c) Prepare and submit a preliminary plan to achieve pretreatment;
- (d) Prepare plans and specifications, working drawings, or other engineering or architectural documents that may be necessary to effect pretreatment;
- (e) Establish a time to let any contract necessary for any construction;
- (f) Establish completion times for any construction necessary;
- (g) Establish a time limit to complete full pretreatment pursuant to the final order; and
- (h) If a phase or unit of construction or implementation may be effected independently of another phase or unit, establish separate timetables for the phases or unit.

(4) *Order to affirmatively respond.* The POTW Manager may issue an order requiring a user to perform any action required under this chapter including, without limitation requiring a user to: submit samples; to install sampling, metering, and monitoring equipment; to submit reports; to permit access for inspection, sampling, testing, monitoring, and investigations; to reduce or eliminate a discharge or pollutants in a discharge; or to pay permit fees or other applicable charges.

(5) *Order to terminate sewer services.*

(a) The POTW Manager may issue an order to terminate the sewer services of a user including, but not limited to, immediate physical blockage of the user's sewer connection, for reasons including, without limitation, the following:

1. A discharge that violates any general or specific discharge prohibition, including any pretreatment standard or requirement, and that reasonably appears to present an imminent endangerment to human health, the environment, or the POTW;

2. Failure of a user to notify the POTW of any discharge as described in this division (C)(5)(a) of which the user was aware or reasonably should have been aware;

3. Failure of a user to sample, monitor, pretreat, or report, or failure to install monitoring or pretreatment facilities, as required by an order of the POTW Manager;

4. A knowing, willful violation of any term, condition, or requirement of an order or user permit, or any provision of this chapter; and

5. A negligent violation of any major term, condition, or requirement of an order or user permit. For purposes of this section, a **MAJOR TERM, CONDITION, OR REQUIREMENT** is one the violation of which is reasonably likely to endanger human health, the environment, the POTW, or cause the POTW to violate its NPDES permit.

(b) If the POTW determines that physical blockage is necessary, the POTW shall make a reasonable attempt to deliver to the person who appears to be in control of the user's facility a written notice describing the reason for the physical blockage order. After delivery of the notice (or after a reasonable attempt to deliver the notice, even if delivery was unsuccessful), the POTW may immediately install the physical blockage. No person shall remove or tamper with a physical blockage installed by the POTW without prior written permission from the village.

(6) *Order to show cause.* The POTW Manager may issue an order requiring a user to appear and explain any noncompliance with the requirements of this chapter or any permit, order, decision, or determination promulgated, issued, or made under this chapter, and to show cause why more severe enforcement actions against the user should not go forward. A show cause hearing shall be held within ten days after the order to show cause is issued, as follows.

(a) The hearing shall be conducted and evidence shall be taken by the POTW Board of Appeals. Notice of the hearing shall be provided to require the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing.

(b) Any testimony taken at the hearing shall be under oath and recorded. A copy of the transcript of the hearing shall be made available at cost to any person upon payment of applicable charges for the transcript.

(c) After reviewing the evidence taken at the hearing, the POTW Board of Appeals shall decide whether further enforcement action is required and, if so, the nature and extent of that further action including, without limitation, the issuance of any order or imposition of any fines, fees, surcharges, or penalties as authorized by this chapter.

(D) *Immediate response to order by user may be required.* Any user issued an order as provided by this section to immediately suspend its discharge to the POTW shall immediately stop or eliminate the discharge using whatever means are necessary to do so, or take any other action as required by the order. If the user fails to comply voluntarily with the order to immediately suspend its discharge, the POTW shall take any action determined necessary as authorized by this chapter including, without limitation, immediate suspension of water service and/or severance of the sewer connection or commencement of judicial proceedings, to prevent or minimize damage to the POTW or endangerment to public health, safety, or the environment. The POTW may reinstate the wastewater treatment service and terminate any judicial proceedings, as applicable, upon satisfactory proof or other demonstration by the user that the noncomplying discharge has been eliminated or will not reoccur. A detailed written statement submitted by the user describing the causes of the noncomplying discharge and the measures taken to prevent any further occurrence shall be submitted to the POTW Manager within 15 days of the occurrence.

(E) *Noncompliance due to factors beyond user's control.* If noncompliance with an order is unintentional and temporary and due to factors beyond the reasonable control of a user, and the user can demonstrate the conditions necessary for demonstration of an upset as provided by § 53.205(B), the POTW Manager may modify the order or take other actions as determined appropriate. However, a user shall not be relieved of liability for noncompliance with an order to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

(F) *Amendment, suspension, and revocation of orders.* An order shall be subject to amendment, suspension, or revocation as determined appropriate by the POTW Manager. Notice of the amendment, suspension, or revocation shall be served upon the user in the same manner as notice was provided for the original order. An amendment, suspension, or revocation of an order shall be subject to the same procedures for review and appeal as the original issuance of the order, as provided by this chapter.

(G) *Consent orders and agreements.* The POTW Manager may enter into a consent order or agreement with a user to resolve disputed claims and address identified and potential deficiencies in the user's compliance status. The order or agreement shall be in the form of a written agreement with the user and may contain appropriate provisions including, without limitation, compliance schedules and stipulated fines and remedial actions.

(H) *POTW authority to require financial assurances.* The POTW may require any user to post a performance bond (or other form of surety acceptable to the POTW Manager) sufficient to cover expenses (direct and/or indirect) that might reasonably be incurred by the POTW as a result of the user's discharges to the POTW (including, but not limited to, the costs to restore or repair any damage to the POTW) or sufficient to achieve consistent compliance with applicable laws and regulations, as determined necessary by the POTW Manager. Further, any user that has in the prior two years been responsible for causing interference or pass-through at the POTW may be required to obtain liability insurance sufficient to cover the reasonable costs of responding or restoring the POTW in the event of a

second such incident. These financial assurance requirements may also be made conditions of a user permit.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.303 SERVICE OF NOTICES OF VIOLATIONS, ORDERS, AND NOTICES OF ASSESSMENTS.**

(A) *Generally.* Except as otherwise expressly provided by this chapter, all orders, notices of violations, and notices of assessments shall be served upon persons and shall contain the information as provided by this section.

(B) *Service.* Service shall be by personal delivery or certified mail (return receipt requested), addressed to the user, alleged violator, or other person, as applicable, at the person's last known address as shown by POTW's records. The person served shall sign and date the order or notice and shall return the signed original copy to the POTW; provided, that the failure to do so shall not affect the person's obligation to comply with the order or notice. Further, a notice or order served by mail may not actually be received by the user, but this shall not nullify any enforcement action subsequently taken by the POTW against the user under authority of this chapter.

(C) *Contents.* All orders and notices shall contain at least the following information, to the extent known by the POTW and as determined by the POTW to be applicable to the situation:

- (1) The name and address of the violator;
- (2) The location and time that the violation occurred or was observed, and the duration of the violation;
- (3) The nature of the violation, including the provisions of this chapter or of any permit, order, decision, determination, or agreement violated;
- (4) The basis for determining that a violation has occurred (personal observation, pollutant analysis, and the like);
- (5) The amount of the fine, penalty, or charge assessed or due, if any;
- (6) The manner in which, and time and date by which, any fine, penalty, or charge must be paid, including any penalty or charge for late payment;
- (7) The remedial action ordered, the time within which required actions must be taken, and any consequences for failure to do so;
- (8) The right to appeal the issuance of the order or notice and a summary of the procedures for appeal, or other applicable administrative procedures; and
- (9) The date and time the order or notice was issued.

(D) *Request for additional information.* A person served may request additional information from the POTW Manager regarding the contents or requirements of any order or notice. However, a request for additional information shall not extend the time for compliance with an order or notice.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.304 PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE.**

(A) The POTW shall publish once per year in the largest newspaper circulated in the village, a list of categorical users that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards or requirements.

(B) For the purposes of this section, a user shall be considered to be in significant noncompliance if its violations meet one or more of the following criteria:

- (1) Chronic violation of discharge limits, defined as results of analyses in which 66% or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude); a numeric pretreatment standard or requirement, including instantaneous limits as defined in 40 C.F.R. § 403.3(l);
- (2) Technical review criteria (TRC) violations, defined as results of analyses in which 33% or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits as defined in 40 C.F.R. § 403.3(l), times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants, except pH);
- (3) Any other violation of a pretreatment effluent limit (instantaneous minimum, instantaneous maximum, daily maximum, or longer-term average, or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of Department personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment, or has resulted in the POTW's exercise of its emergency authority to halt or prevent the discharge;
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or enforcement order, for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide any required reports within 30 days after the due date;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation or group of violations, which may include a violation of best management practices, that the POTW Manager determines will adversely affect the POTW or the operation or implementation of the POTW's pretreatment program.



(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.305 NUMBER OF VIOLATIONS.**

The number of violations resulting from a user's noncompliance with applicable discharge prohibitions or effluent limitations shall be determined as follows.

- (A) Applicable concentration limitations and mass (or loading) limitations shall be treated as separate limitations, and a user may be liable and penalized separately for exceeding any of those limitations for a single pollutant or sampling parameter.
- (B) Each violation of a daily maximum limit for a single pollutant or sampling parameter shall constitute a separate violation for each day on which the violation occurs or continues.
- (C) Each violation of an instantaneous minimum or instantaneous maximum limit for a single pollutant or sampling parameter shall constitute a separate violation for each such occurrence, and there may be multiple violations for each day on which such a violation occurs or continues.
- (D) Each violation of a monthly average limit (or of some other average limit period) for a single pollutant or sampling parameter shall constitute a separate violation for each day of the month (or other stated period) during which the violation occurred, regardless of the number of days on which samples were actually taken. (For example, in a month with 31 days, a violation of the monthly average limit for that month constitutes 31 violations for each pollutant parameter for which the monthly average limit was exceeded during the month.)
- (E) Except with regard to violations of average limits as provided by division (D) above, a violation will be deemed to have continued to occur each day beginning with the first day the violation occurred to the day the user is able to demonstrate through appropriate sampling results that the violation is no longer occurring.
- (F) If, for any period, a user has violated both a daily maximum limit and an average limit for a particular pollutant parameter, then the total number of violations is the sum of the days on which the daily maximum limit was violated plus the number of days in the averaging period.

(G) If a user permit regulates more than one outfall, each outfall shall be considered separately in computing the number of violations as provided by this section.

(H) If a user is discharging a waste stream that is required to be monitored and analyzed under continuous monitoring procedures (such as for pH or any other parameter that is required to be monitored and analyzed under continuous monitoring), then all of the following shall apply.

- (1) If at any time during a daily 24-hour period the continuous monitoring shows that the monitored parameter exceeded the instantaneous minimum, instantaneous maximum, or daily maximum limit for that parameter, then a violation has occurred.
- (2) If during a daily 24-hour period under continuous monitoring the monitored parameter exceeds the instantaneous minimum, instantaneous maximum, or daily maximum limit more than once after returning to compliance during that period, then each such exceedance shall be considered a separate violation.
- (3) If during a daily 24-hour period under continuous monitoring the monitored parameter exceeds the instantaneous minimum, instantaneous maximum, or daily limit into the next daily 24-hour period (i.e., the exceedance occurs both before and after midnight), then the exceedance will be considered a separate violation on both days.
- (4) If during a daily 24-hour period under continuous monitoring the monitored parameter exceeds instantaneous minimum, instantaneous maximum, or the daily limit for more than 66% of the 24 hours, as determined in minutes of the day, and, in the opinion of the Superintendent, has impacted WWTP processes or the collection system, then the user will be considered to be in significant noncompliance.

(I) One violation occurs on: each day that a report is late; and each day after an action required to be completed is not completed.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.306 NUISANCE.**

(A) A violation of this chapter, or of any permit, order, notice, or agreement issued or entered into under this chapter, is deemed to be a public nuisance and shall be corrected or abated as directed by the village.

(B) In addition to any other legal or equitable remedies available under the law, any person creating a public nuisance shall be subject to the provisions of state law, this chapter, or other ordinances of the village governing such nuisances, including reimbursing the village for any costs incurred in removing, abating, or remedying said nuisance, as applicable.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.307 REIMBURSEMENT.**

(A) (1) Any person who discharges to the POTW (including, but not limited to, any person who causes or creates a discharge that violates any provision of this chapter, produces a deposit or obstruction, or otherwise damages, injures, or impairs the POTW, or causes or contributes to a violation of any federal, state, or local law governing the POTW, whether any such act is intentional or unintentional) shall be liable to and shall fully reimburse the village for all expenses, costs, losses, or damages (direct or indirect) payable or incurred by the POTW or the village as a result of any such discharge, deposit, obstruction, damage, injury, impairment, violation, exceedance,

noncompliance, or act. The costs that must be reimbursed to the village shall include, but shall not be limited to, all of the following:

(a) All costs incurred by the POTW and/or the village in responding to the violation or discharge including expenses for any cleaning, repair, or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, or noncompliance;

(b) All costs to the POTW and/or the village of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, or noncompliance;

(c) The full amount of any fines, assessments, penalties, and claims including natural resource damages, levied against the POTW and/or the village, or any POTW or village representative, by any governmental agency or third party as a result of a violation of the POTW's NPDES permit (or other applicable law or regulation) that is caused by or contributed to by any discharge, violation, or noncompliance; and

(d) The full value of any POTW and/or the village staff time (including any administrative and overhead costs and any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the POTW's and/or the village's legal counsel and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, or noncompliance or otherwise incurred by the POTW and/or the village in administering and enforcing the requirements of this chapter.

(2) Further, the village is authorized to correct any violation of this chapter or damage or impairment to the POTW caused by a discharge and to bill the person causing the violation or discharge for the amounts to be reimbursed. The costs reimbursable under this section shall be in addition to fees, amounts, or other costs and expenses required to be paid by users under other sections of this chapter.

(B) In determining the amounts to be reimbursed, the POTW may consider factors such as, but not limited to, the following:

(1) The volume of the discharge;

(2) The length of time the discharge occurred;

(3) The composition of the discharge;

(4) The nature, extent, and degree of success the POTW may achieve in minimizing or mitigating the effect of the discharge;

(5) The toxicity, degradability, treatability, and dispersal characteristics of the discharges;

(6) The direct and indirect costs incurred by the POTW and/or the village, or imposed upon the POTW and/or the village to treat the discharges, including sludge handling and disposal costs;

(7) Fines, assessments, levies, charges, expenses, and penalties imposed upon and/or incurred by the POTW and/or the village, including the POTW's and village's costs of defense of actions, or suits brought or threatened against the POTW and/or the village by governmental agencies or third parties; and

(8) Such other factors, including the amount of any attorney's fees, consultant and expert fees, expenses, costs, sampling and analytical fees, repairs, and the like as the POTW and/or the village deems appropriate under the circumstances.

(C) Costs to be reimbursed to the POTW and/or the village as provided by this section may be assessed to the user as provided by § 53.303, or as otherwise determined appropriate by the POTW Manager in conjunction with an enforcement action.

(D) The failure by any person to pay any amounts required to be reimbursed to the POTW and/or the village as provided by this section shall constitute an additional violation of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.308 REVIEW OR APPROVAL BY VILLAGE.**

In no case shall the review and/or approval by the village of a user's plans, specifications, or operating procedures entitle a user to relief from enforcement actions for failure to achieve compliance with the applicable pretreatment standards and requirements.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.309 SEVERANCE OR SUSPENSION OF SEWER AND/OR WATER SERVICE.**

If a user violates or continues to violate any provision of this chapter (including, without limitation, any notice, order, permit, decision, or determination promulgated, issued, or made by the POTW under this chapter), or if the village determines that the user's actual or proposed discharge may present an imminent or substantial endangerment to the health or welfare of persons or the environment, the village may sever or suspend sewer and/or water service provided to the user by the village. If severed or suspended, the sewer and/or water service shall recommence only after the user has satisfactorily demonstrated to the village the user's ability to comply with all applicable provisions of this chapter, and only at the user's sole expense.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.310 JUDICIAL RELIEF.**

With the approval of the Village Council, in conjunction with the village's legal counsel, the POTW Manager may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this chapter or of any permit, order, notice, or agreement issued or entered into under this chapter. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The POTW Manager may also seek collection of surcharges, fines,



penalties, and any other amounts due to the POTW and/or the village that a user has not paid.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.311 CUMULATIVE REMEDIES.**

The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this chapter, or of any permit, order, notice, or agreement issued or entered into under this chapter, shall not preclude the imposition by the POTW, the village, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or administrative proceeding, conference, or hearing regarding the person.

(Ord. 2009-5, passed 7-20-2009)

## **ADMINISTRATIVE REVIEW AND APPEALS**

### **§ 53.325 PROCEDURES AVAILABLE.**

Any person aggrieved by a notice, citation, order, charge, fee, surcharge, penalty, fine, or other action taken by the POTW Manager under this chapter may request an informal hearing before the POTW Manager or an appeal to the POTW Board of Appeals as provided by this subchapter. If an informal hearing or appeal is not properly and timely requested in connection with an action as provided by this chapter, the action shall be deemed final.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.326 INFORMAL HEARING BEFORE THE POTW MANAGER.**

A request for an informal hearing before the POTW Manager must be made in writing within seven days from the date of the POTW Manager's action in question. The request must state the reasons for the appeal and shall include all supporting documents and dates. The informal hearing shall be scheduled at the earliest practicable date, but not later than seven days after receipt by the village of the request, unless the seven-day time period is extended by the mutual written agreement of the aggrieved party and the POTW Manager. The hearing shall be conducted on an informal basis at the Village Hall or at another location designated by the POTW Manager. The hearing shall be conducted by the POTW Manager as determined appropriate by the POTW Manager under the circumstances. Following the informal hearing, the POTW Manager may affirm or reverse, in whole or in part, the action appealed from, or may make any order, requirement, decision, or determination as, in the Manager's opinion, ought to be made in the case under consideration. The decision of the Manager may be appealed to the POTW Board of Appeals as provided by § 53.327.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.327 APPEAL TO POTW BOARD OF APPEALS.**

(A) The Village Council shall act as the POTW Board of Appeals to consider appeals from final decisions of the POTW Manager.

(B) The following provisions shall govern appeals of final decisions of the POTW Manager made to the POTW Board of Appeals under this chapter.

(1) An appeal from any final action of the POTW Manager must be made to the POTW Board of Appeals within seven days from the date of the action appealed. The appeal may be taken by any person aggrieved by the action. The appellant shall file a notice of appeal with the POTW Manager and with the POTW Board of Appeals and shall be accompanied by payment of the appeal fee in the amount as established by resolution of the Village Council. The notice of appeal shall specify the grounds for the appeal and shall include all documentation that will be submitted in support of the appeal. All documentation and evidence in support of the appeal shall be provided at the sole cost of the appellant. Failure to file a timely notice of appeal shall be deemed to be a waiver of the right to appeal.

(2) Prior to a hearing before the POTW Board of Appeals regarding an appeal, the POTW Manager shall transmit to the POTW Board of Appeals a written summary of all previous action taken in connection with the action being appealed. The POTW Board of Appeals may, at its discretion, request the POTW Manager to provide further information regarding the action that is the subject of the appeal.

(3) The POTW Board of Appeals shall fix a reasonable time for the hearing of the appeal. Notice of the hearing shall be provided to require the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. Any testimony taken at the hearing shall be under oath and recorded. A copy of the transcript of the hearing shall be made available at cost to any person upon payment of applicable charges for the transcript. The POTW Board of Appeals shall decide the appeal within a reasonable time.

(4) The POTW Board of Appeals may reverse or affirm, in whole or in part, the action appealed from, or may make any order, requirement, decision, or determination as, in its opinion, ought to be made in the case under consideration. To that end, the POTW Board of Appeals shall have all the powers of the POTW Manager as provided by this chapter.

(5) The final disposition of the appeal shall be in the form of a ruling by the POTW Board of Appeals, either reversing, modifying, or affirming, in whole or in part, the action of the POTW Manager. The action of the POTW Manager shall not be reversed or modified, in whole or in part, and the POTW Board of Appeals shall not otherwise find in favor of the appellant except by a majority vote of the POTW Board of Appeals. The decision of the POTW Board of Appeals shall be final.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.328 PAYMENT OF CHARGES, PENALTIES, FINES, AND OTHER COSTS OR FEES PENDING OUTCOME OF APPEAL.**

(A) All service charges, penalties, fines, fees, surcharges, costs, or expenses outstanding during any appeal process shall be due and payable to the village.

(B) Upon resolution of any appeal, the village shall adjust the amounts due and payable accordingly, provided that any refunds shall be retroactive to the previous four monthly billings only.

(C) The village may terminate wastewater treatment services if a corrective course of action is not taken or if service charges, penalties, fines, fees, surcharges, costs, or expenses are not paid.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **§ 53.329 FINALITY OF ACTION.**

If an appeal is not demanded as provided by this subchapter within the periods specified by this subchapter, the POTW Manager's action shall be deemed final. If an appeal is properly demanded, the action appealed shall be suspended until a final determination has been made by the POTW Board of Appeals, except for: orders to immediately cease and desist discharge; orders to terminate sewer services; other emergency orders or actions where a suspension or delay might endanger human health, the environment, or the POTW; and as otherwise expressly provided by this chapter (such as for permit appeals, § 53.118).

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.330 APPEALS FROM DETERMINATION OF POTW BOARD OF APPEALS.**

Appeals from the determination of the POTW Board of Appeals may be made to circuit court as provided by law. All findings of fact made by the POTW Board of Appeals, if supported by the evidence, shall be deemed conclusive.

(Ord. 2009-5, passed 7-20-2009)

## **MUNICIPAL LIABILITY**

### **§ 53.345 MUNICIPAL LIABILITY.**

Neither the POTW nor the village (including, but not limited to, village staff, employees, and officials) shall be responsible for interruptions of service due to natural calamities, equipment failures, or the actions of users. It shall be the responsibility of the users that all connected equipment remain in good working order so as not to cause disruption of service of any sewer or treatment plant equipment.

(Ord. 2009-5, passed 7-20-2009)

## **INDUSTRIAL PRETREATMENT PROGRAM FEES**

### **§ 53.360 PURPOSE.**

It is a purpose of this chapter to provide for the recovery from users of the POTW of all costs incurred by the POTW for the administration and implementation by the POTW of the industrial pretreatment program (IPP) established by this chapter. The IPP fees provided for by this subchapter are separate from, and in addition to, amounts chargeable to users for sewage disposal services by the village and/or the POTW and costs required to be reimbursed to the village and/or the POTW under any other provisions of this chapter or other laws and regulations.

(Ord. 2009-5, passed 7-20-2009)

### **§ 53.361 RATES, CHARGES, AND FEES FOR NON-DOMESTIC USERS.**

(A) Sewerage system rates, charges, or fees payable by non-domestic users shall be established by resolution by the Village Council, and shall be subject to amendment or revision from time to time.

(B) Such rates, charges, or fees shall be sufficient to meet the costs of the operation, maintenance, improvement, or replacement of the sewerage system and the treatment plant, and may include any of the following:

(1) Fees to reimburse the village for the costs of development and operation of an industrial pretreatment program, and fees to reimburse the POTW for monitoring, inspections, and surveillance procedures, including expenses incurred for analysis of samples;

(2) Fees for reviewing discharge reports, and for related enforcement procedures;

(3) Fees for permit applications;

(4) Fees for filing appeals;

(5) Fees for removal by the POTW of pollutants subject to federal or state pretreatment standards;

(6) User fees based on volume of waste and concentration or quantity of specific pollutants in the discharge;

(7) Other charges or fees for services or procedures performed by the POTW as are required by law; and

(8) Such other charges or fees as the Village Council may deem necessary to perform fully the provisions of applicable federal and state laws, this chapter, rules, and regulations issued or adopted pursuant to law or ordinance, and terms and conditions of service.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.362 IPP FEE AMOUNTS.**

IPP fees shall be paid by users to the POTW in amounts determined necessary by the POTW Manager from time to time to reimburse the POTW for all expenses incurred by the POTW and/or the village in administering the IPP. To the extent practical, the fees shall be set in an amount to include at least the POTW's and the village's average total costs for that purpose. With regard to IPP activities undertaken by the POTW and/or the village with regard to particular users, the fees shall be charged to the users on a time and materials basis, plus general administrative expenses, based on the nature and requirements of the IPP activities undertaken.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.363 SURCHARGES.**

(A) Surcharges are intended to reimburse the POTW for all costs incurred by the POTW in handling or treating a discharge that contains pollutants in excess of specified surcharge concentrations, loadings, or other applicable limits.

(B) Any user exceeding applicable surcharge limitations or other applicable limits shall be subject to the imposition of one or more surcharges as provided by this section to reimburse the POTW for any costs or expenses, direct or indirect, the POTW may incur in handling or treating the discharge, or which may be imposed upon the POTW, where the exceedance of applicable limits causes or contributes to those costs or expenses.

(C) The amount of a surcharge assessed shall be as specified in the surcharge rate schedule and associated surcharge provisions prepared by the POTW and approved from time-to-time by resolution of the Village Council.

(D) All violations of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements shall constitute a violation of this chapter, subject to applicable fines, penalties, and other enforcement actions provided by this chapter. In no event shall the imposition of a surcharge for a discharge that does not meet the applicable prohibitions, limitations, or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of this chapter.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

#### **§ 53.364 BILLING AND COLLECTION OF IPP FEES.**

(A) User permit application fees shall be due upon submission of permit applications.

(B) All other IPP fees shall be due within 30 days of the date of the activity or service for which the fee is required.

(C) IPP fees provided for by this subchapter shall be billed, collected, and enforced pursuant to the same procedures as provided by the Village Council for sewerage system rates and charges as provided by §§ 53.375 through 53.382 and/or as otherwise established by resolution of the Village Council.

(Ord. 2009-5, passed 7-20-2009) Penalty, see § 53.999

### **RATES AND CHARGES FOR SEWER SERVICE**

#### **§ 53.375 RATES FOR SEWER SERVICE.**

The Village Council shall, by resolution, prescribe rates for sewer service and other sewer charges for all users of the sewerage system, and rates shall be subject to revision from time to time. The POTW shall submit such information, data, and recommendations as the Village Council may require for the determination of sewer service rates.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.376 SERVICE TERMS AND CONDITIONS.**

(A) The terms and conditions of sewerage system use and/or service shall be as prescribed by the POTW; provided, however, that such terms and conditions shall not be less stringent than federal or state laws or regulations issued pursuant thereto by governmental agencies having jurisdiction in the premises.

(B) The terms and conditions of sewerage system services shall include a provision for the discontinuance of service in the event of nonpayment or delinquency in payment of sewer service rates or charges.

(Ord. 2009-5, passed 7-20-2009)

#### **§ 53.377 LIEN.**

The village shall have as security for the collection of sewerage system rates or charges a lien upon the real property to which service is provided. Such lien shall become effective immediately upon the supplying of the sewerage system service, and shall be enforceable as provided by law.

(Ord. 2009-5, passed 7-20-2009)

### § 53.378 COLLECTION ACTION.

The village may, in any court having jurisdiction in the premises, initiate an action for the collection of unpaid sewer service rates or charges, and to recover court costs and reasonable attorney fees. With respect to the collection of sewerage system rates and charges, the village shall have all powers granted to villages by applicable state and federal laws, rules, and regulations.

(Ord. 2009-5, passed 7-20-2009)

### § 53.379 SEPARATE BOOKS, RECORDS, AND ACCOUNTS; AUDIT.

(A) The POTW shall maintain and keep books of records and accounts, separate from all other records and accounts, in which shall be made full and correct entries of all matters relating to the sewerage system and to the wastewater treatment plant.

(B) An annual audit of such books of record and accounts for the preceding operating year shall be by an independent certified public accountant, who shall make available such audit reports to the village.

(C) The operating year of the POTW shall commence on October 1 and shall end on September 30.

(Ord. 2009-5, passed 7-20-2009)

### § 53.380 ANNUAL REVIEW OF RATES, FEES, CHARGES, AND SURCHARGES.

In conjunction with the annual sewerage works audit of the POTW, the village shall review sewer rates, fees, charges, and surcharges for the purpose of meeting anticipated expenditures for the following operating year.

(Ord. 2009-5, passed 7-20-2009)

### § 53.381 ANNUAL REVIEW OF INDUSTRIAL USERS.

A review shall be performed by the POTW at the end of each operating year of the classifications of all industrial users.

(Ord. 2009-5, passed 7-20-2009)

### § 53.382 INSURANCE.

The village shall obtain and maintain in full force and effect such insurance on the physical properties of the sewerage works, said insurance to be of such kinds and in such amounts as are customarily carried by municipalities engaged in the operation of public sewage disposal systems. All monies received for losses under any such insurance coverages shall be used solely for the repair, restoration, or replacement of the sewerage system or of the wastewater treatment plant.

(Ord. 2009-5, passed 7-20-2009)

### § 53.999 PENALTY.

(A) *Municipal civil infractions.*

(1) *Violation; municipal civil infraction.* Except as provided by division (B) below, and notwithstanding any other provision of the village's laws, ordinances, and regulations to the contrary, a person who violates any provision of this chapter (including, without limitation, any notice, order, permit, decision, or determination promulgated, issued, or made by the POTW under this chapter) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$1,000 per day for each infraction and not more than \$10,000 per day for each infraction, plus costs and other sanctions.

(2) *Repeat offenses; increased fines.* Increased fines may be imposed for repeat offenses. As used in this section, **REPEAT OFFENSE** means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this chapter: committed by a person within any 90-day period; and for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this chapter shall be as follows:

(a) The fine for any offense that is a first repeat offense shall be a minimum of \$1,500, plus costs; and

(b) The fine for any offense that is a second repeat offense or any subsequent repeat offense shall be a minimum of \$3,000, plus costs.

(3) *Amount of fines.* Subject to the minimum fine amounts specified in this division (A) and division (B) below, the following factors shall be considered by the court in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this chapter: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

(4) *Authorized local official.* Notwithstanding any other provision of the village's laws, ordinances, and regulations to the contrary, the following persons are designated as the authorized local officials to issue municipal civil infraction citations directing alleged violators to appear in district court for violations of this chapter (or, if applicable, to issue municipal civil infraction notices directing alleged violators to appear at a municipal ordinance violations bureau): the POTW Manager and the POTW Manager's designees; any

sworn law enforcement officer; and any other persons so designated by the village.

(5) *Other requirements and procedures.* Except as otherwise provided by this section, the requirements and procedures for the following shall be as set forth in Public Act 236 of 1961, as amended: commencing municipal civil infraction actions; issuance and service of municipal civil infraction citations; determination and collection of court-ordered fines, costs, and expenses; appearances and payment of fines and costs; failure to answer, appear, or pay fines; disposition of fines, costs, and expenses paid; and other matters regarding municipal civil infractions.

(B) *Criminal penalties; imprisonment.* Any person who does any of the following shall, upon conviction, be guilty of a misdemeanor punishable by a fine of \$500 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court: at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this chapter, or contrary to any notice, order, permit, decision, or determination promulgated, issued, or made by the POTW under this chapter; intentionally makes a false statement, representation, or certification in an application for, or form pertaining to, a permit, or in a notice, report, or record required by this chapter, or in any other correspondence or communication, written or oral, with the POTW regarding matters regulated by this chapter; intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this chapter; or commits any other act that is punishable under state law by imprisonment for more than 90 days.

(C) *Continuing violation.* Each act of violation, and each day or portion of a day that a violation of this chapter (or of any permit, order, notice, or agreement issued or entered into under this chapter) exists or occurs, constitutes a separate violation subject to the fines, penalties, and other sanctions and remedies as provided by this chapter.

(D) *Damage to POTW equipment.* It is a misdemeanor for any person to maliciously or willfully break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment that is part of the POTW. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct, and shall be subject to other sanctions and remedies as provided by this chapter including, but not limited to, reimbursement of the POTW as provided by § 53.307.

(Ord. 2009-5, passed 7-20-2009)

## TITLE VII: TRAFFIC CODE

Chapter

**70. GENERAL PROVISIONS**

**71. PARKING VIOLATIONS BUREAU**

**72. PARKING SCHEDULES**

### CHAPTER 70: GENERAL PROVISIONS

Section

70.01 Adoption of Uniform Traffic Code

70.99 Penalty

#### § 70.01 ADOPTION OF UNIFORM TRAFFIC CODE.

(A) *Code and amendments and revisions adopted.* The Uniform Traffic Code for Cities, Townships, and Villages as promulgated by the Director of the State Department of State Police pursuant to the Administrative Procedures Act of 1969, Public Act 306 of 1969, being M.C.L.A. §§ 24.201 through 24.328, and made effective in this state are incorporated and adopted by reference.

(B) *References in code.* References in the Uniform Traffic Code for Cities, Townships, and Villages to a “governmental unit” shall mean the village.

(C) *Notice to be published.* The Village Clerk shall publish this section in the manner required by law and shall publish, at the same time, a notice stating the purpose of the Uniform Traffic Code for Cities, Townships, and Villages and the fact that a complete copy of the code is available to the public at the office of the Village Clerk, Village of Eau Claire, 6625 East Main Street, Eau Claire, Michigan 49111, for inspection.

(Ord. 2003-4, passed 1-19-2004; Ord. 2009-3, passed 7-20-2009) Penalty, see § 70.99

#### § 70.99 PENALTY.

The penalties provided by the Uniform Traffic Code for Cities, Townships, and Villages are adopted by reference.

(Ord. 2003-4, passed 1-19-2004; Ord. 2009-3, passed 7-20-2009)

# CHAPTER 71: PARKING VIOLATIONS BUREAU

## Section

- 71.01 Establishment
- 71.02 Location
- 71.03 Violations; dispositions
- 71.04 Settling a violation
- 71.05 Notice of violation is allegation only
- 71.06 Schedule of offenses and fines

### § 71.01 ESTABLISHMENT.

(A) Pursuant to § 8395 of the Revised Judicature Act of the state, as added by Public Act 154 of 1968, being M.C.L.A. §§ 600.8101 et seq., a Parking Violations Bureau, for the purpose of handling alleged parking violations within the village, is hereby established.

(B) The Parking Violations Bureau shall be under the supervision and control of the Chief of Police.

(Ord. 23, passed 11-11-1968)

### § 71.02 LOCATION.

The Chief of Police shall, subject to the approval of the Village Council, establish a convenient location for the Parking Violations Bureau, appoint qualified village employees to administer the Bureau, and adopt rules and regulations for the operations thereof.

(Ord. 23, passed 11-11-1968)

### § 71.03 VIOLATIONS; DISPOSITIONS.

(A) No violation not scheduled in § 71.06 shall be disposed of by the Parking Violations Bureau.

(B) The fact that a particular violation is scheduled shall not entitle the alleged violator to disposition of the violation at the Bureau and, in any case, the person in charge of having knowledge of the facts may make a sworn complaint before any court having jurisdiction of the offense as provided by law.

(Ord. 23, passed 11-11-1968)

### § 71.04 SETTLING A VIOLATION.

No violation may be settled at the Parking Violations Bureau except at the specific request of the alleged violator. No penalty for any violation shall be accepted from any person who denies having committed the offense and in no case shall the person who is in charge of the Bureau determine, or attempt to determine, the truth or falsity of any act or matter relating to such alleged violation. No person shall be required to dispose of a parking violation at the Parking Violations Bureau and all persons shall be entitled to have any such violation processed before a court having jurisdiction thereof if they so desire. The unwillingness of any person to dispose of any violation at the Parking Violations Bureau shall not prejudice him or her or in any way diminish the rights, privileges, and protection accorded to him or her by law.

(Ord. 23, passed 11-11-1968)

### § 71.05 NOTICE OF VIOLATION IS ALLEGATION ONLY.

The issuance of a traffic ticket or notice of violation by a police officer of the village shall be deemed an allegation of a parking violation. Such traffic ticket or notice of violation shall indicate the length of time in which the person to whom the same was issued must respond before the Parking Violations Bureau. It shall also indicate the address of the Bureau, the hours during which the Bureau is open, the amount of the penalty scheduled for the offense for which the ticket was issued, and the amount that will be sought if such a person fails to respond within the time limit.

(Ord. 23, passed 11-11-1968)

### § 71.06 SCHEDULE OF OFFENSES AND FINES.

<i>Uniform Traffic Code Violations</i>		
<i>Offense</i>	<i>UTC Section</i>	<i>Penalty</i>
<i>Uniform Traffic Code Violations</i>		
<i>Offense</i>	<i>UTC Section</i>	<i>Penalty</i>
Angle parking violation	8.3	\$5



Bicycle parking violations	5.17	\$5
Bus, parking other than bus	8.19	\$5
Bus, taxicab stand violations	8.20	\$5
Failure to set brakes	5.58	\$5
In alley	8.13	\$5
In prohibited zone (sign required)	8.10(r)	\$5
Loading zone violation	8.16, 8.17	\$5
Obstructing traffic	8.5	\$5
Parked on grade wheels not turned to curb	5.58	\$5
Parking for prohibited purpose - displaying advertising	8.14	\$5
Parking for prohibited purpose - displaying vehicle for sale	8.14	\$5
Parking for prohibited purpose - selling merchandise	8.14	\$5
Parking for prohibited purpose - storage over 48 hours	8.14	\$5
Parking for prohibited purpose - working or repairing vehicle	8.14	\$5
Prohibited parking (no signs) - beside street excavation when traffic obstructed	8.10	\$5
Prohibited parking (no signs) - blocking emergency exit	8.10	\$5
Prohibited parking (no signs) - blocking fire escape	8.10	\$5
Prohibited parking (no signs) - double parking	8.10	\$5
Prohibited parking (no signs) - in front of drive	8.10	\$5
Prohibited parking (no signs) - on bridge or viaduct or within tunnel	8.10	\$5
Prohibited parking (no signs) - on crosswalk	8.10	\$5
Prohibited parking (no signs) - on sidewalk	8.10	\$5
Prohibited parking (no signs) - within 15 feet of hydrant	8.10	\$5
Prohibited parking (no signs) - within 20 feet of crosswalk or within 15 feet of corner lot lines	8.10	\$5
Prohibited parking (no signs) - within 20 feet of fire station entrance	8.10	\$5
Prohibited parking (no signs) - within 30 feet of street side traffic sign or signal	8.10	\$5
Prohibited parking (no signs) - within 50 feet of railroad crossing	8.10	\$5
Prohibited parking (no signs) - within 200 feet of accident where police in attendance	8.10	\$5
Prohibited parking (no signs) - within intersection	8.10	\$5
Taxicab, parking other than cab stand	8.19	\$5
Wrong side boulevard roadway	8.15	\$5

*Additional Offenses and Penalty Variations*

<i>Offense</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third and Subsequent</i>
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*Additional Offenses and Penalty Variations*

<i>Offense</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third and Subsequent</i>
Abandoned vehicle (plus towing and storage charge)	\$5	\$10	\$15
All night parking	\$5	\$10	\$15
Between sidewalk and curb	\$5	\$10	\$15
Disabled vehicle, failure to move	\$5	\$10	\$15
In prohibited zone - fire lane	\$5	\$10	\$15
In prohibited zone - prohibited zone	\$5	\$10	\$15
Keys in vehicle or motor running	\$5	\$10	\$15
Parking on grade prohibited (signs required)	\$5	\$10	\$15
Parking prohibited from 2:00 a.m. to 6:00 a.m. designated streets	\$5	\$10	\$15
Private property, without owner's consent	\$5	\$10	Court

(Ord. 23, passed 11-11-1968; Ord. 1998-6, passed 9-14-1998)

## CHAPTER 72: PARKING SCHEDULES

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Schedule

### I. Trucks; weight limits

#### SCHEDULE I. TRUCKS; WEIGHT LIMITS.

(A) No motor vehicle with a gross weight of 5,000 pounds or more shall be parked on any of the streets, or other property of the village, with the exception of Main Street, except as otherwise provided in this schedule.

(B) Such motor vehicles may deliver or pick up items on streets other than Main Street; provided however, they shall be parked only for the length of time necessary to make the pick up or delivery.

(C) Trucks of any weight or size may be parked on First Street, which will be known as the truck parking area.

(D) Any person, firm, or corporation violating this schedule shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding \$100 for each violation.

(E) This schedule shall be effective 30 days after adoption.

(Ord. 25, passed - -)

## TITLE IX: GENERAL REGULATIONS

Chapter

### 90. HEALTH AND SANITATION

### 91. PARKS AND BALLFIELDS

### 92. ANIMALS

### 93. PUBLIC NUISANCES

## CHAPTER 90: HEALTH AND SANITATION

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Section

### *Fire Protection*

90.01 Prohibition

90.02 Yard waste

### *Noxious Weeds*

90.15 Enforcement

90.16 Duty of owner, possessor, or occupier

90.17 Duty of Code Enforcement Officer

90.18 Account of expenses

90.19 Liens

### *Abandoned Vehicles*

90.30 Definitions

90.31 Abandonment of vehicles

90.32 Leaving of wrecked, nonoperating vehicle on street

90.33 Disposition of wrecked or discarded vehicles

90.34 Impounding

90.35 Notifying owner of impounded vehicle

90.36 Notifying Secretary of State of impounded vehicle

## FIRE PROTECTION

### § 90.01 PROHIBITION.

No person or persons shall burn or fire papers, shavings, offal, rubbish, or any other materials or things at, within, or upon the village fire limits, nor shall build any trash fire of any kind thereon or therein except as shall be contained in a commercial type incinerator approved by the Fire Marshal, with the exception of fall or early spring burning of leaves within the village limits. Any other exceptions must have a burning permit issued by authorized personnel.

(Ord. 1977-1, passed 5-9-1977) Penalty, see § 90.99

### § 90.02 YARD WASTE.

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**YARD WASTE.** Organic materials grown/cultivated on residential property.

(B) *Rules.*

(1) This section is written for yard waste only and specifically does not address all other burning/fires of any other materials, chemicals, or items.

(2) It is the responsibility of the property owner to ensure all fires are conducted in a safe manner to protect both personal and property protection. If ordered by any jurisdictional or enforcement official to extinguish, the property owner shall immediately comply in a safe and timely manner.

(3) Burning, from ignition to a minimum of one hour after extinguishing, shall be monitored at all times by a responsible adult with a prepared supply of water or alternative means capable of extinguishing all burnable materials. Burning shall be conducted on the property for which the permit is granted and shall be located no closer than two feet from any roadway nor 20 feet from any combustible structure.

(Ord. 2001-3, passed 5-21-2001) Penalty, see § 90.99

## NOXIOUS WEEDS

### § 90.15 ENFORCEMENT.

It shall be the duty of the Code Enforcement Officer to see that the provisions of this subchapter are carried out and obeyed.

(Ord. 6A-2001, passed 8-20-2001)

### § 90.16 DUTY OF OWNER, POSSESSOR, OR OCCUPIER.

It shall be the duty of every owner, possessor, or occupier of land, or every person or persons, firm, or corporation having charge of any land, in this village to cut or cause to cut down and be destroyed all Canada thistles, milk weed, wild carrots, oxeye daisies, or other noxious weeds and overgrowth exceeding one foot or as necessary to prevent them from going to seed; and if any owner, possessor, or occupier of land, or any person, firm, or corporation having charge of any land, in this village shall knowingly suffer any overgrowth including, but not limited to, Canada thistles, wild carrots, milk weed, or other noxious weeds to grow thereon, or shall suffer the seed to reopen so as to cause or endanger the spread thereof, he, she, or they shall, upon conviction thereof, be punished by a fine as listed in § 10.99.

(Ord. 6A-2001, passed 8-20-2001) Penalty, see § 90.99

### § 90.17 DUTY OF CODE ENFORCEMENT OFFICER.

(A) It shall be the duty of the Code Enforcement Officer to give a citation of ordinance violation in the following manner to every owner, possessor, or occupier of land, and to every person or persons, firm, or corporation having charge of any land, in this village whereon overgrowth or noxious weeds are growing, to cut and destroy such growth.

(B) (1) The Code Enforcement Officer or his or her designee shall attempt to serve in person any owner, possessor, or occupier of land, or any person, firm, or corporation having charge of any land, the citation of ordinance violation.

(2) If attempted notification is not accomplished, a certified letter shall be sent to the owner, as determined from the official tax roll, containing the notice of ordinance citation.

(C) These notices shall set forth the fact that all overgrowth and noxious weeds must be cut, on or before a certain date, which date shall be ten working days from the mailing of notice or serving of an ordinance violation. The notice may read as follows.

## NOTICE

To owners, possessors or occupiers of land or any person or persons, firm or corporation having charge of any land in this Village. You are hereby notified you are in violation of the Village of Eau Claire Ordinance relative to noxious weeds.

Notice is hereby given that all overgrowth and noxious weeds growing on any land in this Village must be cut down or destroyed on or before the \_\_\_\_ day of \_\_\_\_ A.D. 20\_\_.

Failure to comply with this notice on or before the date mentioned shall make the party or parties liable for all costs necessary for the cutting of the same.

Dated \_\_\_\_\_  
Code Enforcement Officer

(Ord. 6A-2001, passed 8-20-2001)

### § 90.18 ACCOUNT OF EXPENSES.

In case the owner, possessor, or occupier of land, or person or persons, firm, or corporation having charge of any land, shall refuse or neglect to comply with such notice and to cut the weeds, as provided therein, on or before the date stated in such notice, it shall be the duty of the village to empower the Public Works Department or others employed or contracted by the village, to carry out the work, to enter upon the land, and to cause to be cut down with as little damage to existing properties or grounds as may be, and he or she shall not be likely to be sued in any action or trespass therefor.

(Ord. 6A-2001, passed 8-20-2001)

### § 90.19 LIENS.

(A) The village shall keep an accurate account of the expenses incurred by him or her in carrying out the provisions of § 90.18, with respect to each parcel of land entered upon therefor, and shall make a sworn statement of account and present same to the Village Council. The Council is thereby authorized to audit and allow such account and order the same to be paid from the General Fund of the village.

(B) The village shall add to all such expenditures, as have been so audited and allowed, an additional 10% of the amount of such expenditures and shall cause all such expenditures, together with the additional 10%, to be severely levied on the lands on which such expenditures were made, and the same shall become a lien on said and shall be collected in the same manner as other taxes are collected. The same when collected shall be paid in to the General Fund of the village to reimburse the outlay therefrom aforesaid.

(Ord. 6A-2001, passed 8-20-2001)

## ABANDONED VEHICLES

### § 90.30 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**PERSON.** Any person, firm, partnership, association, corporation, company, or organization of any kind.

**PROPERTY.** Any real property within the village which is not a street or highway.

**STREET or HIGHWAY.** The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

**VEHICLE.** A machine propelled by power other than human power designed to travel along the ground by the use of wheels, treads, or runners and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, buggy, and wagon.

(Ord. 15, passed - -)

### § 90.31 ABANDONMENT OF VEHICLES.

No person shall abandon any vehicle within the village and no person shall leave any vehicle at any place within the village for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

(Ord. 15, passed - -) Penalty, see § 90.99

### § 90.32 LEAVING OF WRECKED, NONOPERATING VEHICLE ON STREET.

No person shall leave any partially dismantled, nonoperating, wrecked, or junked vehicle on any street or highway within the village.

(Ord. 15, passed - -) Penalty, see § 90.99

### § 90.33 DISPOSITION OF WRECKED OR DISCARDED VEHICLES.

No person in charge or control of any property within the village, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any partially dismantled, nonoperating, wrecked, junked, or discarded vehicle to remain on such property longer than 48 hours; except that this subchapter shall not apply with regard to: a vehicle in an enclosed building; a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise; or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the village.

(Ord. 15, passed - -) Penalty, see § 90.99

#### **§ 90.34 IMPOUNDING.**

(A) The Chief of Police, or other appropriate official, or any member of his or her Department designated by him or her, is hereby authorized to remove, or have removed, any vehicle left at any place within the village which reasonably appears to be in violation of this subchapter or lost, stolen, or unclaimed.

(B) Such vehicle shall be impounded until lawfully claimed or disposed of.

(Ord. 15, passed - -)

#### **§ 90.35 NOTIFYING OWNER OF IMPOUNDED VEHICLE.**

Whenever an officer removes a vehicle from a street as authorized in this subchapter, and the officer knows or is able to ascertain the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal, and the reasons therefor, and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a garage, a copy of such notice shall be given to the proprietor of such garage.

(Ord. 15, passed - -)

#### **§ 90.36 NOTIFYING SECRETARY OF STATE OF IMPOUNDED VEHICLE.**

Whenever an officer removes a vehicle from a street as authorized in this subchapter, and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of three days, then and in that event the officer shall, within a reasonable period of time, send or cause to be sent a written report of such removal by mail to the Secretary of State, and shall file a copy of such notice with the proprietor of any garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time, and place from which removed, the reasons for such removal, and the name of the garage or place where the vehicle is stored.

(Ord. 15, passed - -)

#### **§ 90.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person who shall violate any provisions of § 90.01 shall, upon conviction thereof, be punished by a fine of not more than \$100 and the costs of prosecution or by imprisonment in the county jail for a period of not more than 30 days or by both such fine and imprisonment in the discretion of the court.

(E) Any person violating any of the provisions of §§ 90.30 through 90.36 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding \$100 or be imprisoned in the county jail for a period not exceeding 30 days or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(Ord. 15, passed - -; Ord. 1977-1, passed 5-9-1977; Ord. 2009-4, passed - -2009)

## **CHAPTER 91: PARKS AND BALLFIELDS**

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### Section

- 91.01 Hours of operation
- 91.02 Camping
- 91.03 Alcohol and drugs
- 91.04 Fires; hunting; firearms
- 91.05 Animals
- 91.06 Reservation of pavilions
- 91.07 Effective date

**§ 91.01 HOURS OF OPERATION.**

The parks shall remain open from 8:00 a.m. until 10:00 p.m. each day.

(Ord. 2011-1, passed 8-15-2011)

**§ 91.02 CAMPING.**

No camping shall be allowed on park premises.

(Ord. 2011-1, passed 8-15-2011) Penalty, see § 91.99

**§ 91.03 ALCOHOL AND DRUGS.**

The possession or use of alcoholic beverages or illegal drugs shall be prohibited from all park areas and arrests may be made per state statutes or local ordinance.

(Ord. 2011-1, passed 8-15-2011) Penalty, see § 91.99

**§ 91.04 FIRES; HUNTING; FIREARMS.**

No open fires, hunting, or firearms shall be allowed in the park.

(Ord. 2011-1, passed 8-15-2011) Penalty, see § 91.99

**§ 91.05 ANIMALS.**

All animals must remain on a leash; all animal waste must be removed by owner.

(Ord. 2011-1, passed 8-15-2011) Penalty, see § 91.99

**§ 91.06 RESERVATION OF PAVILIONS.**

The pavilions may be reserved for use through the Village Clerk’s office. The phone number is (269)-461-6173.

(Ord. 2011-1, passed 8-15-2011)

**§ 91.07 EFFECTIVE DATE.**

This chapter went into effect 30 days after the date of legal publication.

(Ord. 2011-1, passed 8-15-2011)

**§ 91.99 PENALTY.**

- (A) Littering on park property is punishable by a \$100 fine.
- (B) Vandalism to park property is punishable by a \$500 fine, plus repair costs.
- (C) Violations of § 91.05 are punishable by a \$100 fine.

(Ord. 2011-1, passed 8-15-2011)

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**CHAPTER 92: ANIMALS**

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Section

*General Provisions*

92.01 Backyard chickens

*Animal Regulations*

92.15 Dog limit

92.16 Licensing

92.17 Kennels

92.18 Leash requirements

92.19 Noisy dogs/pets

92.20 Livestock, horses, and fowl



- 92.21 Defecation disposal
- 92.22 Destruction of the animal
- 92.23 Grandfather clause
  
- 92.99 Penalty

## GENERAL PROVISIONS

### § 92.01 BACKYARD CHICKENS.

(A) *Generally.* No village residences may be in possession of chickens without completing an application and written consent forms signed by all neighbors connected to the property line.

(B) *Keeping of chickens.*

(1) Any person who keeps chickens in the village shall obtain a permit from the village prior to acquiring the chickens. No permit shall be issued to a person, by the village, and no chickens shall be allowed to be kept unless the owners of all residentially zoned adjacent properties consent in writing to the permit and this consent is presented along with an application for a permit. Written statements waiving the distance requirement in division (B)(3) below shall also be submitted at the time of application and become a part of the permit as issued. Application shall be made to the Village Clerk and the fee for the permit shall be as determined by Council resolution. Permits expire and become invalid one year after the date of issuance. A person who wishes to continue keeping chickens shall have obtained a new permit on or before the expiration date of the previous permit. Application for a new permit shall be pursuant to the procedures and requirements that are applicable at the time the person applies for a new permit.

(2) Notwithstanding the issuance of a permit by the village, private restrictions on the use of property shall remain enforceable and take precedence over a permit. Private restrictions include, but are not limited to, deed restrictions, condominium master deed restrictions, neighborhood association bylaws, and covenant deeds. A permit issued to a person whose property is subject to private restrictions that prohibit the keeping of chickens is void. The interpretation and enforcement of the private restriction is the sole responsibility of the private parties involved.

(3) A person who keeps or houses chickens on his or her property shall comply with all of the following requirements:

- (a) Have been issued the permit required under division (B)(1) above;
- (b) Keep no more than four chickens;
- (c) The principal use of the person's property is for a single-family dwelling or two-family dwelling;
- (d) No person shall keep any rooster;
- (e) No person shall slaughter any chickens;
- (f) The chickens shall be provided with a covered enclosure and must be kept in the covered enclosure or a fenced enclosure at all times;
- (g) A person shall not keep chickens in any location on the property other than in the backyard. For purposes of this section, **BACKYARD** means that portion of a lot enclosed by the property's rear lot line and the side lot lines to the points where the side lot lines intersect with an imaginary line established by the rear of the single-family or two-family structures and extending to the side lot lines;
- (h) No covered enclosure or fenced enclosure shall be located closer than ten feet to any property line of an adjacent property;
- (i) All enclosures for the keeping of chickens shall be so constructed or repaired as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of the enclosure. A covered enclosure or fenced enclosure shall not be located closer than 40 feet to any residential structure on an adjacent property provided, however, this requirement can be waived as follows:
  - 1. If the principal use of applicant's property is for a single-family dwelling, to obtain such a waiver, the applicant shall present, at the time of applying for a permit, the written statements of all adjacent landowners that there is no objection to the issuance of the permit; and
  - 2. If the principal use of the applicant's property is for a two-family dwelling, to obtain such a waiver the applicant shall present, at the time of applying for a permit, the written statements of all adjacent landowners and of the occupants of the other dwelling stating that there is no objection to the issuance of the permit.
- (j) For purposes of this section, **ADJACENT PROPERTY** means all parcels of property that the applicant's property comes into contact with at one or more points, except for parcels that are legally adjacent to, but are in fact separated from, the applicant's property by a public or private street;
- (k) All enclosures for the keeping of chickens shall be so constructed or repaired as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of the enclosure;
- (l) All feed and other items associated with the keeping of chickens that are likely to attract or to become infested with or infected by rats, mice, or other rodents shall be protected so as to prevent rats, mice, or other rodents from gaining access to or coming into contact with them; and

(m) If the above requirements are not complied with, the village may revoke any permit granted under this section and/or initiate prosecution for a civil infraction violation.

(4) A person who has been issued a permit shall submit it for examination upon demand by any police officer or Code Enforcement Officer.

(Ord. 2009-2B, passed 5-18-2009) Penalty, see § 92.99

## **ANIMAL REGULATIONS**

### **§ 92.15 DOG LIMIT.**

No village residences may be in possession of any more than three adult dogs, nor may any residence be in possession of any more than three dogs of any age one month past weaning. It is prohibited for residential zoned property to raise or breed any animal for sale or profit.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

### **§ 92.16 LICENSING.**

All animals legally possessed must have and wear a current valid license when required by Berrien County ordinance or a state statute or regulation, and must have had all shots and inoculations required by county ordinance or state statute or regulation. Evidence of all shots or inoculations shall be shown upon request to any enforcement officer.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

### **§ 92.17 KENNELS.**

Kennels used as commercial boarding or breeding of animals for sale or profit are prohibited in areas zoned as residential in the village proper. Kennels in areas zoned as commercial require a “special” use permit in accordance with the zoning ordinance.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

### **§ 92.18 LEASH REQUIREMENTS.**

It shall be unlawful for any owner, keeper or person in charge of any dog or animal to permit or allow any such dog or animal to stray or go beyond the premises of its owner, keeper or custodian, unless such dog or cat or animal is held properly in leash. The maximum leash length shall be five feet in length.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

### **§ 92.19 NOISY DOGS/PETS.**

It shall be unlawful to permit any dog or any other pet or animal owned or possessed to make continuous or intermittent barking, yelping, growling or other loud or disturbing noises which cause annoyance to neighbors or third parties.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

### **§ 92.20 LIVESTOCK, HORSES, AND FOWL.**

It shall be unlawful to stable or keep, unless the property is zoned agricultural, except temporarily during parades or festival periods, when the same will be ridden, driven or shown with the village, any horses, ponies, mules, donkeys, calves, cows, steers, bulls, pigs, shoats, sheep, goats, chickens (see § 92.01), turkeys, geese, ducks, or any other domestic livestock.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

### **§ 92.21 DEFECATION DISPOSAL.**

(A) No owner, keeper, caretaker or attendant of a dog, cat or animal shall allow that animal to defecate on public or private property other than their own.

(B) If such dog, cat or animal does defecate upon such public or private property, the owner, keeper, caretaker or attendant shall immediately clean the fecal material from such public or private property.

(C) **PUBLIC PROPERTY** shall include any park, school ground, street or sidewalk in the village.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

### **§ 92.22 DESTRUCTION OF THE ANIMAL.**

In addition to all other remedies provided by this subchapter, any animal that has been impounded for 20 days or more and the requirements for release of impoundment are not satisfied or any dog living within the village as described in § 92.15 may be destroyed at the direction of the village.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017)

### **§ 92.23 GRANDFATHER CLAUSE.**

(A) Village residents in possession of more than three dogs at the time of adoption of this chapter are allowed to keep their animals until death or other means of permanent removal from premises.

(B) But in no case shall any other dogs be added to the residence to raise the total amount over three.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017) Penalty, see § 92.99

#### **§ 92.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) Any person, firm, partnership, corporation, association or any other party found guilty of violating the provisions of §§ 92.15 through 92.23 shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$100 or imprisoned in the county jail not more than 90 days or both. Further, the village may enforce the provisions of §§ 92.15 through 92.23 in any manner permissible by law; including seeking injunctive remedies.

(2) The village may impound an animal that is required to be licensed or is prohibited under §§ 92.15 through 92.23. The impoundment may be at the village or the Berrien County Animal Control facility. The animal shall be impounded and shall not be released until:

(a) The cost of impoundment has been paid.

(b) Satisfactory arrangements have been made to comply with §§ 92.15 through 92.23.

(Ord. 1995-1A-2001, passed 4-17-2017; Ord. 2017-1, passed 4-17-2017)

## **CHAPTER 93: PUBLIC NUISANCES**

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### Section

93.01 Public nuisances

93.02 Dangerous structures

93.03 Smoke and steam

93.04 Noises

93.05 Animals, birds, and bees

93.06 Dumps and refuse; littering of streets

93.07 Handbills, stickers, dodgers, and the like

93.08 Restrictions as to posting

93.99 Penalty

#### **§ 93.01 PUBLIC NUISANCES.**

(A) Whatever annoys, injures, or endangers the safety, health, comfort, or repose of the public; offends public decency; interferes with, obstructs, or renders dangerous any street, highway, navigable lake, or stream; or in any way renders the public insecure in life or property is hereby declared to be a public nuisance.

(B) Public nuisances shall include, but not be limited to, whatever is forbidden by any provisions of this chapter.

(C) No person shall commit, create, or maintain any nuisance.

(Ord. 17, passed 2-14-1966) Penalty, see § 93.99

#### **§ 93.02 DANGEROUS STRUCTURES.**

(A) No person shall maintain any structure which is unsafe or which is a menace to the health, morals, or safety of the public.

(B) The Council may, after investigation, condemn such structure by giving notice to the owner of the land upon which such structure is located, specifying in what respect said structure is a public nuisance and requiring said owner to alter, repair, tear down, or remove same within five days after service of said notice.

(C) If, at the expiration of the time limit in said notice, the owner has not complied with the requirements thereof, the Village President shall carry out the requirements of said notice. The cost of such abatement shall be charged against the premises and the owner thereof.

(D) The Village President may abate any such public nuisance if the public safety requires immediate action without preliminary

order of Council. Thereafter, the cost of abating such nuisance shall be charged against the premises and the owner thereof.

(Ord. 17, passed 2-14-1966) Penalty, see § 93.99

### **§ 93.03 SMOKE AND STEAM.**

No person who is responsible therefor shall permit the emission from any chimney or smoke stack of dense smoke or smoke containing soot or other substance in sufficient quantity to noticeably permit the deposit of soot or other substance within the village. The emission of smoke or other substance as herein described shall constitute a public nuisance.

(Ord. 17, passed 2-14-1966) Penalty, see § 93.99

### **§ 93.04 NOISES.**

No person operating or in control of a parked or moving motor vehicle (including motorcycles and mopeds) shall operate, or permit the operation of, an electronically amplified sound system in or on the vehicle so as to produce sound that is clearly audible more than 50 feet from the vehicle, except as follows:

- (A) Any police vehicle, ambulance, fire engine, or emergency vehicle while engaged in emergency or necessary public activities; or
- (B) Sound made to alert persons to the existence of an emergency, danger, or attempted crime, or for warning purposes authorized by law.

(Ord. 2004-1, passed 9-20-2004) Penalty, see § 93.99

### **§ 93.05 ANIMALS, BIRDS, AND BEES.**

- (A) No person shall be cruel to any animal or bird.
- (B) No person shall throw or deposit any poisonous substance on any exposed public or private place where it may endanger any animal, bird, or bee.
- (C) Except by written permission of the Police Chief, no person, except a peace officer in his or her official capacity, shall molest, injure, kill, or capture any wild bird, or molest any wild bird's nest, beehive, or the contents thereof.
- (D) No person shall harbor or keep any swine.
- (E) No person shall harbor or keep any animal, bird, or bee which causes annoyance in the neighborhood, either by:
  - (1) Barking, howling, braying, crowing, or other sound common to its species;
  - (2) Failure of the owner, caretaker, or custodian to maintain in a clean and sanitary condition, devoid of rodents and vermin, and free from objectionable odor, all structures, pens, coops, or yards wherein any animal, fowl, or bee is kept; or
  - (3) In the case of bees, stinging or molesting any person.
- (F) No person shall permit any vicious dog of which he or she is the owner, caretaker, or custodian to be unconfined unless securely muzzled and led by leash. Any dog shall be deemed vicious which has bitten a person or domestic animal without molestation, or which, by its actions, gives indication that it is liable to bite any person or domestic animal without molestation.
- (G) Whenever notice of a dog quarantine shall be published in the official newspaper by the Health Officer, no person shall, during the period of such quarantine, permit any dog, of which he or she is the owner, caretaker, or custodian, to be unconfined except under the conditions specified in such notice.
- (H) No person shall deposit, place, or throw any dead or fatally sick or injured animal, or part thereof, on any public or private place, or into, or on the banks of, any stream, lake, pond, sewer, well, or other body of water.
- (I) No person shall bury any dead or fatally sick or injured animal, or part thereof, in the village except that the owner or occupant of any unplatted property may bury thereon any dead animal owned by him or her dying on such premises, after having obtained a written permit to do so from the Health Officer. Such burial shall be made at a distance of not less than 200 yards from any residence and the carcass shall be placed underground and well covered with at least four feet of earth from the surface of the ground to the upper part of the carcass.
- (J) No person shall carry or convey any dead animal through or upon any street, alley, or public place unless the same is so covered that no part of it is exposed to view and no odors can emanate therefrom.
- (K) Any dead animal, or part thereof, lying upon any street, alley, or public place shall be removed by the Police Department forthwith. If any dead animal, or part thereof, is upon private property, the owner or person in charge of such animal at the time of its death shall dispose of the same, or shall immediately report the facts to the Police Department, which Department shall remove such animal forthwith. When any dead animal, or part thereof, is removed from private property by the Police Department, a fee shall be charged to the owner of the animal for such removal, which fee shall be determined by administrative regulation.

(Ord. 17, passed 2-14-1966) Penalty, see § 93.99

### **§ 93.06 DUMPS AND REFUSE; LITTERING OF STREETS.**

- (A) No person shall dispose of any refuse, waste, or other such materials except at dumps which have been approved and are

supervised by the Health Officer and which are clearly marked for such purpose, provided that garbage shall not be permitted on any dump within the village. This division (A) shall not prevent the burning of garbage, refuse, waste, foods, or other such materials in receptacles approved by the Fire Chief and the Health Officer, or to prohibit the commercial collection of rubbish and garbage by licensed collectors for disposal beyond the village limits.

(B) Except as provided in division (A) above, no person shall dump, throw, or scatter anything in, or transport the same in, such a manner as to cause the littering of any street, alley, or public place or of any private property not his or her own or to cause the obstruction of any ditch, drain, or gutter.

(Ord. 17, passed 2-14-1966) Penalty, see § 93.99

#### **§ 93.07 HANDBILLS, STICKERS, DODGERS, AND THE LIKE.**

No person shall distribute, throw, drop, or scatter in any street, alley, or public place of, in, or upon any vehicle located in any street, alley, or public place any posters, handbills, cards, samples, or other matter used for the purpose of advertising in such a manner as to result in the littering of any street, alley, or public place.

(Ord. 17, passed 2-14-1966) Penalty, see § 93.99

#### **§ 93.08 RESTRICTIONS AS TO POSTING.**

(A) No person shall attach, place, paint, write, stamp, or paste any sign, advertisement, or other matter upon any: lamp post, electric light, railway, telephone, or telegraph pole, shade tree, fire hydrant, or boxing covering them; or bridge, pavement, sidewalk, or crosswalk, public building, or any property or thing belonging to the village, or any article or thing within any park; provided, that this division (A) shall not be construed to prevent any public officer from so doing for any public purpose.

(B) No person shall attach, place, paint, write, stamp, or paste any sign, advertisement, or other matter upon any house, wall, fence, gate, post, or tree box without first having obtained the written permission of the owner, agents, or occupants of the premises and having complied with the Building Code.

(Ord. 17, passed 2-14-1966) Penalty, see § 93.99

#### **§ 93.99 PENALTY.**

(A) Any person violating the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not less than \$10 or more than \$100 and the costs of prosecution or by imprisonment in the county jail for a period of not more than 30 days or by both such fine and imprisonment in the discretion of the court.

(B) A person who violates § 93.04 is responsible for a civil infraction, subject to a civil fine of not more than \$100 and costs.

(Ord. 17, passed 2-14-1966; Ord. 2004-1, passed 9-20-2004)

## **TITLE XI: BUSINESS REGULATIONS**

### Chapter

- 110. GENERAL PROVISIONS**
- 111. AUTO PARTS DEALERS**
- 112. ALCOHOLIC BEVERAGES**
- 113. SEXUALLY ORIENTED BUSINESSES**
- 114. TELECOMMUNICATIONS**
- 115. AMUSEMENTS AND RECREATION**
- 116. MEDICAL MARIJUANA**

## **CHAPTER 110: GENERAL PROVISIONS**

### Section

#### *General Provisions*

110.01 Public exhibitions and entertainments

110.02 Residential sales

#### *Peddlers, Itinerant Merchants, and Solicitors*

- 110.15 Definitions
- 110.16 License requirement
- 110.17 Application procedure
- 110.18 Standards for issuance
- 110.19 Revocation procedure
- 110.20 Standards for revocation
- 110.21 Appeal procedure
- 110.22 Exhibition of identification
- 110.23 City policy on soliciting
- 110.24 Notice regulating soliciting
- 110.25 Duty of solicitors to ascertain notice
- 110.26 Prohibited solicitation
  
- 110.99 Penalty

## GENERAL PROVISIONS

### § 110.01 PUBLIC EXHIBITIONS AND ENTERTAINMENTS.

(A) No person or persons shall make or exhibit in the village any circus, menagerie, caravan, theatrical or other exhibition, or give any concert, vocal or instrumental, or exhibit any natural or artificial curiosity, or give any public entertainment or amusement of any kind, without a license therefor, but this section shall not be construed to extend to any exhibition, concert, fair, or festival, by or in behalf of any public or private school, or any church or benevolent society, or by any organization the primary object of which shall not be the earning of money, nor to any lecture on historic, liter-art, or scientific subjects. There shall be charged and collected for said license, for the use of the village, under this section, \$10 per day for every circus, caravan, or menagerie, and \$5 for every side show accompanying the same, and for every theatrical or other entertainment mentioned in this section, and not expected from its provisions, not less than \$5 per day.

(B) All applications for a license shall be made to the Village Clerk. Before issuing any license, the fee therefor as provided in this section shall be paid to the Village Clerk, and each license shall be signed by the Clerk. No license shall be granted for any time beyond the first Monday in June thereafter, and all licenses, not expiring before said time, shall expire at that time, and no license shall be transferable and the Village Council may cancel any license at any time for cause.

(Ord. 12, passed - -) Penalty, see § 110.99

### § 110.02 RESIDENTIAL SALES.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DEPOSIT.** A refundable fee set to ensure compliance with ordinance rules and requirements.

**LICENSE.** An official document providing permission to conduct a sale.

**RESIDENTIAL SALES.** The sale of items from a noncommercial or nonindustrial property. This definition includes, but is not limited to, garage, rummage, estate, and moving sales.

(B) *Rules.*

(1) No residential sales will be held within the village limits without first obtaining a license and paying a deposit to the Village Clerk's office.

(2) The license and deposit fee shall be set by vote of the Village Council.

(3) The deposit fee shall be refunded on completion of cleanup of all items associated with the sale including, but not limited to, all signs, postings, and notices.

(4) The refund of the cleanup deposit is subject to satisfactory inspection by an official of the village or individual as designated by the village.

(5) Cleanup shall be completed within 24 hours from completion of the sale.

(6) Failure to comply with the requirements in this section will cause forfeiture of deposit.

(7) The license fee shall be waived for sales held by charitable organizations and senior citizens over the age of 65.



(8) No single property, location, or organization shall be licensed for more than four sales within a calendar year. A break of a minimum period of four days shall be between any two sales conducted at the same physical site or property.

(9) No sale shall exceed a four-day consecutive period. The sale must run consecutive days.

(Ord. 2001-4, passed 5-21-2001) Penalty, see § 110.99

## **PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS**

### **§ 110.15 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUSINESS.** The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

**GOODS.** Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

**ITINERANT MERCHANT.** Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the city.

**PEDDLER.** Any person, not an itinerant merchant, who:

- (1) Travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or
- (2) Without traveling from place to place, sells or offers goods for sale from any public place within the city.

**SOLICITOR.** Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

### **§ 110.16 LICENSE REQUIREMENT.**

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the city.

(B) The fee for the license required by this chapter shall be as set from time to time by the City Council.

(C) No license issued under this chapter shall be transferable.

(D) All licenses issued under this chapter shall expire 90 days after the date of issuance thereof.

Penalty, see § 110.99

### **§ 110.17 APPLICATION PROCEDURE.**

(A) All applicants for licenses required by this chapter shall file an application with the Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

- (1) The name and address of the applicant;
- (2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the city;
  - (b) The local address of such individual;
  - (c) The permanent address of such individual;
  - (d) The capacity in which such individual will act;
- (3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;
- (4) The time period or periods during which it is proposed to carry on applicant's business;
- (5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;
  - (b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;
  - (c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;
- (6) The nature of the advertising proposed to be done for the business;
- (7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:

- (1) A description of the applicant;

(2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

(C) All applicants for licenses required by this chapter shall attach to their application, if required by the city, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

Penalty, see § 110.99

#### **§ 110.18 STANDARDS FOR ISSUANCE.**

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant:

- (1) Has been convicted of a crime of moral turpitude; or
- (2) Has made willful misstatements in the application; or
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like; or
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts.

will constitute valid reasons for disapproval of an application.

#### **§ 110.19 REVOCATION PROCEDURE.**

Any license or permit granted under this chapter may be revoked by the Clerk after notice and hearing, pursuant to the standards in § 110.20. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten days prior to the date set for the hearing.

#### **§ 110.20 STANDARDS FOR REVOCATION.**

A license granted under this chapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application; or
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or
- (C) Any violation of this chapter; or
- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

#### **§ 110.21 APPEAL PROCEDURE.**

(A) Any person aggrieved by a decision under §§ 110.18 or 110.20 shall have the right to appeal to the City Council. The appeal shall be taken by filing with the City Council, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The City Council shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 110.19.

(B) The order of the City Council after the hearing shall be final.

#### **§ 110.22 EXHIBITION OF IDENTIFICATION.**

(A) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the city shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) The Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

Penalty, see § 110.99

#### **§ 110.23 CITY POLICY ON SOLICITING.**

It is hereby declared to be the policy of the city that the occupants of the residences in the city shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residences.

#### **§ 110.24 NOTICE REGULATING SOLICITING.**

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

“NO SOLICITORS INVITED”

(B) The letters shall be at least one-third-inch in height. For the purpose of uniformity, the cards shall be provided by the Chief of Police to persons requesting, at the cost thereof.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

#### **§ 110.25 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.**

(A) It shall be the duty of every solicitor upon going onto any premises in the city upon which a residence is located to first examine the notice provided for in § 110.24 if any is attached, and be governed by the statement contained on the notice. If the notice states “NO SOLICITORS INVITED,” then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

Penalty, see § 110.99

#### **§ 110.26 PROHIBITED SOLICITATION.**

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 110.24 above.

Penalty, see § 110.99

#### **§ 110.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person who shall violate any clause, provision, or section of § 110.01 shall, on conviction thereof, be punished by a fine not exceeding \$50 or by imprisonment in the county jail or the jail of the village not exceeding 30 days, or both such fine and imprisonment in the discretion of the court, together with the costs of prosecution, the offender may be imprisoned in the county jail or the jail of the village for a term not exceeding 30 days, unless payment of such costs and fine be sooner paid. Every day that a violation of § 110.01 continues shall be treated as a separate offense.

(Ord. 12, passed - -)

## **CHAPTER 111: AUTO PARTS DEALERS**

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### Section

- 111.01 Definitions
- 111.02 License required
- 111.03 Application for license
- 111.04 Granting of license; fence requirements
- 111.05 License fee
- 111.06 License rules and regulations
- 111.07 Revocation of license
- 111.08 Pawning, loaning, advances, and the like
- 111.09 Record book
- 111.10 Prohibitions on transacting business; reporting car information to Police Department
- 111.11 Display of goods

**Cross-reference:**

*Business regulations, general provisions, see Chapter 110*

*International Property Maintenance Code, see § 150.01*

*Land usage, general provisions, see Chapter 150*

**§ 111.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DEALER IN USED AUTO PARTS.** Any person who engages in the business of dismantling automobiles, or who deals in, buys, sells, or receives junk cars, wrecked cars, used or second hand auto parts, accessories, or salvaged automobiles.

**PERSON.** One or more natural persons, firms, co-partnerships, corporations, and all associations of natural persons, incorporated or unincorporated, whether acting by themselves, or by a servant, agent, or employee, shall be equally liable as principals.

(Ord. 14, passed - -)

**§ 111.02 LICENSE REQUIRED.**

No person, directly or indirectly, himself or herself, or by his or her clerk, agent, or employee shall engage in the business of a dealer in used auto parts, within the corporate limits of the village, without having first obtained a license thereof from the Village Clerk.

(Ord. 14, passed - -) Penalty, see § 111.99

**§ 111.03 APPLICATION FOR LICENSE.**

Applications for such licenses shall be made in writing to the Village Council and filed with the Village Clerk; it shall give all such information as may be deemed necessary for the proper enforcement of the provisions of this chapter, including the name and address of the applicant, the business or trade name under which the applicant is to operate, previous experience in the business, the names and addresses of all persons interested in the issuing of the license, and, if the applicant is a corporation, the names and addresses of the officers. It shall contain an agreement upon the part of the applicant that he or she will accept the license, if granted him or her, upon the condition that it may be suspended or revoked by the Village Council on proper cause shown.

(Ord. 14, passed - -) Penalty, see § 111.99

**§ 111.04 GRANTING OF LICENSE; FENCE REQUIREMENTS.**

If the village is satisfied that the applicant is a suitable person to engage in the business of dealer in used auto parts, it shall grant such license; if the business of a dealer in used auto parts is to be conducted on a vacant lot or in a partially enclosed structure, no license shall be granted until the applicant therefor shall have enclosed such property with a properly painted tight board fence at least eight feet high and erected in such manner as to obliterate the premises from view, which fence shall at all times be properly maintained, painted, and kept in repair by the licensee.

(Ord. 14, passed - -) Penalty, see § 111.99

**§ 111.05 LICENSE FEE.**

When such license has been granted, the Village Clerk shall issue the same upon payment of the following license fee to the Village Treasurer: dealer in used auto parts, \$25 per year.

(Ord. 14, passed - -)

**§ 111.06 LICENSE RULES AND REGULATIONS.**

Each license issued under this chapter shall designate the particular place in said village where such business may be conducted and it shall be unlawful for any licensee to engage in such business at any place other than that designated in such license. Such license shall be subject to all the terms and conditions of this chapter. It shall be always conspicuously displayed on the licensed premises. It shall not be assignable or transferable. No person, except the licensee, directly or indirectly shall do business or be permitted to do business under said license. It shall be unlawful for such licensee to remove, deface, or obliterate anything contained in such license.

(Ord. 14, passed - -) Penalty, see § 111.99

**§ 111.07 REVOCATION OF LICENSE.**

Licenses issued under the provisions of this chapter shall be revoked by the Village Council at any time for a violation of any of the provisions of this chapter, or if it shall be satisfied that said business as conducted is detrimental to the interest of the public. All licenses shall expire on February 1 of each year unless sooner revoked by the Council.

(Ord. 14, passed - -)

### **§ 111.08 PAWNING, LOANING, ADVANCES, AND THE LIKE.**

No licensee shall receive, in the course of his or her business, any article by way of pledge or pawn, nor shall he or she loan or advance any sum of money on the security of any article or thing.

(Ord. 14, passed - -) Penalty, see § 111.99

### **§ 111.09 RECORD BOOK.**

Each licensee shall keep a record book in accordance with the provisions of the state law, relative to description of articles received in the course of business.

(Ord. 14, passed - -) Penalty, see § 111.99

### **§ 111.10 PROHIBITIONS ON TRANSACTING BUSINESS; REPORTING CAR INFORMATION TO POLICE DEPARTMENT.**

No licensee shall purchase, receive, or take any article mentioned in this chapter from any person under the age of 18 years, from any intoxicated person, from a habitual drunkard, or from any person known by reputation or suspected by him or her to be a thief or an associate of thieves, or a receiver of stolen property. No licensee shall wreck or cause to be wrecked, dismantled, or disassembled any used or second-hand automobile, without first having reported the license number, motor number, and serial number of such used or second hand automobile to the Police Department. Such report shall be made 24 hours before dismantling upon official forms to be furnished by the Police Department.

(Ord. 14, passed - -) Penalty, see § 111.99

### **§ 111.11 DISPLAY OF GOODS.**

No licensee shall make use of any street, sidewalk, or other part of the highway, or any other property not in his or her possession, or under his or her control for the storage or display of second-hand auto parts, accessories, dismantled or salvaged automobiles, or other second hand goods.

(Ord. 14, passed - -) Penalty, see § 111.99

### **§ 111.99 PENALTY.**

Any violation of or failure to comply with the provisions of this chapter shall be punished by a fine, not to exceed \$100, and costs of prosecution, or by imprisonment not to exceed 90 days, or by both such fine and imprisonment in the discretion of the court, and when such fine and costs are imposed the court shall provide that in default of the payment thereof, the offender shall be imprisoned for a period not to exceed 90 days, unless such fine and costs shall be sooner paid; provided no person shall be imprisoned for a single violation of this chapter for a longer period than 90 days.

(Ord. 14, passed - -)

## **CHAPTER 112: ALCOHOLIC BEVERAGES**

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### Section

#### *Liquor Licenses*

112.01 Title

112.02 Applications; contents; fees

112.03 Public hearing; approval

112.04 Refusal to approve

112.05 Length of approval

112.06 Standards and guidelines for objection to renewal of request to State Liquor Control Commission or request for revocation

112.07 Public hearing; refusal to renew or revocation

112.08 Procedure at public hearing; findings and determination; notification

112.09 Effective date

112.10 Application for approval of State Liquor Control Commission License

### **LIQUOR LICENSES**

#### **§ 112.01 TITLE.**

This subchapter shall be known and cited as the “Village of Eau Claire Liquor License Ordinance” and may be referred to herein as “this subchapter” or “subchapter”.

(Ord. 2006-1, passed 3-20-2006)

## **§ 112.02 APPLICATIONS; CONTENTS; FEES.**

(A) *Generally.* Whenever a person, joint venture, partnership, limited liability company, or corporation which is in the process of obtaining a license from the State Liquor Control Commission to sell alcoholic beverages requests approval from the village for the issuance of the license from the State Liquor Control Commission, the person, joint venture, partnership, limited liability company, or corporation shall file a formal application for approval with the Village Council.

(B) *Application verification/information.* The application to be filed with the Village Clerk shall be verified by oath or affidavit and shall contain the following information:

(1) The name, age, and address of the applicant in the case of an individual; or, in the case of a partnership, the persons entitled to share in the profits thereof; in the case of a corporation, the names and addresses of the officers, directors, and shareholders;

(2) The location and description of the premises or place of business which is to be operated under such license;

(3) A statement whether applicant has made application for a similar or other license on premises other than described in this application, and the disposition of such application;

(4) A statement that applicant has never been convicted of a felony and is not disqualified to receive a license by reason of any matter or thing contained in this subchapter or the laws of the state;

(5) A statement that the applicant will not violate any of the laws of the state or of the United States or any ordinances of the village in the conduct of its business; and

(6) The application shall be accompanied by building and plat plans showing the entire structure and premises and in particular the specific areas where the license is to be utilized. The plans shall demonstrate adequate off-street parking, lighting, refuse disposal facilities, and, where appropriate, adequate plans for screening and noise control. The premises at which the license is to be located shall be inspected by the appropriate village official prior to the public hearing set forth in § 112.03. The premises shall comply with all ordinances of the village.

(C) *Processing fee.* Along with the application, the applicant shall pay a processing fee which shall be set by the Village Council by resolution from time to time.

(D) *Restrictions on licenses.* No license shall be issued to:

(1) A person whose license, under this subchapter, has been revoked for cause;

(2) A person who, at the time of application or renewal of any license issued hereunder, would not be eligible for such license upon a first application;

(3) A joint venture, unless all of the members of such joint venture shall qualify to obtain a license;

(4) A partnership, unless all of the members of such partnership shall qualify to obtain a license;

(5) A limited liability company, if any officer, member, manager, or director thereof would not be eligible to receive a license hereunder for any reason;

(6) A corporation, if any officer, manager, or director thereof, or a stock owner or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license hereunder for any reason;

(7) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee;

(8) A person who has been convicted of a violation of any federal or state law concerning the manufacture, possession, or sale of alcoholic liquor or a controlled substance;

(9) A person who does not own the premises for which a license is sought or does not have a lease therefor for the full period for which the license is issued, or to a person, joint venture, partnership, limited liability company, or corporation that does not have sufficient financial assets to carry on or maintain the business;

(10) Any law enforcing public official or any member of the Village Council, and no such official shall be interested in any way either directly or indirectly in the manufacture, sale, or distribution of alcoholic liquor;

(11) For premises where there exists a violation of the applicable building, electrical, mechanical, plumbing, or fire codes, applicable zoning regulations, applicable public health regulations, or any other applicable village ordinance;

(12) For any new license or for the transfer of any existing license unless the sale of beer, wine, or spirits is shown to be incidental and subordinate to other permitted business uses upon the site such as, but not limited to, food sales, motel operations, or recreational activities;

(13) For premises where it is determined by a majority of the Village Council that the premises do not or will not, reasonably soon after commencement of operations, have adequate off-street parking, lighting, refuse disposal facilities, screening, noise, or nuisance



control or where a nuisance does or will exist; and

(14) Where the Village Council determines, by majority vote, that the proposed location is inappropriate considering: the desirability of establishing a location in developed, commercial areas, in preference to isolated, undeveloped areas; the attitude of adjacent residents and property owners; traffic safety; accessibility to the site from abutting roads; capability of abutting roads to accommodate the commercial activity; distance from public or private schools for minors; proximity of the inconsistent zoning classification; and accessibility from primary roads or state highways.

(E) *Term of license.* Approval of a license shall be for a period of one year subject to annual renewal by the Village Council upon continued compliance with the regulations of this subchapter. Approval of a license shall be with the understanding that any necessary remodeling or new construction for the use of the license shall be commenced within six months of the action of the Village Council or the State Liquor Control Commission approving such license, whichever last occurs. Any unusual delay in the completion of such remodeling or construction may subject the license to revocation.

(F) *Reservation of authority.* No such applicant for a liquor license has the right to the issuance of such license to him, her, or it, and the Village Council reserves the right to exercise reasonable discretion to determine who, if anyone, shall be entitled to the issuance of such license. Additionally, no applicant for a liquor license has the right to have such application processed and the Village Council further reserves the right to take no action with respect to any application filed with the Village Council. The Village Council further reserves the right to maintain a list of all applicants and to review the same when, in its discretion, it determines that the issuance of an additional liquor license is in the best interests of the village at large and for the needs and convenience of its citizens.

(Ord. 2006-1, passed 3-20-2006) Penalty, see § 10.99

### **§ 112.03 PUBLIC HEARING; APPROVAL.**

The Village Council shall set a date for a public hearing at which time comments can be received from the general public in regard to the application and at which time the applicant or its agents can be questioned by the Council. After passing a resolution setting a public hearing, the Village Clerk shall cause notice to be published in a local newspaper in general circulation in the village at least ten business days prior to the hearing. Approval of the application shall be by a majority of the Council.

(Ord. 2006-1, passed 3-20-2006)

### **§ 112.04 REFUSAL TO APPROVE.**

The Village Council's determination to approve or refuse to approve shall be based upon satisfactory compliance of the restrictions set forth in § 112.02(D). If the Village Council refuses to approve the application, the applicant shall be advised in writing and shall be advised as to the basis for the refusal.

(Ord. 2006-1, passed 3-20-2006)

### **§ 112.05 LENGTH OF APPROVAL.**

Approval of the applicant as a licensee of the State Liquor Control Commission shall be continuing until a transfer to a subsequent applicant or until action is taken by the Village Council as set forth hereafter to object to the annual renewal required by the State Liquor Control Commission or until request by the Village Council to the State Liquor Control Commission that the license be revoked.

(Ord. 2006-1, passed 3-20-2006)

### **§ 112.06 STANDARDS AND GUIDELINES FOR OBJECTION TO RENEWAL OF REQUEST TO STATE LIQUOR CONTROL COMMISSION OR REQUEST FOR REVOCATION.**

The Village Council may object to the annual renewal of the license by the State Liquor Control Commission or may request that the license be revoked upon a determination based on a preponderance of the evidence presented at the public hearing described hereafter, that any of the following exists:

(A) Violation of any law of the state or United States, or violation of any ordinance of the village;

(B) Maintaining of a nuisance upon the premises including, but not limited to, any of the following:

(1) A pattern of patron conduct in the neighborhood of the licensed establishment which is in violation of the law and/or disturbs the peace, order, and tranquility of the neighborhood; and/or

(2) Entertainment which disturbs the peace, order, and tranquility of the neighborhood.

(C) Making a false or fraudulent statement or answer in the application described in § 112.02(B);

(D) Nonpayment of real property taxes and/or personal property taxes as same come due; and/or

(E) Violation of any of the restrictions on licenses set forth in § 112.02(D).

(Ord. 2006-1, passed 3-20-2006)

### **§ 112.07 PUBLIC HEARING; REFUSAL TO RENEW OR REVOCATION.**

(A) Upon objection to the annual renewal of a license by the State Liquor Control Commission or a request for revocation of a license by the Village Council, as referenced in § 112.06, a public hearing shall be conducted by the Village Council as a whole at a regular or

special meeting.

(B) The Village Clerk shall serve the license holder by first-class mail, mailed not less than ten days prior to the public hearing, which notice shall contain the following information:

- (1) Notice of proposed action;
- (2) Date, time, and location of the public hearing;
- (3) A detailed statement as to the reasons for the proposed action citing specific standards and guidelines the licensee has not complied with or has otherwise violated;
- (4) A statement as to the licensee’s rights at the hearing, including the opportunity to defend against the allegations by confronting any adverse witness and by presenting witnesses, evidence, and arguments; and
- (5) A statement that the licensee has the right to be represented by an attorney.

(Ord. 2006-1, passed 3-20-2006)

**§ 112.08 PROCEDURE AT PUBLIC HEARING; FINDINGS AND DETERMINATION; NOTIFICATION.**

(A) At the public hearing referenced in § 112.07, the supervisor shall act as the presiding official. The village representative shall present witnesses and evidence in support of the proposed action; the witnesses called by or on behalf of the village may be cross-examined by the licensee or the licensee’s attorney. The licensee shall thereafter present any witnesses, evidence, or argument against the proposed action; the village representative may thereafter cross-examine the licensee’s witnesses. Any individual Council member may question witnesses called by either the licensee or the village. There shall be an opportunity for comments from the general public.

(B) Following the public hearing, the Village Council shall make specific findings of fact and determinations in regard to the proposed action.

(C) If the Village Council passes a resolution to request that the license not be renewed by the State Liquor Control Commission or to have the license revoked, a certified copy of the resolution and a certified copy of the separate statement of findings and determinations shall be delivered to the licensee and to the State Liquor Control Commission.

(Ord. 2006-1, passed 3-20-2006)

**§ 112.09 EFFECTIVE DATE.**

This subchapter became effective 20 days after the date of its enactment.

(Ord. 2006-1, passed 3-20-2006)

**§ 112.10 APPLICATION FOR APPROVAL OF STATE LIQUOR CONTROL COMMISSION LICENSE.**

VILLAGE OF EAU CLAIRE’S  
 APPLICATION FOR APPROVAL OF  
 MICHIGAN LIQUOR CONTROL COMMISSION LICENSE

**I. APPLICATION INFORMATION**

- 1. Name of applicant: \_\_\_\_\_
- 2. Current residential address of applicant: \_\_\_\_\_  
\_\_\_\_\_
- 3. Current business address of applicant: \_\_\_\_\_  
\_\_\_\_\_
- 4. Date of birth of applicant: \_\_\_\_\_
- 5. Social Security number of applicant: \_\_\_\_\_
- 6. Is applicant a business entity (corporation, partnership, limited liability company)? If so, please identify the type of entity and provide the following information:
  - a. Name of each corporate shareholder, partner or member:  
\_\_\_\_\_
  - b. Address of each shareholder, partner or member: \_\_\_\_\_  
\_\_\_\_\_
  - c. Nature and extent of investment of each shareholder, partner or member:  
\_\_\_\_\_

d. Name and address of each officer, director and shareholder if the applicant is a corporation:

\_\_\_\_\_  
\_\_\_\_\_

II. LOCATION INFORMATION

1. Address of proposed location: \_\_\_\_\_

2. Description of the premises or place of business which is to be operated under the license:

\_\_\_\_\_  
\_\_\_\_\_

3. Has the applicant, or any person associated with the applicant made application for a similar or other license on premises other than premises described in this application?

\_\_\_\_\_

If so, please state the date of each such application and please state the location of the premises for each such application:

\_\_\_\_\_  
\_\_\_\_\_

III. CRIMINAL HISTORY

1. Has the applicant ever been convicted of a felony? \_\_\_\_\_

If so, please state the date of each conviction, court of each conviction, and crime related to each conviction:

\_\_\_\_\_  
\_\_\_\_\_

2. Has any person affiliated with the applicant been convicted of a felony? \_\_\_\_\_

If so, please state the date of each conviction, court of each conviction, and the charge related to each conviction:

\_\_\_\_\_  
\_\_\_\_\_

IV. AFFIRMATION

I hereby swear and affirm that applicant will not violate any of the laws of the State of Michigan, the United States of America or any ordinances of the Village of Eau Claire in the conduct of applicant's business. I hereby swear and affirm that the information contained in this application is true and accurate.

Dated: \_\_\_\_\_

Applicant signature

STATE OF MICHIGAN )

)ss:

COUNTY OF BERRIEN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

ADDITIONAL INFORMATION DEEMED PART OF THIS APPLICATION:

Please be advised that in accordance with the Ordinances of the Village of Eau Claire, this Application must be accompanied by building and plat plans showing the entire structure and premises; and in particular the specific areas where the license is to be utilized. The plans shall demonstrate adequate off-street parking, lighting, refuse disposal facilities and, where appropriate, adequate plans for screening and noise control. The premises at which the license is to be located shall be inspected by the appropriate Village of Eau Claire Officials prior the public hearing. The premises shall comply with all Ordinances of the Village of Eau Claire.

(Ord. 2006-1A, passed 3-20-2006)

## CHAPTER 113: SEXUALLY ORIENTED BUSINESSES

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### Section

- 113.01 Title
- 113.02 Purpose and intent
- 113.03 Definitions
- 113.04 Business use requirements
- 113.05 Prohibited activities related to nudity
- 113.06 Regulations specifically applicable to adult physical culture businesses
- 113.07 Licensing requirements
  
- 113.99 Penalty

#### **§ 113.01 TITLE.**

This chapter shall be known and cited as the “Village of Eau Claire Sexually Oriented Business Ordinance” and may be referred to herein as “this chapter” or “chapter”.

(Ord. 2006-3, passed 4-18-2006)

#### **§ 113.02 PURPOSE AND INTENT.**

(A) The purpose and intent of these provisions is to regulate sexually oriented businesses and related activities to promote the health, safety, and welfare of patrons and employees of such businesses, and to promote the health, safety, and welfare of the citizens of the village.

(B) In the development and execution of this chapter, it is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or when one or more of them is located in proximity to a residential zone, thereby having a deleterious effect upon the adjacent areas. These controls are for the purpose of preventing a concentration of these uses within any one area, or to prevent deterioration or blighting of a surrounding residential neighborhood.

(C) There is convincing documented evidence, consulted by the village, of the deleterious effect that sexually oriented businesses have on both existing businesses around them and the surrounding residential areas to which they are adjacent.

(D) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the village. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(E) These provisions are not intended, nor shall they have the effect of, imposing a limitation or restriction on the content of any communicative materials including, but not limited to, sexually oriented materials that are protected by the First Amendment to the United States Constitution or by Article I, § 5 of the State Constitution.

(F) Additionally, it is not the intent of the provisions of this chapter, nor shall it have the effect of, restricting or denying access by adults to sexually oriented materials that are protected by said federal and state constitutions.

(G) Further, it is not the intent of these provisions, nor shall they have the effect of, denying access by the distributors and exhibitors of sexually oriented entertainment to their target market.

(H) These regulations shall not be interpreted as intending to legitimize any activities that are prohibited by federal or state law, or by any other ordinance of the village.

(Ord. 2006-3, passed 4-18-2006)

#### **§ 113.03 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

##### ***ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE.***

(1) A commercial establishment that, as one of its business purposes or services, offers for sale or rental for any form of consideration, any one or more of the following:

(a) Books, magazines, periodicals, or other printed and/or electronic or digital matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations or media which depict or describe specified sexual activities or

specified anatomical areas; or

(b) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

(2) A commercial establishment may have other business purposes or services that do not involve the offering for sale or rental of the material identified in divisions (1)(a) or (1)(b) above, and still be categorized as an **ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE**. The sale or rental of such material shall be deemed to constitute a business purpose or service of an establishment if: such materials occupy 20% or more of the floor area of visible inventory within the establishment; or the business derives a significant or substantial portion of its revenues from such materials.

**ADULT CABARET.** A nightclub, bar, restaurant, lounge, or similar commercial establishment that regularly features:

(1) Persons who appear in a state of nudity;

(2) Live performances that are characterized by the exposure of specified sexual activities or specified anatomical areas; or

(3) Films, motion pictures, videocassettes, slides, electronic, digital, other photographic reproductions, or visual media that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT MOTION PICTURE THEATER.** A commercial establishment which, for any form of consideration, regularly and primarily shows films, motion pictures, video cassettes, slides, or other photographic reproductions or visual media that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT PHYSICAL CULTURE BUSINESS.** Any commercial establishment, club, or business, by whatever name designated, which regularly offers or advertises or is equipped or arranged to provide massages, body rubs, alcohol rubs, physical stimulation, baths, or other similar treatment by any person. An **ADULT PHYSICAL CULTURE BUSINESS** may include, but is not limited to, establishments commonly known as massage parlors, health spas, sauna baths, Turkish bathhouses, and steam baths. The following uses shall not be included within the definition of an **ADULT PHYSICAL CULTURE BUSINESS**:

(1) Businesses which routinely provide such services by a licensed physician, a licensed chiropractor, a licensed osteopath, a licensed physical therapist, a licensed practical nurse practitioner, a professional massage therapist, or any other similarly licensed medical professional;

(2) Fitness and recreation centers;

(3) Electrolysis treatment by a licensed operator of electrolysis equipment;

(4) Continuing instruction in martial or performing arts, or in organized athletic activities;

(5) Hospitals, nursing homes, medical clinics, or medical offices;

(6) Barbershops or beauty parlors and salons which offer massages to the scalp, the face, the neck, or the shoulders only; and

(7) Adult photography studios whose principal business does not include the taking of photographs of specified anatomical areas.

**PROFESSIONAL MASSAGE THERAPIST.** An individual graduated from a school of massage licensed by the state's Post Secondary Proprietary School Unit, having completed a minimum of 500 hours of formal training and a member of the American Massage Therapy Association.

**SEXUALLY ORIENTED BUSINESS.** An adult bookstore, video store, or novelty store, adult cabaret, adult motion picture theater, or a commercial enterprise that regularly features the sale, rental, or exhibition for any form of consideration, of books, films, videos, DVDs, magazines, or other visual representation of live performances which are characterized by an emphasis on the exposure or display of specified sexual activities or specified anatomical areas. For purposes of this chapter, an adult physical culture business shall also be considered as a **SEXUALLY ORIENTED BUSINESS**.

**SPECIFIED ANATOMICAL AREAS.**

(1) Less than completely and opaquely covered human genitals, pubic region, buttock, or anus; or female breast immediately below the top of the areola; or

(2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES.**

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse, or sodomy; or

(3) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

**ZONING ADMINISTRATOR.** The person designated by the Village Board to administer the provisions of this chapter.

**ZONING ORDINANCE.** Zoning ordinance of Village of Eau Claire, Berrien County, Michigan, as amended.

(Ord. 2006-3, passed 4-18-2006)

## **§ 113.04 BUSINESS USE REQUIREMENTS.**

(A) All sexually oriented businesses must be located within a zone district of the village zoning ordinance in which sexually oriented

businesses are specifically listed as a special land use and comply with all regulations in the village zoning ordinance applicable to the use.

(B) Any sexually oriented business shall not be located within a 1,000-foot radius of any other such use, measured in a straight line from the nearest lot line to the nearest lot line.

(1) The Village Council may grant a waiver of this requirement. Waivers of these provisions shall only be granted after the Village Council makes the following findings:

(a) The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed;

(b) The proposed use will not enlarge or encourage the development of a blighted or deteriorating area in its immediate surroundings;

(c) The establishment of a regulated use, or an additional regulated use, in the area will not be contrary to any program of neighborhood conservation; and

(d) All applicable state laws and local ordinances will be observed.

(2) As part of the granting of any waiver, the Village Council may impose any conditions or limitations upon the establishment, location, construction, maintenance, or operation of the sexually oriented business as may, in its judgment, be necessary for the protection of the public interest. Any evidence or guarantee may be required as proof that the conditions stipulated in connection therewith will be fulfilled.

(C) Notwithstanding the requirement of any other village ordinance, parking spaces shall be provided at the ratio of one space per person permitted by the maximum occupancy load established by local, county, state, fire, health, or building codes.

(D) No sexually oriented business shall be open for business prior to 10:00 a.m. nor after 11:00 p.m. However, employees or other agents or contractors of the business are permitted to be on the premises at other hours for legitimate business purposes such as maintenance, clean-up, preparation, record keeping, and similar purposes.

(E) No alcohol shall be served at any sexually oriented business.

(F) No sexually oriented business shall permit any person under the age of 18 to be on the premises of the business either as an employee or customer. Signs shall be conspicuously posted on both the exterior and interior walls of the entrances, in a location which is clearly visible to those entering or exiting the business, and using lettering which is at least two inches in height, that states: "Persons under the age of 18 years are not permitted to enter the premises."

(G) All parking areas and the building shall be well lighted to ensure the safety and security of patrons. These areas shall remain lighted for one hour after closing each night.

(H) (1) No person shall operate or maintain, or cause to be operated or maintained, a sexually oriented business within 500 feet of:

(a) A church, synagogue, mosque, temple, or other building used primarily for religious worship and related religious activities;

(b) A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, public or private schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. For purposes of this section, the term **SCHOOL** shall include the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(c) Family day care homes or group day care homes;

(d) An entertainment use which has as its principal use children or family entertainment;

(e) Any other sexually oriented business;

(f) A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis court, wilderness area, or other similar public land within the village which is under the control, operation, or management of the village or county; and

(g) The zoning district boundary of a residential district as defined in this chapter.

(2) For purposes of the uses listed in divisions (H)(1)(a) through (H)(1)(g) above, the distance limitations shall be measured in a straight line without regard to intervening structures or objects from the lot line occupied by the sexually oriented business to the nearest point of the lot line occupied by any of the uses listed in divisions (H)(1)(a) through (H)(1)(g) above.

(I) No advertisement, display of product, or entertainment on the premises, signs, or other exhibits which depict, describe, or relate to specified sexual activities and/or specified anatomical areas shall be displayed in window areas or any other area where they can be viewed by pedestrians and motorists on any street, sidewalk, or other public place.

(J) Any sign or signs proposed for sexually oriented business must comply with the requirements of this chapter and the village zoning ordinance, and shall not include photographs, silhouettes, drawings, or pictorial representations of any type, nor include any animated illumination or flashing illumination, that depict or appear to depict any specified sexual activities and/or specified anatomical areas.

(K) No building, premises, structure, or other facility that contains any sexually oriented business shall contain any other kind of



sexually oriented business.

(L) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the sales counter to every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The view required in this division (L) must be by direct line of sight from the manager's station and/or sales counter.

(M) Restrooms may not contain video reproduction equipment.

(N) No viewing room may be occupied by more than one person at any time. No openings of any kind are permitted between viewing rooms or booths.

(O) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candles as measured at the floor level. Required illumination shall be maintained at all times that any patron is present in the premises.

(P) The proposed site shall front upon and have direct access to a major or minor arterial road, as classified in the Village Master Plan. All ingress and egress shall be from that arterial road.

(Q) (1) Sexually oriented businesses shall not be enlarged, increased, or expanded in any manner without first applying for and receiving the approval of the Village Council as set forth in this chapter.

(2) Further, if a use subject to the control of this section is discontinued or abandoned for a period of more than 30 days, the use may not be reestablished without applying for and receiving the approval of the Village Council as set forth in this chapter.

(3) For purposes of this section, enlarging, increasing, or expanding a sexually oriented business shall mean an increase in floor areas occupied by the establishment or business by more than 25% as the floor areas exist on the date of the original license issuance.

(Ord. 2006-3, passed 4-18-2006) Penalty, see § 113.99

#### **§ 113.05 PROHIBITED ACTIVITIES RELATED TO NUDITY.**

(A) It shall be a violation of this chapter for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or engages in specified sexual activities.

(B) It shall also be a violation of this chapter for a person who knowingly or intentionally, in a sexually oriented business, appears in a seminude condition unless the person is an employee who, while seminude, shall be at least six feet from any patron or customer and on a stage at least two feet from the floor.

(C) It shall be a violation of this chapter for an employee, while seminude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, or another employee while that employee is seminude in a sexually oriented business.

(D) It shall be a violation of this chapter for an employee, while seminude, to knowingly and intentionally touch a customer or the clothing of a customer.

(Ord. 2006-3, passed 4-18-2006) Penalty, see § 113.99

#### **§ 113.06 REGULATIONS SPECIFICALLY APPLICABLE TO ADULT PHYSICAL CULTURE BUSINESSES.**

The requirements of this section apply to every adult physical culture business and to every massage technician in the village.

(A) No person shall give, or assist in the giving of, any massage to any person under the age of 18 years, unless the parent or guardian of such minor person has consented thereto in writing.

(B) Each operator shall erect and maintain, after obtaining the necessary permits, a recognizable and readable sign that will be posted adjacent to the main entrance identifying the premises as an adult physical culture business. The signs may not use any strobe lights or other flashing lights to illuminate the front of the business. Each operator shall have posted, in a conspicuous location upon the premises where the massage operation is to be conducted, the operator's permit as issued by the village.

(C) Each operator shall provide, in each room where massages are given, sufficient lighting and ventilation as required by the adopted Building Code of the village.

(D) Every adult physical culture business shall, from time to time and at least once a year, be inspected and approved by the County Health Department for the purpose of determining that the health provisions of the laws of the state and ordinances of the village are met.

(E) A minimum of one tub or shower, and one toilet and washbasin, shall be provided for the patrons in every adult physical culture business. If male and female patrons are to be served simultaneously, and if steam rooms and saunas are provided, separate steam rooms or saunas shall be provided for male and female patrons. Hot and cold running water under pressure shall be provided to all washbasins, bathtubs, showers, and similar equipment. Each washbasin shall be provided with soap or detergent and sanitary towels placed in permanently installed dispensers. No common use of towels or linens shall be permitted and reuse is prohibited unless they have been first laundered.

(F) In addition to the washbasin provided for patrons, a minimum of one separate washbasin shall be provided in each adult physical culture business, which basin shall provide soap or detergent and hot running water at all times and shall be located within or as practical to the area devoted to the performing of massage services.

(G) In addition, there shall be provided at each washbasin sanitary towels placed in permanently installed dispensers. If the washbasin for patrons is not in the toilet room but it is adjacent thereto, this washbasin shall meet the separate washbasin requirement if it is reasonably close to the area devoted to the performing of massages.

(H) A trash receptacle shall be provided in each toilet room.

(I) No person shall operate an adult physical culture business, or administer a massage as herein defined in any adult physical culture business, between the hours of 10:00 p.m. and 7:00 a.m.

(J) No person licensed to do business as herein provided shall operate under any name or conduct business under any designation not specified in his or her permit.

(K) No person shall enter, be, or remain in any part of an adult physical culture business licensed under this chapter while in possession of, consuming, using, or under the influence of any alcoholic beverage or drug. The owner, operator, and manager shall be responsible for ensuring that no such person shall enter or remain upon the licensed premises.

(L) No building or part thereof used as an adult physical culture business shall be equipped with any electronic, mechanical, or artificial device used, or capable of being used, for recording or videotaping, for monitoring the activities, conversation, or other sounds in the treatment room or room used by the business customers; nor shall any such equipment be used to record, videotape, or monitor a person receiving a massage without that person's written consent.

(M) No adult physical culture business issued a permit under this chapter shall send massage technicians off the premises for the purposes of administering a massage, nor shall the adult physical culture business or any part thereof be used by any employee, operator, manager, or owner to receive or accept such requests for off-premises massages, except as permitted by this chapter.

(N) Every massage technician working in an adult physical culture business shall display his or her license as required by this chapter in a conspicuous place within the adult physical culture business so that the same may be readily seen by persons entering the premises.

(O) No massage technician shall, while performing any massage or associated task, expose his or her genitals, buttocks, or, in the case of a female, her breast(s) or make intentional contact or occasional and repetitive contact with the genitals or anus of another person.

(P) All massage technicians and all other persons working in adult physical culture business shall wear clean outer garments. These garments must be of a fully opaque material and provide complete covering of the genitals, genital area, buttocks, and female breasts of such employees, massage technicians, and attendants.

(Q) Each establishment shall provide to all patrons clean, sanitary, and opaque coverings capable of covering the patron's specified anatomical areas, including the genital area and buttocks and female breasts. No common use of such coverings shall be permitted and reuse is prohibited unless coverings are adequately cleaned between uses.

(R) No massage technician, while performing any massage or associated task, shall be present in any room with another person unless that person's genitals, genital area, buttocks, and female breasts are fully covered.

(S) Standard or portable massage tables with durable, washable plastic or other waterproof material as covering shall be used for massage. Foam pads more than four inches thick or with a width of more than four feet may not be used. Beds, mattresses, and waterbeds may not be used in the administration of a massage.

(T) (1) Every person operating an adult physical culture business and each person doing business as a massage technician shall keep a record of the dates and hour of each treatment or service, name, address, and birth date of the patron to be verified by legal identification, name of technician administering such service, and description of the treatment or service rendered.

(2) These records shall be open to inspection by the village and/or county charged with the responsibility of preventing the spread of communicable and contagious diseases and to officials charged with the enforcement of the provisions of this chapter.

(3) The information furnished or secured as a result of any of these records shall be used only to ensure and enforce compliance with this chapter and other applicable laws and shall otherwise remain confidential. Officials charged with enforcement of this chapter shall periodically inspect these records to ensure compliance with this section.

(4) The records required by this division (T) shall be maintained for a period of not less than one year.

(U) No person holding an off-premises massage technician permit shall conduct massage, whether or not for compensation, at any hotel, motel, or other commercial establishment except in the office of the customer. For purposes of this division (U), a hotel room shall not be considered an office.

(V) All massage establishments and employees thereof shall comply with the licensing requirements and provisions of § 113.07.

(Ord. 2006-3, passed 4-18-2006) Penalty, see § 113.99

### **§ 113.07 LICENSING REQUIREMENTS.**

(A) Any person operating a sexually oriented business shall be required to obtain a valid sexually oriented business license issued by the village pursuant to this chapter. This requirement is in addition to the requirement of possessing a valid business license from the village, county, and/or state as required. For purposes of licensing of the establishment and its employees, the requirements of this section apply to any adult physical culture business in the same manner as a sexually oriented business.

(B) Employees of a sexually oriented business shall be required to obtain a license from the village as a sexually oriented business employee pursuant to this chapter prior to beginning employment.

(C) An application for a license must be made on a form provided by the village. All applicants must be qualified according to the provisions of this chapter.

(D) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file with the Zoning Administrator a notarized, completed application made on a form prescribed and provided by the Village Clerk. An application shall be considered complete if it includes the following information:

- (1) The applicant's full true name and any other names used in the preceding five years;
- (2) The current business address;
- (3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this chapter, or the applicant's Social Security number, to be used for the same purpose;
- (4) If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address, and phone number of the proposed sexually oriented business;
- (5) Written proof of age in the form of either a copy of a birth certificate and current photo, a current driver's license with picture, or other picture identification document issued by a governmental agency;
- (6) If applicable, the issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor;
- (7) If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process; and
- (8) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(E) If the person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant, if the person that wishes to operate a sexually oriented business is other than an individual (such as a corporation), each officer, director, general partner, shareholder, and/or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant. Each applicant must be qualified under this chapter, and each applicant shall be considered as a licensee if a license is granted.

(F) Any change in circumstance related to the information provided pursuant to divisions (D)(1) through (D)(8) above, which would render the information originally submitted false or incomplete, shall be forwarded, in writing, by certified mail, return receipt requested, to the Zoning Administrator within ten working days of the change of circumstances.

(G) The information provided by an applicant in connection with the application for a license under this chapter shall be maintained by the Zoning Administrator on a confidential basis, and may be disclosed only to other governmental agencies in connection with a law enforcement or public safety function, or as may otherwise be required by law or a court order.

(H) (1) Upon the filing of a completed application for a sexually oriented business license or a sexually oriented business employee license, the Zoning Administrator shall issue a temporary license to the applicant, which shall expire upon the final decision of the Zoning Administrator to deny or grant the license.

(2) Within 30 days after the receipt of a completed application, the Zoning Administrator shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Zoning Administrator shall not approve the license if one or more of the following is found to be true:

- (a) An applicant is less than 18 years of age;
- (b) An applicant is delinquent in the payment to the village of taxes, fees, fines, or penalties assessed against, or imposed upon, the applicant in relation to a sexually oriented business;
- (c) An applicant has failed to provide information, as required by division (D) above, for issuance of the license;
- (d) An applicant has been convicted of a specified criminal activity. The fact that a conviction is being appealed shall have no effect under this division (H)(2)(d). For the purpose of this division (H)(2)(d), **CONVICTION** means a conviction or a guilty plea, and includes a conviction of any business entity for which the applicant had, at the time of the offense leading to the conviction for a specified criminal activity, a management responsibility or a controlling interest;
- (e) The license application fee required by this chapter has not been paid;
- (f) An applicant has falsely answered a question or request for information on the application form; and/or
- (g) The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under the zoning ordinance, or has not received the required approval in accordance with this chapter.

(I) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. A sexually oriented business employee license shall contain a photograph of the licensee.

- (1) The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented

business so that it may be easily read at any time.

(2) A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing, and shall produce such license for inspection upon request by a Zoning Administrator, law enforcement officer, or other authorized village official.

(J) For the purpose of ensuring compliance with this chapter, an applicant, operator, or licensee shall permit Zoning Administrators and any other federal, state, county, or village agency in the performance of any function connected with the enforcement of this chapter, normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, those portions of the premises of a sexually oriented business which patrons or customers are permitted to occupy.

(K) (1) Each sexually oriented business license, including licenses for employees, shall expire one year from the date of issuance and may be renewed only by making application as provided in this chapter. An application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.

(2) When the village denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to the denial, the village finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date that the denial became final.

(L) (1) The village shall issue a written intent to suspend a license for a period not to exceed 30 days if it determines that a license or an employee of a licensee has:

(a) Violated or is not in compliance with any section of this chapter or applicable provision of the village zoning ordinance, or any other applicable village ordinances; or

(b) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

(2) An applicant that is ineligible for a license due to a suspension may qualify for a sexually oriented business license only when the time period required as a result of the suspension has elapsed.

(M) (1) The Zoning Administrator shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in division (L) above occurs and the license has been suspended within the preceding 12 months. The Zoning Administrator shall issue a written statement of intent to revoke a sexually oriented business license if he or she determines any one of the following:

(a) A licensee gave false or misleading information in the material submitted during the application process;

(b) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) A licensee has knowingly allowed prostitution on the premises;

(d) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended; and/or

(e) A licensee has knowingly allowed any specified sexual activities to occur in or on the licensed premises.

(2) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(3) When, after the notice and hearing procedure described in division (N) below, the Zoning Administrator revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation becomes effective, provided that, if the conditions of this section are met, a provisional license will be granted. If, subsequent to revocation, the Zoning Administrator finds that the basis for the revocation has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

(N) (1) If the Zoning Administrator determines that facts exist for denial, suspension, or revocation of a license under this chapter, the Zoning Administrator shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend, or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.

(2) The notification shall be directed to the most current business address on file with the Zoning Administrator.

(3) Within five working days of receipt of such notice, the respondent may provide to the Village Supervisor, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three days of the receipt of respondent's written response, the Village Supervisor shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.

(4) Within ten working days of the receipt of respondent's written response, the Village Board shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf.

(5) The Village Board shall issue a written opinion and decision within five business days of the hearing. If a response is not received by the Village Council in the time stated or, if after the hearing, the Village Council finds that grounds as specified in this chapter exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five days after the Village Supervisor sends, by certified mail, written notice that the license has been denied, suspended, or revoked.

(6) Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

(7) If the Village Council finds that no grounds exist for denial, suspension, or revocation of a license, then, within five days after the hearing, the Village Supervisor shall withdraw the intent to deny, suspend, or revoke the license, and shall so notify the respondent in

writing by certified mail of such action and shall contemporaneously issue the license.

(8) When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose license has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction.

(9) Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the village's enforcement of the denial, suspension, or revocation, the Zoning Administrator shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee, as the case may be, and will expire upon the court's entry of a judgment or order on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the village's enforcement.

(O) A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. 2006-3, passed 4-18-2006) Penalty, see § 113.99

#### **§ 113.99 PENALTY.**

(A) A violation of this chapter is a municipal civil infraction, for which the fine shall be in accordance with the following:

- (1) First violation: \$1,500;
- (2) Second violation within a three-year period from the date of the first violation: \$2,000;
- (3) Third violation within a three-year period from the date of the first violation: \$3,000; and
- (4) Fourth and any subsequent violations within a three-year period from the date of the previous violation: \$5,000.

(B) In addition to the above fines, the guilty party is subject to all other costs, damages, expenses, and other penalties as provided by law.

(C) Notwithstanding the provisions of this section, offenses committed on subsequent days within a period of one week following the issuance of a citation for a first offense shall all be considered separate first offenses. Each day during which any violation continues shall be deemed a separate offense.

(D) The rights and remedies provided herein are cumulative, and in addition to other remedies provided by law.

(Ord. 2006-3, passed 4-18-2006)

## **CHAPTER 114: TELECOMMUNICATIONS**

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### Section

- 114.01 Purpose
- 114.02 Conflict
- 114.03 Definitions
- 114.04 Permit required
- 114.05 Issuance of permit
- 114.06 Construction/engineering permit
- 114.07 Conduit or utility poles
- 114.08 Route maps
- 114.09 Repair of damage
- 114.10 Establishment and payment of maintenance fee
- 114.11 Modification of existing fees
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- 114.14 Annual report
- 114.15 Cable television operators
- 114.16 Existing rights
- 114.17 Compliance

114.18 Reservation of police powers

114.19 Authorized village officials

114.99 Penalty

#### **§ 114.01 PURPOSE.**

The purposes of this chapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Public Act 48 of 2002), being M.C.L.A. §§ 484.3101 to 484.3120, (“Act”) and other applicable law, and to ensure that the village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

(Ord. 2002-1, passed - -)

#### **§ 114.02 CONFLICT.**

Nothing in this chapter shall be construed in such a manner as to conflict with the Act, being M.C.L.A. §§ 484.3101 to 484.3120, or other applicable law.

(Ord. 2002-1, passed - -)

#### **§ 114.03 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACT.** The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Public Act 48 of 2002), being M.C.L.A. §§ 484.3101 to 484.3120, as amended from time to time.

**AUTHORITY.** The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to § 3 of the Act.

**MPSC.** The Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term “Commission” in the Act, being M.C.L.A. §§ 484.3101 to 484.3120.

**PERMIT.** A nonexclusive permit issued pursuant to the Act, being M.C.L.A. §§ 484.3101 to 484.3120, and this chapter to a telecommunications provider to use the public rights-of-way in the village for its telecommunications facilities.

**PERSON.** An individual, corporation, partnership, association, governmental entity, or any other legal entity.

**PUBLIC RIGHT-OF-WAY.** The area on, below, or above a public roadway, highway, street, alley, easement, or waterway. **PUBLIC RIGHT-OF-WAY** does not include a federal, state, or private right-of-way.

**TELECOMMUNICATION FACILITIES** or **FACILITIES.** The equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. **TELECOMMUNICATION FACILITIES** or **FACILITIES** do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in § 332(d) of part I of title III of the Communications Act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 C.F.R. § 20.3, and service provided by any wireless, two-way communication device.

**TELECOMMUNICATIONS PROVIDER, PROVIDER AND TELECOMMUNICATIONS SERVICES.** Those terms as defined in § 102 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. § 484.2102. **TELECOMMUNICATION PROVIDER** does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in § 332(d) of part I of the Communications Act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. § 332 and further defined as commercial mobile radio service in 47 C.F.R. § 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act, being M.C.L.A. §§ 484.3101 to 484.3120, and this chapter only, a **PROVIDER** also includes all of the following:

- (1) A cable television operator that provides a telecommunications service;
- (2) Except as otherwise provided by the Act, being M.C.L.A. §§ 484.3101 to 484.3120, a person who owns telecommunication facilities located within a public right-of-way; and
- (3) A person providing broadband internet transport access service.

**VILLAGE.** The Village of Eau Claire.

**VILLAGE COUNCIL.** The Village Council of the Village of Eau Claire or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the Village Council.

(Ord. 2002-1, passed - -)

#### **§ 114.04 PERMIT REQUIRED.**



(A) *Permit required.* Except as otherwise provided in the Act, being M.C.L.A. §§ 484.3101 to 484.3120, a telecommunications provider using or seeking to use public rights-of-way in the village for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.

(B) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with § 6(1) of the Act. A telecommunications provider shall file one copy of the application with the Village Clerk and one copy with the Village Attorney. Upon receipt, the Village Clerk shall make copies of the application and distribute a copy to [identify additional recipients]. Applications shall be complete and include all information required by the Act including, without limitation, a route map showing the location of the provider's existing and proposed facilities in accordance with § 6(5) of the Act.

(C) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, Public Act 442 of 1976, being M.C.L.A. §§ 15.231 through 15.246, pursuant to § 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(D) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time nonrefundable application fee in the amount of \$500.

(E) *Additional information.* The Village Clerk may request an applicant to submit such additional information which the Village Council deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Village Council. If the village and the applicant cannot agree on the requirement of additional information requested by the village, the village or the applicant shall notify the MPSC as provided in § 6(2) of the Act.

(F) *Previously issued permits.* Pursuant to § 5(1) of the Act, authorizations or permits previously issued by the village under § 251 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. § 484.2251, and authorizations or permits issued by the village to telecommunications providers prior to the 1995 enactment of § 251 of the State Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.

(G) *Existing providers.* Pursuant to § 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, being M.C.L.A. §§ 484.3101 to 484.3120, a telecommunications provider with facilities located in a public right-of-way in the village as of such date, that has not previously obtained authorization or a permit under § 251 of the State Telecommunications Act, Public Act 179 of 1991, being M.C.L.A. § 484.2251, shall submit to the village an application for a permit in accordance with the requirements of this chapter. Pursuant to § 5(3) of the Act, a telecommunications provider submitting an application under this division (G) is not required to pay the \$500 application fee required under division (D) above. A provider under this division (G) shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in § 5(4) of the Act.

(Ord. 2002-1, passed - -) Penalty, see § 114.99

#### **§ 114.05 ISSUANCE OF PERMIT.**

(A) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the Village Council. Pursuant to § 15(3) of the Act, the Village Clerk shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit under § 114.04(B) for access to a public right-of-way within the village. Pursuant to § 6(6) of the Act, the Village Clerk shall notify the MPSC when the village has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The Village Clerk shall not unreasonably deny an application for a permit.

(B) *Form of permit.* If an application for permit is approved, the Village Clerk shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with §§ 6(1), 6(2), and 15 of the Act.

(C) *Conditions.* Pursuant to § 15(4) of the Act, the Village Clerk may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(D) *Bond requirement.* Pursuant to § 15(3) of the Act, and without limitation on division (C) above, the Village Clerk may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

(Ord. 2002-1, passed - -)

#### **§ 114.06 CONSTRUCTION/ENGINEERING PERMIT.**

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the village without first obtaining a construction or engineering permit as required under the village zoning ordinance, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. 2002-1, passed - -) Penalty, see § 114.99

#### **§ 114.07 CONDUIT OR UTILITY POLES.**

Pursuant to § 4(3) of the Act, obtaining a permit or paying the fees required under the Act, being M.C.L.A. §§ 484.3101 to 484.3120, or under this chapter does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. 2002-1, passed - -) Penalty, see § 114.99

#### **§ 114.08 ROUTE MAPS.**

Pursuant to § 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the village. The route maps should be in [paper or electronic] format unless and until the MPSC determines otherwise, in accordance with § 6(8) of the Act.

(Ord. 2002-1, passed - -) Penalty, see § 114.99

#### **§ 114.09 REPAIR OF DAMAGE.**

Pursuant to § 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the village, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Ord. 2002-1, passed - -) Penalty, see § 114.99

#### **§ 114.10 ESTABLISHMENT AND PAYMENT OF MAINTENANCE FEE.**

In addition to the nonrefundable application fee paid to the village set forth in § 114.04(D) above, a telecommunications provider with telecommunications facilities in the village's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to § 8 of the Act.

(Ord. 2002-1, passed - -) Penalty, see § 114.99

#### **§ 114.11 MODIFICATION OF EXISTING FEES.**

(A) In compliance with the requirements of § 13(1) of the Act, the village hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, being M.C.L.A. §§ 484.3101 to 484.3120, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority.

(B) In compliance with the requirements of § 13(4) of the Act, the village also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the village's boundaries, so that those providers pay only those fees required under § 8 of the Act.

(C) The village shall provide each telecommunications provider affected by the fee with a copy of this chapter, in compliance with the requirement of § 13(4) of the Act.

(D) To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the village's policy and intent and, upon application by a provider or discovery by the village, shall be promptly refunded as having been charged in error.

(Ord. 2002-1, passed - -)

#### **§ 114.12 SAVINGS CLAUSE.**

Pursuant to § 13(5) of the Act, if § 8 of the Act is found to be invalid or unconstitutional, the modification of fees under § 114.11 shall be void from the date the modification was made.

(Ord. 2002-1, passed - -)

#### **§ 114.13 USE OF FUNDS.**

Pursuant § 10(4) of the Act, all amounts received by the village from the Authority shall be used by the village solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the village from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the village under Public Act 51 of 1951.

(Ord. 2002-1, passed - -)

#### **§ 114.14 ANNUAL REPORT.**

Pursuant to § 10(5) of the Act, the Village Clerk shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

(Ord. 2002-1, passed - -)

#### **§ 114.15 CABLE TELEVISION OPERATORS.**

Pursuant to § 13(6) of the Act, the village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access

services.

(Ord. 2002-1, passed - -)

#### **§ 114.16 EXISTING RIGHTS.**

Pursuant to § 4(2) of the Act, except as expressly provided herein with respect to fees, this chapter shall not affect any existing rights that a telecommunications provider or the village may have under a permit issued by the village or under a contract between the village and a telecommunications provider related to the use of the public rights-of-way.

(Ord. 2002-1, passed - -)

#### **§ 114.17 COMPLIANCE.**

(A) The village hereby declares that its policy and intent in adopting this chapter is to fully comply with the requirements of the Act, being M.C.L.A. §§ 484.3101 to 484.3120, and the provisions hereof should be construed in such a manner as to achieve that purpose.

(B) The village shall comply in all respects with the requirements of the Act including, but not limited to, the following:

(1) Exempting certain route maps from the Freedom of Information Act, Public Act 442 of 1976, being M.C.L.A. §§ 15.231 through 15.246, as provided in § 114.04(C);

(2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with § 114.04(F);

(3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500 application fee, in accordance with § 114.04(G);

(4) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the village, in accordance with § 114.05(A);

(5) Notifying the MPSC when the village has granted or denied a permit, in accordance with § 114.05(A);

(6) Not unreasonably denying an application for a permit, in accordance with § 114.05(A);

(7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in § 114.05(B);

(8) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with § 114.05(C);

(9) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with § 114.05(D);

(10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with § 114.06;

(11) Providing each telecommunications provider affected by the village's right-of-way fees with a copy of this chapter, in accordance with § 114.11;

(12) Submitting an annual report to the Authority, in accordance with § 114.14; and

(13) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with § 114.15.

(Ord. 2002-1, passed - -) Penalty, see § 114.99

#### **§ 114.18 RESERVATION OF POLICE POWERS.**

Pursuant to § 15(2) of the Act, this chapter shall not limit the village's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the village's authority to ensure and protect the health, safety, and welfare of the public.

(Ord. 2002-1, passed - -)

#### **§ 114.19 AUTHORIZED VILLAGE OFFICIALS.**

The Village Clerk or his or her designee is hereby designated as the authorized village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the Municipal Chapter Violations Bureau) for violations under this chapter as provided by this code of ordinances.

(Ord. 2002-1, passed - -)

#### **§ 114.99 PENALTY.**

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to § 10.99. Nothing in this section shall be construed to limit the remedies available to the village in the event of a violation by a person of this chapter or a permit.

(Ord. 2002-1, passed - -)

## CHAPTER 115: AMUSEMENTS AND RECREATION

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### Section

#### *Pool Halls; Bowling Alleys; Shooting Galleries*

- 115.01 License required
- 115.02 License fee
- 115.03 Minors
- 115.04 Curtains, screens, blinds, and the like
  
- 115.99 Penalty

#### **Cross-reference:**

*Alcoholic beverages, see Chapter 112*

*Zoning adopted by reference, see § 150.02*

### **POOL HALLS; BOWLING ALLEYS; SHOOTING GALLERIES**

#### **§ 115.01 LICENSE REQUIRED.**

(A) It shall be unlawful for any person, firm, company, or association to have or keep for gain or profit within the limits of the village any billiard table, pool table, bowling alley, or shooting gallery without first having obtained a license therefor, and complying in all respects with the provisions of this subchapter.

(B) Any person, firm, company, or association desiring to engage in any business herein before numbered may secure the license above provided by making application to the Village Council therefor.

(Ord. 7A-2001, passed 10-15-2001) Penalty, see § 115.99

#### **§ 115.02 LICENSE FEE.**

(A) All applications for license under this subchapter shall be accompanied by the fee therefor as set forth by the Village Council, which fee shall be returned in case the Village Council shall not approve of said application.

(B) If the Council shall approve said application, it may order the Village Clerk to issue said license, which license shall be issued and signed by the Village Clerk.

(Ord. 7A-2001, passed 10-15-2001)

#### **§ 115.03 MINORS.**

No minor may be in attendance of a billiard hall, pool room, bowling alley, or shooting gallery, or other business mentioned in § 115.01, between the hours of 11:00 p.m. and 5:00 a.m.

(Ord. 7A-2001, passed 10-15-2001) Penalty, see § 115.99

#### **§ 115.04 CURTAINS, SCREENS, BLINDS, AND THE LIKE.**

At no time shall there be in the room, place, or building in which the said occupation or business shall be conducted any curtain, screen, partition, blinds, or other device which shall be calculated to or shall so operate as to interfere wholly or partly with a clear, clean unobstructed view of the entire interior of said room, place, or building from the sidewalk, street, or ground immediately in front thereof. No license shall be granted until the provisions of this section shall first be complied with.

(Ord. 7A-2001, passed 10-15-2001) Penalty, see § 115.99

#### **§ 115.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) In case of the violation of any of the terms of §§ 115.01 through 115.04, either by the proprietor or one employed by or working under him or her, in addition to all other penalties herein provided for, the license granted to said proprietor shall be forfeited. Such forfeiture shall be declared by the Village Council.

(Ord. 7A-2001, passed 10-15-2001)

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## CHAPTER 116: MEDICAL MARIJUANA

*Licensing*

- 116.01 Title
- 116.02 Findings
- 116.03 Purpose
- 116.04 Definitions
- 116.05 Cultivation, distribution, possession or use of marijuana prohibited
- 116.06 License required
- 116.07 Application for license
- 116.08 Inspections
- 116.09 Issuance of license; term; standards for approval
- 116.10 Denial of license; appeal process
- 116.11 Renewal of license
- 116.12 Revocation of license; appeal process
- 116.13 Surrender of license upon demand

*Growing Operations*

- 116.25 Definitions
  - 116.26 Findings
  - 116.27 Prohibited locations
  - 116.28 Permitted locations
  - 116.29 Special use
  - 116.30 License required
  - 116.31 No immunity
  - 116.32 Revocation of license; appeal process
  - 116.33 Surrender of license upon demand
  - 116.34 Required review
- 
- 116.99 Penalty

**LICENSING**

**§ 116.01 TITLE.**

This subchapter shall be known and may be cited as the “Village of Eau Claire Medical Marijuana Licensing Ordinance.”  
(Ord. 2017-03, passed - -2017)

**§ 116.02 FINDINGS.**

The Council of the village hereby makes the following findings:

- (A) Electors in the state approved a referendum authorizing certain limited uses of marijuana for medical purposes.
- (B) Pursuant to voter approval, the legislature enacted initiated Act 1 of 2008, M.C.L.A. §§ 333.26421 et seq. (the “Act”).
- (C) The Act authorizes a narrow exception to prosecution under state laws which criminalize the cultivation, distribution, possession and use of marijuana.
- (D) The cultivation, distribution, possession and use of marijuana remain criminalized under federal law.
- (E) The cultivation, distribution, possession and use of marijuana under the Act, if not closely monitored and licensed, may result in an increase in illegal activities within the village jeopardizing the health, safety and welfare of the general public, persons properly licensed under the Act and law enforcement officers.

(Ord. 2017-03, passed - -2017)

### § 116.03 PURPOSE.

The purpose of this subchapter is to provide reasonable regulations regarding activities carried out pursuant to the Act and in keeping with the general character of the surrounding land uses by individuals properly registered with the state pursuant to said Act within the village so as to provide reasonable locations for licensed activities and to protect the health, safety and welfare of such individuals, the general public and law enforcement officers.

(Ord. 2017-03, passed - -2017)

### § 116.04 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**MARIJUANA. MARIHUANA** as it is referred to in the Michigan Medical Marihuana Act of 2008 (the “Act”), and as defined in § 7106 of the Public Health Code, 1978 PA 368, M.C.L.A. § 333.7106.

**MEDICAL MARIJUANA GROWING OPERATION.** A facility where a “primary caregiver” who is legally registered by the Michigan Department of Licensing and Regulatory Affairs (“Department”), may lawfully assist up to five “qualifying patients” who are also legally registered by the Department with the growing of medical marijuana in accordance with the Act. Any facility involved in the growing of more than 12 plants on one property parcel shall be classified as a growing operation.

**MEDICAL USE.** The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marijuana or paraphernalia relating to the use of marijuana to treat or alleviate a registered “qualifying patient's” debilitating medical condition.

**PRIMARY CAREGIVER.** A person who is at least 21 years old and has agreed to assist a qualifying patient, to whom he or she is connected through the Department registration process for the use of medical marijuana in accordance with state law.

**QUALIFYING PATIENT.** A person who has obtained a valid registration card from the Department allowing them to possess and purchase medical marijuana.

**VILLAGE.** The Village of Eau Claire.

(Ord. 2017-03, passed - -2017)

### § 116.05 CULTIVATION, DISTRIBUTION, POSSESSION OR USE OF MARIJUANA PROHIBITED.

Nothing in this subchapter shall be construed as permitting the cultivation, distribution, possession or use of marijuana within the village except for in strict compliance with the Act and the rules promulgated by the Department.

(Ord. 2017-03, passed - -2017)

### § 116.06 LICENSE REQUIRED.

The use of property as a Medical Marijuana Growing Operation shall require the submittal and approval of a license issued by the Village Clerk in accordance with this subchapter and in compliance with §§ 116.25 through 116.34 and the village zoning ordinance.

(Ord. 2017-03, passed - -2017) Penalty, see § 116.99

### § 116.07 APPLICATION FOR LICENSE.

Applications for licenses required by this subchapter shall be submitted upon forms provided by the Village Clerk, which shall be signed and verified under oath by the applicant, and which shall be accompanied by the appropriate nonrefundable application fee as set by resolution of the Village Council. Applications for licenses shall contain or set forth the following minimum information:

- (A) The name, address, date of birth, and telephone number of the applicant.
- (B) The street address of the site proposed to be licensed.
- (C) Evidence that the site proposed to be licensed complies with the village's zoning ordinance relative to such use.
- (D) The length of time for which the license is sought, if less than one year.
- (E) A copy of the applicant's computerized criminal history (“CCH”).
- (F) A site plan, survey, or sketch of the site proposed to be licensed.
- (G) A description of how the applicant intends to comply with the Act's requirement that marijuana be kept in an enclosed, locked facility.

(Ord. 2017-03, passed - -2017)

### § 116.08 INSPECTIONS.

Upon receipt of an application, the Village Clerk may request the assistance of village officials and consultants to determine that the premises comply with the provisions of this subchapter and any other ordinances of the village, including the village's zoning ordinance.



Inspections should be scheduled within 30 days of receipt of a complete application and prior to issuance of a license.

(Ord. 2017-03, passed - -2017)

#### **§ 116.09 ISSUANCE OF LICENSE; TERM; STANDARDS FOR APPROVAL.**

The Village Clerk shall issue a license in response to an application which satisfies the requirements of this subchapter and is accompanied by the appropriate application fee. A license shall be valid for a term of no more than one year from the date of issuance. The Village Clerk shall deny the issuance of a license under the following conditions:

- (A) The application is incomplete in any manner.
- (B) The applicant is less than 21 years of age.
- (C) Verification of any of the information required on the application shows the information provided by the applicant to be fraudulent, a misrepresentation, or a false or untrue statement.
- (D) A license for the applicant has been previously revoked.
- (E) An investigation through an appropriate law enforcement agency shows a pattern or history of criminal behavior.
- (F) The applicant's CCH shows a conviction for a felony.
- (G) The applicant's CCH shows a conviction for an activity that may pose a threat or a danger to the residents of the village should a license be granted (by way of example, but not exclusively, disturbing the peace, assault and battery, simple assault, domestic violence, stalking, theft, dishonesty or deception, fraud, obstruction of justice, disorderly conduct, criminal sexual conduct, trespassing, or breaking or entering).

(Ord. 2017-03, passed - -2017)

#### **§ 116.10 DENIAL OF LICENSE; APPEAL PROCESS.**

(A) Any person whose application for a license has been denied shall have the right to petition the Village Council for an appeal. Within 60 days of receipt of a petition for appeal, the Village Council shall set a date for a public hearing. The Village Clerk shall send by certified mail notice of the date, time and location of the public hearing to the applicant at the address shown on the petition for appeal, at least seven days prior to the public hearing date. At the public hearing, the applicant shall have the right to appear and present evidence in support of the application.

(B) Within 60 days after the public hearing, the Village Council shall submit to the applicant its written determination regarding the appeal. The Village Council determination shall be based upon competent, material and substantial evidence.

(Ord. 2017-03, passed - -2017)

#### **§ 116.11 RENEWAL OF LICENSE.**

A license issued pursuant to this subchapter shall expire after a period of one year and may be renewed annually. Applications for renewal of a license shall be submitted pursuant to the same process as an application for a new license except that a public hearing and Village Council approval shall not be required unless otherwise stipulated. Applications for renewal of a license may not be submitted earlier than 90 days prior to the expiration date shown on the current license.

(Ord. 2017-03, passed - -2017)

#### **§ 116.12 REVOCATION OF LICENSE; APPEAL PROCESS.**

A license issued by the Village Clerk may be revoked by written notice of the Village Clerk sent by certified mail to the applicant at the address shown on the application upon a determination by the Village Clerk of any of the following:

- (A) The licensed site fails to comply with the village's zoning ordinance.
- (B) Any of the information required on the application shows the information provided by the applicant to have been fraudulent, a misrepresentation, or a false or untrue statement.
- (C) The applicant has been convicted of any felony.
- (D) Any violation of this subchapter.
- (E) Any person who wishes to appeal the revocation of a license shall follow the appeals process described in § 116.10 above.

(Ord. 2017-03, passed - -2017)

#### **§ 116.13 SURRENDER OF LICENSE UPON DEMAND.**

The license shall be surrendered on demand to any law enforcement officer based upon probable cause by the officer that the license or licensed premises are being used in violation of this subchapter. Within five business days of the surrender of any license, the Village Clerk shall either revoke the license pursuant to § 116.12, or return the license to the applicant.

(Ord. 2017-03, passed - -2017)

## GROWING OPERATIONS

### § 116.25 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**MARIJUANA. MARIHUANA** as it is referred to in the Michigan Medical Marihuana Act of 2008 (the “Act”), and as defined in § 7106 of the Public Health Code, 1978 PA 368, M.C.L. A. § 333.7106.

**MEDICAL MARIJUANA GROWING OPERATION.** A facility where a “primary caregiver” who is legally registered by the Michigan Department of Licensing and Regulatory Affairs (“Department”), may lawfully grow, cultivate and harvest medical marijuana on behalf of up to five “qualifying patients” who are also legally registered by the Department with the growing and maintenance of medical marijuana in accordance with the Act. Any establishment involved in the growing of more than 12 plants upon one property parcel shall be classified as a growing operation.

**MEDICAL USE.** The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marijuana or paraphernalia relating to the use of marijuana to treat or alleviate a registered “qualifying patient's” debilitating medical condition.

**PRIMARY CAREGIVER.** A person who is at least 21 years old and has agreed to assist a qualifying patient, to whom he or she is connected through the Department registration process for the use of medical marijuana in accordance with state law.

**QUALIFYING PATIENT.** A person who has obtained a valid registration card from the Department allowing them to possess and purchase medical marijuana.

**VILLAGE.** The Village of Eau Claire.

(Ord. 2017-4, passed - -2017)

### § 116.26 FINDINGS.

It is determined necessary for the health, safety and welfare of the Village to adopt this ordinance regulating the location and operation of Medical Marijuana Growing Operations due to the following factors:

(A) The purpose of this subchapter is to guide the development of medical marijuana growing operations within the Industrial (I) District of the village. It is the intent of this subchapter to give effect to the intent of the Act as approved by the electors, and not to determine and establish an altered policy with regard to marijuana. It is the further intent of this ordinance to comply with the Act while concurrently attempting to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably expected to occur in the absence of the provisions of this subchapter.

(B) The Act authorizes a narrow exception to the prosecution under state laws which otherwise criminalize the cultivation, distribution, possession and use of marijuana. Outside the purview of the Act, the possession and use of marijuana in the state of Michigan remains a misdemeanor offense and possession with intent to deliver, delivery and manufacture of marijuana remain felonies.

(C) Marijuana is also classified federally as a “Schedule I drug” under the Controlled Substances Act and is illegal to possess, manufacture, distribute or dispense under federal law.

(D) The United States Supreme Court has determined that distribution of medical marijuana is illegal under the Federal Controlled Substances Act, 21 U.S.C. § 841 and that there is no medical necessity defense allowed under federal law. *Gonzalez v Raich*, 545 US 1, 27; 125 S. Ct. 2195 (2005).

(E) There are potential adverse secondary impacts associated with the location of medical marijuana growing operations. These include, but are not limited to, an increase in criminal activity such as illegal drug activity, robbery of persons leaving a medical marijuana growing operation, and burglaries at medical marijuana growing operations.

(F) The location of medical marijuana growing operations in close proximity to homes, apartments, schools, churches, licensed day care centers and public parks may have adverse effects upon children, established family relations, property values and public safety.

(G) The Act states that registered primary caregivers may receive compensation for assisting Qualified Patients in the medical use of marijuana, making this a likely commercial activity.

(Ord. 2017-4, passed - -2017)

### § 116.27 PROHIBITED LOCATIONS.

A medical marijuana growing operation shall not be located:

(A) Within 50 feet of any residential zoning districts.

(B) Within 1,000 feet of the property line of any public or private school, college or university, any nursery school, day nursery, licensed day care center or any other building or location either rented or used in any way for the care or instruction of children under 18 years of age.

(C) Within 500 feet of the property line of any church, house of worship or other religious facility or institution.

(D) Within 500 feet of any public park publically owned building or recreational area commonly used by minor children.

(E) Within 500 feet of a public library.

(F) In an area that has been designated as an historic area by the village, County of Berrien or the state.

(G) Within 500 feet of any other medical marijuana growing operation business.

(H) The distance measurement provided for in this subsection shall be a straight line from the boundary line of the medical marijuana growing operation business to the boundary line of the location it is to be separated from.

(Ord. 2017-4, passed - -2017)

#### **§ 116.28 PERMITTED LOCATIONS.**

A medical marijuana growing operation shall be located only in the Industrial (I) District, as a special use, as further specified by the village zoning ordinance and shall be subject to all the requirements of this subchapter.

(Ord. 2017-4, passed - -2017)

#### **§ 116.29 SPECIAL USE.**

The use of property as a medical marijuana growing operation within the Industrial (I) District shall require submittal of a special use permit application and approval of a special use permit, pursuant to Article XV, entitled "Special Uses", of the village zoning ordinance.

(Ord. 2017-4, passed - -2017)

#### **§ 116.30 LICENSE REQUIRED.**

The use of property as a medical marijuana growing operation shall require the submittal and approval of a license issued by the Village Clerk in accordance with §§ 116.01 through 116.13.

(Ord. 2017-4, passed - -2017)

#### **§ 116.31 NO IMMUNITY.**

Nothing in this subchapter, or in any companion regulatory provision adopted in any other provision of the village ordinances, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marijuana not in strict compliance with the Act. Also, since federal law is not affected by the Act, nothing in this subchapter, or in any companion regulatory provision adopted in any other provision of the village ordinances, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. The Act does not protect users, caregivers or the owners of properties on which the medical use of marijuana is occurring from federal prosecution, or from having their property seized by federal authorities under the federal Controlled Substances Act.

(Ord. 2017-4, passed - -2017)

#### **§ 116.32 REVOCATION OF LICENSE; APPEAL PROCESS.**

(A) A license issued by the Village Clerk may be revoked by written notice of the Village Clerk sent by certified mail to the applicant at the address shown on the application upon a determination by the Village Clerk of any of the following:

(1) The licensed site fails to comply with the village's zoning ordinance.

(2) Any of the information required on the application shows the information provided by the applicant to have been fraudulent, a misrepresentation, or a false or untrue statement.

(3) The applicant has been convicted of any felony.

(4) Any violation of this subchapter.

(B) The applicant may appeal the revocation of his or her license to the Village Council by following the process set forth within § 116.10.

(Ord. 2017-4, passed - -2017)

#### **§ 116.33 SURRENDER OF LICENSE UPON DEMAND.**

The license shall be surrendered on demand to any law enforcement officer based upon probable cause by the officer that the license or licensed premises is being used in violation of this subchapter. Within five business days of the surrender of any license, the Village Clerk shall either revoke the license pursuant to § 116.32, or return the license to the applicant.

(Ord. 2017-4, passed - -2017)

#### **§ 116.34 REQUIRED REVIEW.**

This subchapter shall be reviewed by the Village Council within two years of the date of its adoption. Evaluation of the effect of caregiver operations upon surrounding land uses, the community in general and changes in state law shall factor into consideration of any

proposed changes.

(Ord. 2017-4, passed - -2017)

**§ 116.99 PENALTY.**

(A) (1) Any person who shall violate any of the provisions of §§ 116.01 through 116.13 is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$50 or more than \$500, plus costs and other sanctions, for each infraction.

(2) Repeat offenses shall be subject to an increased civil fine as follows:

(a) The fine for any offense shall be not less than \$250, plus costs and other sanctions.

(b) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than \$500, plus costs and other sanctions. A repeat offense means a second (or any subsequent) violation of §§ 116.01 through 116.13 (i) committed by a person within any six-month period and (ii) for which the person admits responsibility or is determined to be responsible.

(3) Each day on which any violation of this §§ 116.01 through 116.13 continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(4) The imposition of penalties or sanctions hereunder shall not exempt the offender from compliance with the requirements of this §§ 116.01 through 116.13 .

(B) (1) Any person who shall violate any of the provisions of §§ 116.25 through 116.34 is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$50 or more than \$500, plus costs and other sanctions, for each infraction.

(2) Repeat offenses shall be subject to an increased civil fine as follows:

(a) The fine for any offense shall be not less than \$250, plus costs and other sanctions.

(b) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than \$500, plus costs and other sanctions. A repeat offense means a second (or any subsequent) violation of §§ 116.25 through 116.34 (i) committed by a person within any six-month period and (ii) for which the person admits responsibility or is determined to be responsible.

(3) Each day on which any violation of §§ 116.25 through 116.34 continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(4) The imposition of penalties or sanctions hereunder shall not exempt the offender from compliance with the requirements of §§ 116.25 through 116.34 .

(Ord. 2017-03, passed - -2017; Ord. 2017-4, passed - -2017)

## TITLE XIII: GENERAL OFFENSES

Chapter

### 130. GENERAL OFFENSES

## CHAPTER 130: GENERAL OFFENSES

Section

130.01 Curfew for minors

**§ 130.01 CURFEW FOR MINORS.**

(A) No parent, guardian, or other adult having the charge or custody of any child under the age of 17 years shall allow or permit said child on any street, lane, alley, public park, or other public place, including business open to the public, within the village after the hour of 11:00 p.m., unless such child to be in the company and in the custody of parent, guardian, or of some person over the age of 21 with written parent or guardian permission.

(B) No person, being the proprietor, manager, clerk, or other person in charge of any store, bowling alley, pool, or billiard parlor, tavern, or bar, or other place of business, shall permit any child under the age of 17 to loiter or linger in said place of business after the hour of 11:00 p.m. unless said child is in the direct charge and custody of some person over the age of 21 with the parent's or guardian's written permission.

(C) No child under the age of 17 shall be allowed or permitted to be on any street, lane, alley, public park, or other public place within the village after the hour of 11:00 p.m. unless said child be in the company of, and in the charge and custody of, some person over the age of 21 with the parent's or guardian's written permission.

(D) Exemptions from the above divisions:

- (1) Accompanied by the minor's parent or guardian;
- (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency;
- (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
- (7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the village, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the village, a civic organization, or another similar entity that takes responsibility for the minor;
- (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (9) Married or had been married or had disabilities of minority removed in accordance with state law.

(Ord. 27A-2001, passed 10-15-2001) Penalty, see § 10.99

## TITLE XV: LAND USAGE

Chapter

- 150. GENERAL PROVISIONS**
- 151. COMMUNICATION TOWERS**
- 152. LAND DIVISION**
- 153. STREETS AND SIDEWALKS; PUBLIC PROPERTY**

### CHAPTER 150: GENERAL PROVISIONS

Section

- 150.01 International Property Maintenance Code 2012 adopted by reference
- 150.02 Zoning adopted by reference
- 150.03 Enforcing agency for State Construction Code Act
- 150.04 Enforcing agency for Stille-DeRossett Hale Single State Construction Code Act
- 150.05 Building setbacks
- 150.06 Lot regulations
- 150.07 Cutting, injuring, trimming, and removing trees
- 150.08 Artificial bodies of water
  
- 150.99 Penalty

#### **§ 150.01 INTERNATIONAL PROPERTY MAINTENANCE CODE 2012 ADOPTED BY REFERENCE.**

(A) A certain document, one copy of which is on file in the office of the Village Clerk and one copy of which is on file in the office of the Village Building Inspector, being marked and designated as the International Property Maintenance Code as published by the International Code Council, Inc., be and is hereby adopted as the Property Maintenance Code of the village, in the state; for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions, and terms of said Property Maintenance Code are hereby referred to, adopted, and made a part hereof, as if fully set out in this section, with the additions, insertions, deletions and changes, if any, prescribed in the ordinance codified herein.

(B) This section shall take effect 30 days after the date of its adoption and legal publication.

(Ord. 2015-2, passed 4-20-2015)

## **§ 150.02 ZONING ADOPTED BY REFERENCE.**

The village zoning ordinance is hereby adopted by reference and incorporated herein as if set out in full.

(Ord. 1978-4, passed 8-14-1978; Ord. 2001-1, passed 1-15-2001; Ord. 2005-1, passed 3-21-2005; Ord. 2015-1, passed 4-20-2015; Ord. 2017-2, passed - -2017)

## **§ 150.03 ENFORCING AGENCY FOR STATE CONSTRUCTION CODE ACT.**

Pursuant to the provision of the State Building, Electrical, Mechanical Code, in accordance with Public Act 230 of 1972, § 8b(6), being M.C.L.A. § 125.1508b(6), as amended, the Building, Electrical, Mechanical Official of the village is hereby designated as the enforcing agency to discharge the responsibility of the village under Public Act 230 of 1972, being §§ 125.1501 through 125.1531, as amended. The village assumes responsibility for the administration and enforcement of said Act throughout its corporate limits.

(Ord. 2000-2, passed 5-15-2000)

## **§ 150.04 ENFORCING AGENCY FOR STILLE-DEROSSETT HALE SINGLE STATE CONSTRUCTION CODE ACT.**

(A) *Enforcing agency designated.* Pursuant to § 8b(6) of the Stille-DeRossett Hale Single State Construction Code Act, Public Act 230 of 1972, being M.C.L.A. § 125.1508b(6), the village hereby elects to administer and enforce Public Act 230 of 1972, being M.C.L.A. § 125.1508b(6), and the State Plumbing Code. The village shall also administer and enforce the respective provisions of the State Residential, Rehabilitation, and Uniform Energy Codes and all applicable laws and ordinances. A government official registered in accordance with Public Act 54 of 1986 shall be appointed to receive all fees, issue permits, plan reviews, notices, orders, and certificates of use and occupancy. All personnel performing plan reviews and inspections shall be registered in accordance with Public Act 54 of 1986.

(B) *Publication.* This section shall be effective after legal publication and in accordance with provisions of the Act governing same.

(Ord. 2010-1, passed 9-20-2010)

## **§ 150.05 BUILDING SETBACKS.**

See the village zoning ordinance, adopted by reference in § 150.02, for building setbacks.

(Ord. 2001-5, passed 6-18-2001) Penalty, see § 150.99

## **§ 150.06 LOT REGULATIONS.**

(A) A **LOT**, as used in this section is defined as follows: a lot which is a part of a subdivision, according to the recorded plat thereof; or, a piece or parcel of unplatted land containing 8,712 square feet and less than 17,424 square feet. Parcels containing multiples of 8,712 square feet shall be considered two or more lots, depending on the dividend when divided by 8,712.

(B) Hereafter, there shall be built, erected, or moved on one lot no more than one main building and one accessory building not used as living quarters.

(C) Any building built, erected, or moved which shall be in violation of this section shall be deemed a nuisance per se.

(D) This section shall not apply to lots which are not used or intended for use as living quarters.

(E) For lot regulations, see the village zoning ordinance, adopted by reference, in § 150.02.

(Ord. 20, passed 8-3-1966) Penalty, see § 150.99

## **§ 150.07 CUTTING, INJURING, TRIMMING, AND REMOVING TREES.**

No lighting company, telephone company, telegraph company, or any employee thereof, or any person or corporation, shall cut, mar, injure, deface, trim, or remove, or assist in cutting, marring, injuring, defacing, trimming, or removing any trees, shrubs, plants, flowers, or flower beds upon the public streets, parks, or other public places within the village without first obtaining the express consent thereof of either the President, Marshal, or Common Council. Such consent must specify the particular act to be permitted.

(Ord. 8, passed - -; Ord. 8A-2001, passed - -) Penalty, see § 150.99

## **§ 150.08 ARTIFICIAL BODIES OF WATER.**

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOD** (denoting **BIOCHEMICAL OXYGEN DEMAND**). The quality of oxygen utilized in the biochemical oxidation or organic matter under standard laboratory procedure in five days at 20°C, expressed in parts per million by weight.

**HOLDING POND.** Any pond, lake, lagoon, or pool with an area of 5,000 square feet or less into which are dumped, released, or made to flow waters from any residence, business, institution, or industrial establishment, or used for the temporary storage of water-carried wastes.

**LAGOON.** Any pond, lake, lagoon, or pool with an area over 5,000 square feet into which is dumped, released, or made to flow waters from any residence, business, institution, or industrial establishment, or use, and which any pond, lake, lagoon, or pool are used



for the holding, settling, curing, or otherwise disposing of water-carried wastes, washings, or water from industrial processes.

**POOL.** Any pond, lake, lagoon, or pool, with an area of 5,000 square feet or less, into which are dumped, released, or made to flow waters which at the time of introduction are suitable for swimming, bathing, or other human use.

**WATER-CARRIED WASTES.** Any water dumped, disposed of, or released from residences, business, institutions, or industrial establishments which have been used in industrial processes, washings, and/or manufacturing including those arising from the preparation, washing, or dispensing of food, the liquid wastes from industrial processes, sewage, storm, surface, or ground waters.

(B) *Holding pond.* No holding pond shall be permitted within the limits of the village unless the waters in said holding pond are exchanged every 72 hours. **EXCHANGE** shall be interpreted to mean the dumping from said holding pond sufficient waters to constitute the entire volume of water contained in said holding pond at any one time.

(C) *Lagoons.* No lagoon shall be permitted within the limits of the village within one-quarter mile of any residence, school, or place of public assemblage unless the legal and equitable owners thereof shall release to the owner of said lagoon by instrument recordable under the laws of the state their right to restrain said lagoon by legal action, including action for restraining of nuisance and damages for nuisance: no lagoon shall be permitted unless it contains one acre for every 21 pounds of BOD per day and shall not exceed at any time over six feet in depth. Measurements of BOD shall be made by the owner thereof and presented to the Village Health Officer at his or her demand, but not less than once each week from May 1 to November 1, and once each month from November 1 through April 30.

(D) *Outer limits of lagoon or holding pond.* Each lagoon or holding pond shall be surrounded at its outer limits by a six-foot fence kept in good repair, covered at the top with two strands of barb wire.

(E) *Pool.* No pool other than kiddie pools under one foot in depth shall be permitted within the village limits unless it shall be chlorinated once each 48 hours during use or filtered by a recirculating filter.

(F) *Permits.* Nothing in this section shall be construed as granting a permit or releasing the requirements of a permit under the provisions of Public Act 261 of 1927.

(G) *Effective date.* This section became effective 21 days after adoption.

(Ord. 19, passed 5-12-1966) Penalty, see § 150.99

#### **§ 150.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person, association, or corporation violating the terms of § 150.06 or failing to fulfill any of its particulars shall be guilty of a misdemeanor punishable by a fine of \$100 or imprisonment for 90 days, or both.

(C) Any person, association, or corporation violating the terms of § 150.08 or failing to fulfill any of its particulars shall be guilty of a misdemeanor punishable by a fine of \$100 or imprisonment for 90 days, or both.

(Ord. 19, passed 5-12-1966; Ord. 20, passed 8-3-1966)

## **CHAPTER 151: COMMUNICATION TOWERS**

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### Section

- 151.01 Title
- 151.02 Purpose
- 151.03 Definitions
- 151.04 Application for special land use permit
- 151.05 Public hearing requirements
- 151.06 Standards for approval of special land use permit
- 151.07 Special performance standards
- 151.08 Written notice
  
- 151.99 Penalty

#### **§ 151.01 TITLE.**

This chapter shall be known and cited as the “Village of Eau Claire Communication Tower Ordinance” and may be referred to herein as “this chapter” or “chapter”.

(Ord. 2006-2, passed 4-18-2006)

## § 151.02 PURPOSE.

The purpose of this chapter is to provide a procedure for the application, siting, regulation, construction, and operation of towers, structures, and related facilities that utilize the radio frequency spectrum for the purpose of transmitting, rebroadcasting, or receiving radio signals.

(Ord. 2006-2, passed 4-18-2006)

## § 151.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

**FEASIBILITY OF COLLOCATION.** Collocation shall be deemed to be feasible for purposes of this chapter where all of the following are met:

- (1) The wireless communication provider entity under consideration for collocation will undertake to pay market rent or other market compensation for collocation;
- (2) The site on which collocation is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support;
- (3) The collocation being considered is technologically reasonable, e.g., the collocation will not result in unreasonable interference, given appropriate physical and other adjustments in relation to the structure, antennas, and the like; and
- (4) The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the village, taking into consideration the several standards contained in § 151.06.

**TELECOMMUNICATION TOWER.** 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, televisions towers, telephone devices and exchanges, microwave relay facilities, telephone transmission equipment building(s), 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 preempt municipal regulatory authority.

(Ord. 2006-2, passed 4-18-2006)

## § 151.04 APPLICATION FOR SPECIAL LAND USE PERMIT.

Special land use permit requirements are as follows.

- (A) *Permit.* No telecommunication tower shall be erected in the village without first having acquired a permit as described in this section.
- (B) *Application.* An application shall be submitted by the owner of record with the application fee as required by Council resolution. Such application shall be submitted to the Village Clerk, or Council designee(s), who shall then review the application for completeness, pursuant to the conditions contained herein.
- (C) *Contents.* In addition to the information required on the application form, an application submitted under this chapter shall include:
  - (1) A statement describing the efforts by the applicant utilized to determine the feasibility of collocation. If collocation is unavailable or not practical, the applicant shall provide a statement which identifies the facts, characteristics, and/or circumstances which render collocation unavailable or technically not practical for the coverage area and capacity needs. Any such documentation must be verified by a certified state professional engineer;
  - (2) A site plan prepared in accordance with the requirements found in § 152.04(B); and survey as required in § 152.05(C). The site plan shall so identify the zoning districts of all property within two miles of the proposed site;
  - (3) An engineering drawing of the tower design signed by a certified state structural or professional engineer verifying that the tower design meets all wind load and soil load bearing requirements for the intended site;
  - (4) A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility. Such plan shall be designed to ensure long-term, continuous maintenance to a reasonably prudent standard;
  - (5) The name, address, and phone number of the person to contact for engineering, maintenance, and other notice purposes. This information shall be continuously updated by the applicant during all times the facility is on the premises;
  - (6) A list of all property owners within a one-half mile radius of the proposed site;
  - (7) A map showing the locations, name, and address of the owner(s) and/or operators of any other telecommunication towers within the village and any other tower within a five-mile radius of the proposed site, identify any other collocation utilized on each tower; and

(8) An application fee in the amount established for special use permits along with a sufficient deposit to cover any mailing and publication costs required for the public hearing.

(Ord. 2006-2, passed 4-18-2006)

#### **§ 151.05 PUBLIC HEARING REQUIREMENTS.**

Providing all the above requirements have been satisfied, the Village Council shall schedule a public hearing to be held no sooner than 28 days after the Council meeting at which the public hearing was scheduled. All property owners within a half-mile radius of the proposed site shall be notified by first-class mail of the public hearing.

(Ord. 2006-2, passed 4-18-2006)

#### **§ 151.06 STANDARDS FOR APPROVAL OF SPECIAL LAND USE PERMIT.**

The following site and developmental requirements shall apply.

(A) The proposed site must meet all front, side, and rear yard setback minimum requirements where not specifically addressed herein and any minimum road frontage requirements that may be established.

(B) The use of guy wires is strictly prohibited. All towers shall be self-supporting.

(C) The base of the tower shall be fenced with a six-foot high fence. Said fence shall be constructed in conformance with the village fence ordinance.

(D) Telecommunication towers shall only be located in industrial districts.

(E) Any such site which is approved shall maintain a separate access road or driveway. No other use shall be served by said driveway or road.

(Ord. 2006-2, passed 4-18-2006) Penalty, see § 151.99

#### **§ 151.07 SPECIAL PERFORMANCE STANDARDS.**

(A) *Special performance standards.*

(1) Tower must be set back from all property lines a distance equal to its height, unless engineering plans and specifications have been verified by the Village Engineer that the structural integrity of the tower will withstand high winds and impacts, and the likelihood of a tower failure is minimal. The applicant shall bear all costs associated with the village engineering review.

(2) Accessory structures are limited to uses associated with the operation of the tower and may not be located any closer to any property line than 30 feet.

(3) Accessory structures shall not exceed 600 square feet of gross building area.

(4) All buffer yard requirements within the village zoning ordinance shall be otherwise satisfied.

(5) The division of property for the purpose of locating a wireless communication facility is prohibited unless all village zoning ordinance requirements and conditions are met.

(6) The tower construction plans shall be certified by a registered structural engineer licensed in the state.

(7) The applicant shall provide verification that the antenna mount and structure have been reviewed and approved by a professional engineer and that the installation is in compliance with all applicable codes.

(8) All towers must meet the standards of the Federal Aviation Administration and the Federal Communications Commission.

(9) Communication towers in excess of 100 feet in height above grade level shall be prohibited within a two-mile radius of a public airport or one-half mile radius of a heliport.

(10) No part of any tower or antenna shall be constructed, located, or maintained at any time, permanently or temporarily, on or upon any required setback area for the district in which the antenna or tower is to be located. In no case shall a tower or antenna be located within 30 feet of a property line. The applicant may apply to the Zoning Board of Appeals for a setback variance.

(11) Metal towers shall be constructed, or treated with, corrosive-resistant material.

(12) Antenna and metal towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable local statutes, regulations, and standards.

(13) Towers with antennas shall be designed to withstand a uniform wind loading as prescribed in the Building Code.

(14) All signals and remote control conductors of low energy extending substantially horizontally above the ground between a tower or antenna and a structure, or between towers, shall be at least eight feet above the ground at all points, unless buried underground.

(15) Towers shall be located and designed so that they do not interfere with telephone, radio, and television reception in nearby residential areas.

(16) Towers shall be located so as to allow maintenance vehicles to maneuver on the property.

(17) The base of the tower shall occupy no more than 500 square feet.

(18) Minimum spacing between communication tower locations shall be two miles to prevent a concentration of towers in the village.

(19) Height of the tower shall not exceed 300 feet from grade.

(20) Towers shall be artificially lighted only to the extent required by the FAA, or by the Village Council, whichever is greater. Where possible, considering all site restrictions, any such lighting shall not unduly interfere with the peace and repose of the surrounding land uses, whether or not in the same zoning district.

(21) Existing on-site vegetation shall be preserved to the maximum extent practicable.

(22) No advertisement or identification of any kind, except as required for emergency purposes, shall be displayed or erected on the property.

(23) The antenna shall be painted to match the exterior treatment of the tower. The paint scheme shall minimize the off-site visibility of the antenna and tower.

(24) Structures shall be subject to any state and federal regulations concerning non-zoning electromagnetic radiation. If more restrictive standards are adopted in the future, the antenna shall be made to conform to said regulation within 30 days or the special land use approval will be subject to revocation by the Village Council. All costs for testing and verification of compliance shall be borne by the operator of the antenna.

(25) There shall be no employees located on the site. Occasional or temporary repair service activities are excluded from the restriction.

(26) Where the property adjoins any residentially zoned property or land use, the developer shall plant two alternating rows of evergreen trees having a minimum height at time of planting of five feet on ten foot centers along the entire perimeter of the tower and related structures. In no case shall the evergreens be any closer than 20 feet to any structure. These trees shall be maintained by the applicant, and dead trees shall be replaced during the following planting season. Any necessary replacements shall also be a minimum height of five feet at the time of replacement. These trees shall be maintained by the applicant perpetually, and dead trees shall be replaced during the following planting season.

(27) All new and modified wireless communication facilities shall be designed and constructed so as to accommodate collocation.

(28) The site and tower shall be maintained in compliance with all applicable laws, codes, and ordinances. The village may require landscaping or other improvements to the site so as to minimize the aesthetic or other damage the tower causes to the surrounding properties.

(B) *Land division.* Subject to Chapter 152 of this code, the division of property for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements are met.

(Ord. 2006-2, passed 4-18-2006) Penalty, see § 151.99

#### **§ 151.08 WRITTEN NOTICE.**

The Village Council shall issue a written statement within two weeks of denial of an application made pursuant to this chapter.

(Ord. 2006-2, passed 4-18-2006)

#### **§ 151.99 PENALTY.**

(A) The tower shall be removed by the property owner within six months of being abandoned. If the applicant fails to do so within six months of abandonment, the special use shall be considered revoked. The village may, at its sole discretion, enter the property and cause the demolition of the tower, antenna, and any necessary structure(s). Prior to demolition, the village shall provide written notice of demolition via first-class mail to the applicant not less than 30 days prior to demolition. All costs, including attorney's fees, associated with demolition shall be placed on the tax bill of the property as a special assessment.

(B) Any person, firm, or corporation who violates any provision of this chapter shall be guilty of a misdemeanor punishable by imprisonment of up to 90 days and a fine of up to \$500, or both. Each day a violation exists shall be a separate offense.

(C) Nothing in this chapter shall be construed to preclude the village from seeking injunctive relief or any other relief as may be permitted by law or equity to cure, preclude, or abate a violation of this chapter.

(Ord. 2006-2, passed 4-18-2006)

## **CHAPTER 152: LAND DIVISION**

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### Section

152.01 Title

152.02 Purpose

- 152.03 Definitions
- 152.04 Prior approval requirement for land divisions
- 152.05 Application for land division approval
- 152.06 Procedure for review of applications for land division approval
- 152.07 Standards for approval of land divisions
- 152.08 Allowance for approval of other land division
- 152.09 Consequences of noncompliance with land division approval requirement
  
- 152.99 Penalty

***Cross-reference:***

*Lot regulations, see §§ 150.02 and 150.06*

*Zoning, see § 150.02*

**§ 152.01 TITLE.**

This chapter shall be known and cited as the “Eau Claire Land Division Ordinance” and may be referred to herein as “this chapter” or “chapter”.

(Ord. 2001-9, passed 10-24-2001)

**§ 152.02 PURPOSE.**

The purpose of this chapter is to carry out the provisions of the State Land Division Act (Public Act 288 of 1967, being M.C.L.A. §§ 560.101 through 560.293, as amended, formerly known as the Subdivision Control Act), to prevent the creation of parcels of property which do not comply with the applicable ordinance(s) and said Act, to minimize potential boundary disputes, to maintain orderly development of the community, and otherwise provide for the health, safety, and welfare of the residents and property owners of the municipality by establishing reasonable standards for prior review and approval of land divisions within the municipality.

(Ord. 2001-9, passed 10-24-2001)

**§ 152.03 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***APPLICANT.*** A natural person, firm, association, partnership, corporation, or combination of any of them that hold an ownership interest in land whether recorded or not.

***DIVIDED* or *DIVISION.*** The partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successor, or assigns for the purpose of sale or lease of more than one year, or of building development that results in one or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of §§ 108 and 109 of the State Land Division Act.

***EXEMPT SPLIT* or *EXEMPT DIVISION.*** The partitioning or splitting of a parcel or tract of land by the proprietor thereof, or by his or her heirs, executors, administrators, legal representatives, successors, or assigns that does not result in one or more parcels of less than 40 acres or the equivalent; provided all resulting parcels are accessible for vehicular travel and utilities from existing public roads through existing adequate roads or easements, or through access owned by the owner of the parcel that can provide each access.

***FORTY ACRES OR THE EQUIVALENT.*** Either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.

***GOVERNING BODY.*** The Eau Claire Village Council.

(Ord. 2001-9, passed 10-24-2001)

**§ 152.04 PRIOR APPROVAL REQUIREMENT FOR LAND DIVISIONS.**

Land in the village shall not be divided without the prior review and approval of the Village Council, in accordance with this chapter and the State Land Division Act; provided that the following shall be exempted from this requirement:

(A) An exempt split as defined in this chapter and the State Land Division Act; and

(B) An applicant shall submit a preliminary drawing or map to scale of not less than that provided for on the application form (one inch to 50 feet for ten acres or less, one inch to 100 feet for parcels of ten acres to 40 acres, one inch to 200 feet for parcels over 40 acres) and including an accurate legal description of each proposed division, showing the boundary lines, dimensions, and accessibility for each division from the existing or proposed public roads for automobile traffic and public utilities, for preliminary review, approval, and/or denial by the Village Council.

(Ord. 2001-9, passed 10-24-2001) Penalty, see § 152.99

#### **§ 152.05 APPLICATION FOR LAND DIVISION APPROVAL.**

An applicant shall file all of the following with the Village Clerk's Department on normal business hours before making any division either by deed, land contract, lease for more than one year, or for building development:

(A) Completed application with any such additional information as may be required thereon;

(B) Proof of fee ownership of the land proposed to be divided;

(C) (1) A survey map of the land proposed to be divided, prepared pursuant to the survey map requirements of Public Act 132 of 1970, being M.C.L.A. § 54.211, as amended, by a land surveyor licensed by the state, and showing the dimensions and the land descriptions of the existing parcel and the parcel proposed to be created by the division(s), the location of all existing structures and other land improvements, and the accessibility of the parcel for vehicular traffic and utilities from existing public roads.

(2) In lieu of such survey map, at the applicant's option, the applicant may waive in writing the 45-day statutory requirement for a decision on the applicant until each survey map and legal description are filed with the governing body, and submit a tentative preliminary parcel map drawn to scale of not less than that provided for on the application form including an accurate legal description of each proposed division, and showing the boundary lines, dimensions, and the accessibility of each division from existing or proposed public roads for automobile traffic and public utilities, for preliminary review, approval, and/or denial by the Village Council or other official designated by the governing body, prior to a final application to the governing body under this section.

(3) The governing body, or its designated agent delegated such authority by the governing body, may waive the survey map requirement where the foregoing tentative map is deemed to contain adequate information to approve a proposed land division considering the size, simple nature of the divisions, and the underdeveloped character of the territory within which the proposed divisions are located. An accurate legal description of all of the proposed divisions, however, shall at all times be required.

(D) Proof that all standards of the State Land Division Act and this chapter have been met;

(E) The history and specifications of any previous divisions of land of which the proposed division was a part sufficient to establish the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the State Land Division Act;

(F) Proof that all due and payable taxes or installments of special assessment pertaining to the land proposed to be divided are all paid in full;

(G) If transfer of division rights are proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer;

(H) Unless a division creates a parcel which is acknowledged and declared to be not buildable under § 152.08, all divisions shall result in buildable parcels containing sufficient buildable area outside of the unbuildable wetlands, floodplains, and other areas where buildings are prohibited therefrom, and with sufficient parking spaces, on-site water and sewer hookup, and maximum allowed area coverage of building and structures on the site; and

(I) The fee as may from time to time be established by resolution of the governing body for land division review pursuant to this chapter to cover the cost of review of the application and administration of this chapter and State Land Division Act.

(Ord. 2001-9, passed 10-24-2001) Penalty, see § 152.99

#### **§ 152.06 PROCEDURE FOR REVIEW OF APPLICATIONS FOR LAND DIVISION APPROVAL.**

(A) Upon receipt of a complete land division application package, the Village Zoning Commission or other official designated by the governing body shall forthwith submit the same to the Village Council for review and decision. The governing body shall approve with reasonable conditions to assure compliance with applicable ordinances and the protection of public health, safety, and general welfare, or disapprove the land division applied for within 45 days after the receipt of the complete application package conforming to this chapter's requirements and shall promptly notify the applicant of the decisions and the reasons for any denial. If the application package does not conform to the requirements of this chapter and/or the State Land Division Act, the Zoning Commission, or other designee, shall return the same to the applicant for completion and refile in accordance with this chapter and the State Land Division Act.

(B) Any person or entity aggrieved by the decision of the governing body, within 45 days of said decision, may appeal the decision to the Zoning Board of Appeal, which shall consider and resolve such appeal by a majority vote of said Board at its next meeting or session affording sufficient time for a 20-day written notice to the applicant (and appellant where other than the applicant) of the time and date of said meeting and appellate hearing.

(C) A decision approving a land division is effective for 90 days from the final approval by the last Board to review the land split, after which it shall be considered revoked unless within such period a document is recorded with the County Register of Deed's Office and a copy of said document is filed with the Clerk's Department and to give a copy of the approved land division to the County Land Description Office accomplishing the approved land division or transfer.

(D) The Village Clerk's Department shall maintain an official record of all approved and accomplished land division or transfer.

(Ord. 2001-9, passed 10-24-2001)

#### **§ 152.07 STANDARDS FOR APPROVAL OF LAND DIVISIONS.**

A proposed land division shall be approved if the following criteria are met:



(A) All the parcels to be created by the proposed land division(s) fully comply with the applicable lot (parcel), yard, and area requirements. If the village zoning ordinance including, but not limited to, minimum lot (parcel) frontage/width, minimum road frontage, minimum lot (parcel) area, minimum lot width to depth ratio, and maximum lot (parcel) coverage, and minimum setbacks for existing building structures, or have received a variance from such requirement(s) from the governing body;

(B) The proposed land division(s) comply with all the requirements of the State Land Division Act and this chapter;

(C) All parcels created and remaining have existing adequate accessibility, or an area available therefor, to a public road for public utilities and emergency and other vehicles not less than the requirements the applicable village zoning ordinance major thoroughfare plan, road ordinance of this chapter. In determining adequacy of accessibility, the ordinance standards applicable to plats under the village zoning ordinance and county road commission ordinance shall apply as a minimum standard;

(D) (1) The ratio of depth to width of any parcel created by the division does not exceed a four to one ratio exclusive of access roads, easements, or non-buildable parcels created under § 152.08 and parcels added to contiguous parcels that result in all involved parcels complying with said ratio.

(2) The permissible depth of a parcel created by land division shall be measured with the boundaries of each parcel from the abutting road right-of-way to the most remote boundary line point of the parcel from this point of commencement of the measurement.

(3) The permissible minimum width shall be as defined in the village zoning ordinance.

(E) Where accessibility is to be provided by a proposed new dedicated public road, proof that County Road Commission or State Department of Transportation has approved the proposed layout and construction design of the road and of utility easements and drainage facilities connected therewith.

(Ord. 2001-9, passed 10-24-2001)

#### **§ 152.08 ALLOWANCE FOR APPROVAL OF OTHER LAND DIVISION.**

Notwithstanding disqualification from approval pursuant to this chapter, a proposed land division which does not fully comply with applicable lot, yard, accessibility, and area requirements of the village zoning ordinance or this chapter may be approved in any of the following circumstances:

(A) Where the applicant executes and records an affidavit or deed restriction with the County Register of Deeds, in a form acceptable to the village, designating the parcel as non-buildable, any such parcel shall also be designated as not buildable in the village records, and shall not thereafter be subject of a request to the Village Zoning Board of Appeals for variance relief the applicable lot and/or area requirements, and shall not be developed with any building or aboveground structure exceeding four feet in height;

(B) Where in circumstances not covered by division (A) above, the Zoning Board of Appeals has, previous to this chapter, granted a variance from the lot, yard, ratio, frontage, and/or area requirements with which the parcel failed to comply; and

(C) Where the proposed land division involves only minor adjustment of a common boundary line or involves a conveyance between adjoining properties which does not result in either parcel violating this chapter, the village zoning ordinance, or the State Land Division Act.

(Ord. 2001-9, passed 10-24-2001)

#### **§ 152.09 CONSEQUENCES OF NONCOMPLIANCE WITH LAND DIVISION APPROVAL REQUIREMENT.**

Any parcel created in noncompliance with this chapter shall not be eligible for any building permits, zoning approvals, such as special land use approval or site plan approval, and shall not be recognized as a separate parcel on the assessment roll. In addition, violation of this chapter shall subject the violator to the penalties and enforcement actions set forth in this chapter, and as may otherwise be provided by law.

(Ord. 2001-9, passed 10-24-2001) Penalty, see § 152.99

#### **§ 152.99 PENALTY.**

(A) Any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$500 or by imprisonment in the county jail for not to exceed 90 days or by both such fine and imprisonment.

(B) Any person who violates any of the provisions of this chapter shall also be subject to a civil action seeking invalidation of the land division and appropriate injunctive or other relief as permitted by law or equity.

(Ord. 2001-9, passed 10-24-2001)

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## **CHAPTER 153: STREETS AND SIDEWALKS; PUBLIC PROPERTY**

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### Section

#### *Sidewalks*

##### 153.01 Duty

- 153.02 Concrete
- 153.03 Grade
- 153.04 Specifications
- 153.05 Village Council deems sidewalk necessary
- 153.06 Notice
- 153.07 Keeping sidewalk in good repair
- 153.08 Keeping sidewalks free from obstructions
- 153.09 Account of expenses
- 153.10 Neglect; refusal to build/repair sidewalk

***Public Property***

- 153.25 Prohibition of animals, wagons, and the like on sidewalks
- 153.26 Obscene/indecent advertisements
- 153.27 Display of stallions, bulls, snakes, serpents, or reptiles
- 153.28 Tearing down, destroying, or defacing advertisements
- 153.29 Obstructing the sidewalk
- 153.30 Damaging a public lamp
- 153.31 Damaging property
- 153.32 Sale of goods or property on streets or street corners
- 153.33 Damaging drains, sidewalks, and the like
- 153.34 Fires
- 153.35 Speed limit
- 153.36 Parking
  
- 153.99 Penalty

***Cross-reference:***

*International Property Maintenance Code adopted by reference, see § 150.01*

*Zoning adopted by reference, see § 150.02*

**SIDEWALKS**

**§ 153.01 DUTY.**

The owner of any lot or premises now or hereafter in the corporate limits of the village shall, in accordance with the provisions of this subchapter, build, rebuild, repair, and maintain sidewalks in the public streets adjacent to and abutting on such lots or premises.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

**§ 153.02 CONCRETE.**

All sidewalks hereafter built or rebuilt within the village shall be concrete, and of the width, material, and manner of construction hereinafter provided and not otherwise.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

**§ 153.03 GRADE.**

All sidewalks shall be built and maintained on the grade and on the lines now or hereafter established by the Village Council and shall be given a grade of one-quarter of an inch to a foot from the street line to the curbline.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

**§ 153.04 SPECIFICATIONS.**

All sidewalks shall be built to village specifications.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.05 VILLAGE COUNCIL DEEMS SIDEWALK NECESSARY.**

(A) Whenever the Village Council shall deem it necessary that a sidewalk be built or rebuilt, it shall so declare by majority vote, and shall cause the same to be built or rebuilt. Said majority vote shall describe the lots or premises adjacent to and abutting upon which said sidewalks are required to be built or rebuilt, and shall order the owner of such lot or premises to build or rebuild such sidewalks within 20 days from the time of the service of a notice as hereinafter required, and if the owner does not rebuild or build such sidewalk in the time specified, then the Village Police will cause such sidewalk to be built and the expense thereof, together with a 10% addition thereto, shall be charged to such owner and shall also be charged upon the lots and premises adjacent to and abutting upon such walk.

(B) Whenever the Council shall determine that it is necessary to build or rebuild a sidewalk, or whenever any person desires to build or rebuild the sidewalk on any public street or alley, the Village Council shall then request of such persons, or on the request of the Public Works Supervisor, to give and establish on said street or alley a sidewalk line for at least the distance that sidewalks are about to be built, by setting stakes not more than 25 feet apart, said stakes to be set to designate both edges of the sidewalk, and also to designate the grade of the sidewalk, and a record of the same shall be entered in a book to be kept for such purpose, in the office of the Village Clerk. It shall be the duty of all such persons, before building or rebuilding any sidewalk, to obtain the proper grades and lines of such sidewalk from the Village Council and shall build such sidewalk in conformity to such grades and lines.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.06 NOTICE.**

(A) When the Council shall order any sidewalk to be built or rebuilt, the Planning Commission or the Public Works Supervisor shall give notice thereof in the manner hereinafter specified to the owner of the lot and premises adjacent to and abutting upon such sidewalk to be built or rebuilt, the same within 20 days from the service of such notice as hereinafter specified. Such notice shall give the date of the resolution requiring such sidewalk to be constructed and shall describe the lots, and premises adjacent to and abutting upon, which the sidewalk has been ordered constructed, and shall notify the owners of such lots and premises to construct such sidewalk within 20 days after service of such notice, and shall in addition notify such owner that unless such sidewalk is constructed within the time specified in such notice, then that the Village Council shall cause the same to be constructed and the expense thereof, together with 10% in addition thereto, will be charged to such owner and will also be chargeable upon the lots and premises adjacent to and abutting upon said sidewalks.

(B) The above notice shall be in writing or partly written and partly printed, and shall be signed by the Village Council; and the Village Council of said village may serve notice within five days by giving the same personally to the owner or occupant of such lot or premises, if known and found within the village, and if the Village Council serving such notice shall not, within five days, find such person or persons within the village, then the notice shall be served by posting the same in some conspicuous place on said lot or premises. The officer serving such notice shall certify that the date and mode of service, which certificate shall be deemed final: and in the office of the Village Clerk, in a book to be provided for that purpose; and shall be kept a record and a copy of all notices, filing names of all persons, and descriptions of lots and premises, also date and mode of service.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.07 KEEPING SIDEWALK IN GOOD REPAIR.**

It shall be the duty of the owner of any lot or premises adjacent to or abutting upon any sidewalk, now or hereafter constructed in the village, to keep such sidewalks in good repair, free from breaks and holes, and maintain such sidewalk in a condition safe for public travel; and to keep concrete walks with even top; and should any such walk be or become broken, or in need of repair, it shall be the duty of the Village Police at once to notify the owner of said lot or premises to repair such sidewalk within 20 days after such notice.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.08 KEEPING SIDEWALKS FREE FROM OBSTRUCTIONS.**

The owner of every lot or premises adjacent to or abutting upon any sidewalk in the village shall keep such sidewalk free from obstruction, encroachments, and filth and shall remove snow and ice therefrom, so that the entire width of the walk shall be in a condition for public travel; and should any owner not keep such sidewalk free from obstruction, encroachment, or filth, snow, and ice, as herein provided, the Public Works Supervisor shall give such owner 24-hours' notice to remove the same. The notice required by this or § 153.07 shall briefly state what repair shall be made or work done, and shall as near as may be, conform to the notice required in § 153.06(B), and may be served at once, either personally on the owner or by posting the same on the premises, and record thereof shall be kept in the same manner as required of notices for building and rebuilding walks.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.09 ACCOUNT OF EXPENSES.**

The Public Works Supervisor shall, at the next meeting of the Council, or so soon thereafter as is practicable, after the construction, rebuilding, repairing, or clearing of any sidewalk by him or her, or by or under his or her direction, deliver to the Common Council, a verified account of the expense incurred in building, rebuilding, repairing, or clearing each sidewalk to or upon which such lot or premises is adjacent or abutting; such account shall include a statement of the labor or services for which such expense was incurred, together with a description of the lot or premises upon or in respect to which the expense was incurred and the name of the person or owner, if known, chargeable therewith. Whereupon, the Village Council shall audit said bill. The Village Clerk shall cause such amounts as shall have been authorized and ordered paid, as above stated, together with an additional 10%, to be severally assessed against the

several lots with respect to which such expenditures were made and added to the next tax roll, and same shall severally become liens on said lands and shall be collected in the same manner as other taxes are collected and included as a part of the highway tax or fund of the village.

(Ord. 5A-2001, passed 10-15-2001)

#### **§ 153.10 NEGLECT; REFUSAL TO BUILD/REPAIR SIDEWALK.**

If any owner shall neglect or refuse to build, rebuild, or repair any sidewalk, or if any owner shall neglect or refuse to keep any sidewalk clear of obstructions, encroachments, filth, snow, or ice, as herein provided, and the village by any suit or other proceedings is compelled to pay damages or costs to any person for injuries to any person or property on account of such neglect or refusal, such owner shall be severally liable to the village for the amount paid and the same may be collected by suit, if necessary, and service of any such note, as herein provided, shall not be construed to release the owner of the property from liability for injury to the person or property occasioned directly or indirectly by the condition of such walk.

(Ord. 5A-2001, passed 10-15-2001) Penalty, see § 153.99

### **PUBLIC PROPERTY**

#### **§ 153.25 PROHIBITION OF ANIMALS, WAGONS, AND THE LIKE ON SIDEWALKS.**

(A) No person shall lead, drive, or back any team, horse, ox, cow, or other animal or wagon, cart, or wheel carriage, or draw, push, or otherwise propel any handcart, wagon, or carriage on or along any sidewalk in the village.

(B) This section, however, shall not be construed to apply to any bicycle or tricycle operated by children under ten years of age, or to any invalid chair or vehicle, or to any baby carriage.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.26 OBSCENE/INDECENT ADVERTISEMENTS.**

No person shall post, paste, or fasten any obscene or indecent picture, handbills, advertisement, or written or printed matter in any public place, nor post, paste, or fasten any handbill, advertisement, or notice upon any schoolhouse, church, or other public building in the village.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.27 DISPLAY OF STALLIONS, BULLS, SNAKES, SERPENTS, OR REPTILES.**

No person shall display or exhibit any stallion, bull, or any snakes, serpents, or reptiles in any public place in the village.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.28 TEARING DOWN, DESTROYING, OR DEFACING ADVERTISEMENTS.**

No person shall tear down, destroy, or deface in any manner any handbill, advertisement, or notice, whether public or private, not forbidden by § 153.26.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.29 OBSTRUCTING THE SIDEWALK.**

No person shall obstruct the full, clear, and free passage of the entire width of the sidewalk on any street with anything whatever, but this section shall not be construed to prohibit merchants and others from occupying the sidewalk to an extent of three feet in front of their respective places of business for the purpose of displaying their goods, wares, and merchandising, or the necessary use of same for erecting or repairing building adjoining thereto.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.30 DAMAGING A PUBLIC LAMP.**

No person shall carelessly, willfully, or maliciously break, deface, mar, or in any way injure or destroy any public lamp or any lamp placed in the streets, or any lamp post in the village, or hitch any animal to any post, or shall extinguish or cause to be extinguished, or light or cause to be lighted, any or said lamps unless duly authorized to do so.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.31 DAMAGING PROPERTY.**

No person shall remove, cut, mark, mar, injure, destroy, deface, or assist in injuring, removing, destroying, defacing, or marring, any gate, fence, hedge, door, building, schoolhouse, church building, depot, house, public building, or sign; nor shall any person cut, pluck, break, or in any way injure or deface the trees, shrubs, plants, flowers, or flower beds within or upon any public place in the village.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

#### **§ 153.32 SALE OF GOODS OR PROPERTY ON STREETS OR STREET CORNERS.**

No person shall sell any goods or property of any description, household goods, except at public auction, on the streets or street corners, or on the sidewalks within the corporate limits of the village, or shall make any outcry or indulge in loud words or language directed to the public or any individual thereby seeking to induce the public or any individual to purchase his or her wares or enter his or her place of business, without a license, except auctions arranged and sanctioned by the Village Council.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

### **§ 153.33 DAMAGING DRAINS, SIDEWALKS, AND THE LIKE.**

No person shall injure or tear up any drains, sidewalks, crosswalks, or any part thereof, or dig any hole, ditch, drain, or dig or remove any sod, stone, earth, sand, or gravel from any street, alley, park, bluff, or public ground in the village, or cause or produce the same to be done, without first having obtained from the Council written permission to do so, or hinder or obstruct the making or repairing of any public improvement or work ordered by the Council.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

### **§ 153.34 FIRES.**

No person shall burn or fire any leaves, off, or rubbish of any kind on any streets within the village limits or shall build any bonfire of any kind on said streets.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

### **§ 153.35 SPEED LIMIT.**

No person shall operate a motor vehicle in any event while upon any highway, alley, or other public place within the village run at a higher speed in the business district than 25 mph, and not greater than 25 mph in all other portions thereof, subject, however, to the other provisions of subchapter.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

### **§ 153.36 PARKING.**

All vehicles shall park, in the business district, within the spaces and locations indicated by the pavement markings and parallel to said markings. No vehicle shall park on the Main Street between the hours of 2:00 a.m. and 6:00 a.m.

(Ord. 1A-2001, passed 10-15-2001) Penalty, see § 153.99

### **§ 153.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person who shall permit any obstruction, encroachment, filth, snow, or ice to remain on any sidewalk, contrary to the provisions of §§ 153.01 through 153.10, and any person who shall build or rebuild or attempt to rebuild or repair any sidewalk in the village not of the material or not in the lines and grades as herein provided, or in any way not complying with the provisions of §§ 153.01 through 153.10, and any person who, in any other matter or thing, shall fail to comply with the provisions of §§ 153.01 through 153.10 shall be deemed guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction, shall be punished by a fine of not more than \$100 together with the costs of prosecution, or by imprisonment in the county jail not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

(C) Whoever shall violate any of the provisions of §§ 153.25 through 153.36 shall on conviction thereof be punished by a fine not exceeding \$50, or by imprisonment in the county jail or the jail of the village, not exceeding 30 days, or by both such fine and imprisonments in the discretion of the court, together with the costs of prosecution the offender may be imprisoned in the county jail, or in the jail of the village for a term not exceeding 30 days, unless payment of such costs and fine be sooner made.

(Ord. 1A-2001, passed 10-15-2001; Ord. 5A-2001, passed 10-15-2001)

## **TABLE OF SPECIAL ORDINANCES**

Table

### **I. FRANCHISE AGREEMENTS**

### **II. REAL ESTATE TRANSACTIONS**

## **TABLE I: FRANCHISE AGREEMENTS**

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
1989-3	5-8-1989	Electric franchise with Indiana Michigan Power Company.
1994-3	8-8-1994	Gas franchise with Utilicorp United Inc. doing business in the state as Michigan Gas Utilities.
2003-2	5-19-2003	Cable television franchise with TW Fanch-one.

## TABLE II: REAL ESTATE TRANSACTIONS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
1976-2	4-14-1976	Sale of land to Shawnee Specialties Inc. described as commencing 112.6 feet west of the northwest corner of Lot 51 of Crystal Brook Addition in Pipestone Township, Berrien County, Michigan, according to the recorded Plat thereof, thence east 446.6 feet, thence north 23 degrees 36 minutes west along the railroad right-of-way 408.72 feet, thence south 66 degrees 24 minutes west 409.25 feet, thence south 23 degrees 36 minutes east 229.92 feet to the place of beginning, being in the Township of Pipestone, Berrien County, Michigan.
1976-4	5-20-1976	Sale of land to Shawnee Specialties Inc. described as commencing 112.7 feet west of the northwest corner of Lot 51 of Crystal Brook Addition in Pipestone Township, Berrien County, Michigan, according to the recorded Plat thereof, thence east 446.7 feet, thence north 23 degrees 36 minutes west along the railroad right-of-way 408.7 feet, thence south 66 degrees 24 minutes west 409.3 feet, thence 23 degrees 36 minutes east 229.9 feet to the place of beginning, being in the Township of Pipestone, Berrien County, Michigan. Subject to an easement reserved to the village, for sewer and water over the southerly 20 feet and easterly 20 feet thereof.
1976-5	3-14-1977	Sale of land to Michigan Tube Company described as that part of the east half of the southeast quarter of Section 32, Township 5 south, Range 17 west, Village of Eau Claire and Pipestone Township, Berrien County, Michigan, described as follows, to-wit: commencing at the southwest corner of Lot 50, recorded Plat of Crystal Brook Addition to the village; thence north, along the west line of Lots 50 and 51 of said Plat, to the northwest corner of said Lot 51; thence west 112.7 feet; thence south, parallel with the west line of said Lots 50 and 51, 437.2 feet to the north line of Love Road, 112.7 feet to the place of beginning, subject to the franchise for laying and maintaining gas pipes, and the like in favor of Michigan Gas Utilities Company, a Michigan Corporation, as recorded in Book 191 of Miscellaneous Records, page 63 and subject to the easement for electric power lines in favor of Indiana & Michigan Electric Company as recorded in Book 70 of Miscellaneous Records, page 61 and in Book 93 of Miscellaneous Records, page 613.

## PARALLEL REFERENCES

References to Michigan Compiled Laws Annotated



References to Resolutions

References to Ordinances

## REFERENCES TO MICHIGAN COMPILED LAWS ANNOTATED

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<i>M.C.L.A. Cite</i>	<i>Code Section</i>
<i>M.C.L.A. Cite</i>	<i>Code Section</i>
15.231 et seq.	31.22
15.231 through 15.246	114.04, 114.17
15.261 et seq.	31.01, 31.02, 31.22
24.201 through 24.328	70.01
28.609	30.34
54.211	152.05
125.31 et seq.	31.15, 31.16, 31.25
125.271 et seq.	31.25
125.1508b(6)	150.03, 150.04
125.3101 et seq.	31.15, 31.25
125.3801 et seq.	31.15, 31.16, 31.24
141.101 through 141.138	52.17, 52.25, 52.27, 52.28
324.3101 et seq.	53.001, 53.002, 53.190
324.11101 et seq.	53.002, 53.141, 53.250
325.191	52.30
325.192	52.30
333.7106	116.04
333.26421 et seq.	116.01, 116.25
484.2102	114.03
484.3101—484.3120	114.01—114.04, 114.07, 114.11, 114.17
484.2251	114.04
560.101 et seq.	31.27
560.101 through 560.293	152.02
600.101 et seq.	10.02
600.8101 et seq.	71.01
600.8701 through 600.8735	10.02
764.9a through 764.9e	10.10
764.9c	30.33

## REFERENCES TO RESOLUTIONS

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<i>Res. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
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## REFERENCES TO ORDINANCES

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8	--	150.07
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12	--	110.01, 110.99
14	--	111.01—111.11, 111.99
15	--	90.30—90.36, 90.99
21	--	51.01, 51.04—51.08, 51.99
25	--	Ch. 72 Schedule I
201	--	52.15—52.18, 52.20—52.29
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1998-6	9-14-1998	71.06
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